Gatwick Airport Northern Runway Project

Examination Ref: TR020005

Response to [REP5-074] 10.38 Appendix B – Response to the JLAs' Environmentally Managed Growth Framework Proposition Version 1

and

JLAs' Proposed Control Document Setting Out An Outline Approach To Environmentally Managed Growth Framework (EMGF)

Deadline 6: 26 June 2024

Crawley Borough Council (GATW-AFP107)
Mid Sussex District Council (20044737)
Reigate and Banstead Borough Council (20044474)
East Sussex County Council (20044514)
Mole Valley District Council (20044578)
Horsham District Council (20044739)
West Sussex County Council (20044715)
Surrey County Council (20044665)
Tandridge District Council (20043605)

This document includes:

- A response at Deadline 6 (26 June2024) from the Joint Local Authorities as listed above to [REP5-074] 10.38 Appendix B – Response to the JLAs' Environmentally Managed Growth Framework Proposition Version 1 – See Appendix I

  And

- JLAs' Proposed Control Document Setting Out An Outline Approach To Environmentally Managed Growth Framework (EMGF) - See Appendix II

APPENDIX I

Joint Local Authorities' Response

Deadline 6

Response to [REP5-074] 10.38 Appendix B – Response to the JLAs' Environmentally Managed Growth Framework Proposition Version 1

Introduction

1. The purpose of this report is to respond to the Applicant's response at deadline 5 [REP5 – 074] to the JLAs' Environmentally Managed Growth Framework Proposition submitted at Deadline 4 [REP4 – 050].

2. A further report was submitted by the JLAs at Deadline 5 [REP5-093] setting out the reasons for introducing an EMG Framework and explaining the inadequacies of the Applicant's proposed controls on environmental impacts. In particular, it is worth drawing attention to what is said in section 4 of REP5-093 on the process of slot allocation, including the 'grandfather rights' enjoyed by airlines once slots have been allocated in respect of declared capacity, and the limited scope of the Applicant to curtail such rights, even if there are subsequent exceedances of environmental controls.

3. A further report from the JLAs setting out a proposed Control Document for the Outline Approach to Environmentally Managed Growth (EMG Approach) has also been submitted at Deadline 6. It provides a proposed way forward for establishing an EMG approach should the Secretary of State be minded to approve the application. The document is intended to be used as a certified DCO control document. A Requirement would be introduced for the Applicant to enter into discussions with the JLAs and other key stakeholders to establish the detailed approach for the environmental thresholds and limits across the identified topic areas and the associated governance arrangements to handle the processes involved.

Planning Policy Background

4. Whilst the JLAs accept that Government supports the sustainable growth of aviation, national planning, aviation and noise policies are interlinked and clear that growth cannot happen at any cost. Airport development proposals should mitigate and minimise adverse environmental impacts. This is at the heart of the JLAs EMG Approach, which would operate within and be complementary to the Applicant's proposed ATM cap so that growth is continually managed to ensure that negative environmental consequences are minimised.

5. The Government's policy contained in 'The Future of UK Aviation; Making best use of existing runways' is *"…to be supportive of all airports who wish to make best use of their existing runways, including those in the South East, subject to environmental issues being addressed"(para 1.5)*. This wording makes it abundantly clear that such growth is 'subject to' (i.e. must be achieved within) the relevant environmental control mechanisms. There is a similar message in 'Flightpath to the Future' as noted at para 10 below, where it is recognised that Government policy support for aviation growth sits 'within' the achievement of strict environmental criteria.

6. In relation to noise, the ANPS makes clear that Noise Envelopes should *"be tailored to local priorities and include clear noise performance targets. As such, the design of the envelope should be defined in consultation with local communities and relevant stakeholders"(Para 5.60)*, making clear that there should be a balance between growth and noise reduction. Hence, it is important that growth can be controlled when the limits set by the noise envelope are not being met.

7. The ANPS states, in relation to surface access that, "*The Government also wishes to see the number of journeys made to airports by sustainable modes of transport maximised as much as possible (paragraph 5.5)."* The ANPS goes on to state, *"The airport surface access strategy must contain specific targets for maximising the proportion of journeys made to the airport by public transport, cycling or walking (paragraph 5.9)."*

8. Furthermore, *"The strategy should also contain actions, policies and defined performance indicators for delivering against targets, and should include a mechanism whereby the Airport Transport Forum can oversee implementation of the strategy and monitor progress against targets alongside the implementation and operation of the preferred scheme"(para 5.9)*.

9. The policy is therefore clear that access by sustainable transport must be maximised in terms of airport related journeys. If the Applicant routinely misses their own targets in relation to surface access, causing worse environmental impacts than envisaged through the Environmental Statement, it is not apparent how the development could be considered policy compliant against these criteria. The airport could continue to grow, whilst missing key surface access targets and therefore would not be maximising sustainable transport to and from the airport, in accordance with the ANPS. The JLAs consider the Framework would be an appropriate mechanism to ensure that growth occurs at the airport in a policy compliant manner, linked to the monitoring of key environmental effects.

10. Additionally, Government policy set out in 'Flightpath to the Future' (page 5) states: *"Airport expansion has a key role to play in realising benefits for the UK through boosting our global connectivity and levelling up. We continue to be supportive of airport growth where it is justified, and our existing policy*

frameworks for airport planning provide a robust and balanced framework for airports to grow sustainably within our strict environmental criteria".

11. This is further recognised where it is stated that "*Central to Flightpath to the Future is recognising the importance of clarity for the sector on the Government's ambitions, both for recovery and beyond. At the heart of our future ambitions is a commitment to rebuilding the sector in a sustainable way. We want to get the balance right between championing a return of passenger demand, whilst also recognising our sustainability goals, and the fact that the sector must adapt as we rebuild to ensure a cleaner, greener future."* (Page 22) and "*… the Government remains supportive of airport expansion where it can be delivered within our environmental obligations"* (Page 26).

12. The Crawley Borough Adopted Local Plan and the emerging new Local Plan which has completed its examination stage, includes a range of policies aimed at mitigating and safeguarding the local area from adverse environmental impacts arising from new development, including development at the airport. The JLAs comments on the Applicant's Policy Compliance Commentary [REP4-042] has been included as part of the West Sussex Authorities Deadline 4 response.

13. Other airports have or are looking to introduce environmental management frameworks with the aim to control growth should environmental parameters be likely to be or are exceeded e.g. Heathrow Airport's 'Environmentally Managed Growth – Our Framework for Growing Sustainably' link: Environmentally Managed Growth.pdf and Luton Airport's 'Controlled Green Growth Framework' Link: GCG Framework - Certified Document (planninginspectorate.gov.uk) . The JLAs' proposals reflect these approaches, particularly the framework put forward by London Luton Airport Limited, which was itself refined and improved through the DCO Examination process. Further comment on the context of these approaches is dealt with in later paragraphs 23 to 25.

Critique of the Applicant's Approach

14. The Applicant's current position is that the growth of the airport under the DCO will be subject to controls related to environmental effects in the form of:

- an air noise envelope (Requirements 15 and 16);
- an overall air transport movement ("ATM") cap of 386,000 commercial ATMs per annum (Requirement 19(1));
- the Surface Access Commitments ("SACs") (Requirement 20); and
- a Carbon Action Plan ("CAP") (Requirement 21).

15. Whilst welcomed, the JLAs do not consider these controls to be sufficiently robust or enforceable. For instance, whilst the air noise envelope requirements prevent the Airport operator from declaring any further

increase in capacity if the agreed noise contours for the noise envelope are exceeded, the timing proposed by the Applicant means that this restriction does not apply to the initial declaration of capacity once the Applicant is ready to commence dual runway operations. Thus, slots allocated to fill that capacity will be allocated ahead of the noise control mechanisms in the Applicant's air noise envelope [REP5-030] and paragraph 7.2.3 of REP5-030 is explicit that any subsequent noise reduction controls will 'have to comply with... respecting, for example, historic slot rights.' In addition, the sanction on future capacity declarations potentially arises after the exceedance has taken place over a 24-month period, notwithstanding forecasting of future impacts. Since there are inherent uncertainties with any forecasting process, and the Applicant proposes no limits or checks before an exceedance arises or is forecast to arise, there is a continuing risk that the forecasts will not predict an exceedance, but the actual operational experience will produce an exceedance. In that scenario, the restriction on declaring further capacity in paragraph 7.3.1 of REP5-030 will not apply until there has been 24 months of operation with an exceedance. Moreover, the JLAs remain concerned that the Applicant's proposals for the air noise envelope exclude the local authorities from any role of being able to require remedial action in the event of an exceedance.

16. The SACs, meanwhile, only require the airport operator to identify further actions without any safeguards in place to ensure the that environmental performance gets back on track and / or whether any exceedances are prevented. The same is true in respect of carbon and air quality targets with no constraints to growth as a consequence of missing targets. With specific reference to carbon, the JLAs are aware of the very recent Supreme Court decision in R (Finch) v Surrey County Council [2024] UKSC 20, where judgment was delivered on 20 June 2024, and which may have implications for the assessment of GHG emissions for the NRP. However, the JLAs are still in the process of absorbing the legal points made by that judgment, and have not therefore as yet taken it into account either in their approach to EMG or more generally in the context of the Examination. To the extent that further comment is necessary, this will follow at a later deadline.

17. The JLAs' key concern is that the proposed DCO provisions would provide too much flexibility to allow growth to proceed with what may prove to be in practice only retrospective checks and no certainty of any excessive impacts being effectively controlled. Of particular concern is the lack of safeguards to ensure the continued growth of the airport does not exceed expected environmental parameters. These potentially negative environmental consequences would not have been assessed in the Environmental Statement and could permit non-policy compliant development to occur, which would be further exacerbated by allowing the airport to continue to grow further, despite potentially missing key environmental targets.

EMG v NRP Mitigation

18. The JLAs acknowledge there are differences of opinion regarding the thresholds and limits that should be agreed as part of the DCO consideration whether or not an EMG approach is agreed or not. These are issues which the JLAs and the Applicant have and will continue to raise through the examination process.

19. The key effect relating to the imposition of the EMG approach are the sanctions that would be imposed where the agreed thresholds and limits are not met. Ultimately, it is the JLAs' view that where accepted environmental parameters are not met, despite opportunities prior to exceedance through agreed on-going forecasting and monitoring to manage environmental adverse impacts to keep on track, that further slot allocations should be stalled until deliverable action plans to ensure compliance with environmental parameters are put in place.

20. This is absent from the Applicant's approach where only limited sanctions on growth exist except an ATM cap for the whole Airport upon which the environmental assessment was based. This ATM cap however, does not prevent potential adverse environmental exceedances occurring prior to the capped level being reached and does not give the assurances that are suggested by the Applicant in their response (para 4.1.5). The JLAs are of the view that the ATM cap should be retained alongside the EMG framework.

21. The JLAs' EMG approach set out in its further submission at deadlines 5 and 6 tackles the retrospective issue where the only effective sanctions are those which could be established through restrictions on slot allocations, thereby restricting the number of ATMs until deliverable mitigation action plans to ensure compliance are in place to prevent any further environmental parameters being exceeded.

22. Other than the capacity restrictions associated with the Noise Envelope, the JLAs are not aware of any proposals set out by the Applicant in the DCO proposals which would impose any restriction on growth where exceedances do occur. The only safeguard provided by the Applicant is the drafting of reviewed action plans.

23. The JLAs acknowledge that the proposed Heathrow EMG and the Luton Green Controlled Growth (GCG) frameworks are not yet fully instigated. However, they are approaches which have been developed through collaboration between the airport operators and the local authorities and the local communities involved and would be expected to be agreed as part of the development processes involved. The proposed Luton GCG framework was also extensively tested and refined through the recent DCO Examination. The JLAs therefore believe that they do provide precedents to inform an appropriate approach for the Gatwick Airport NRP DCO.

24. Heathrow's EMG approach, first put forward in 2019 was a new concept for UK airports. Although developed as a potential alternative to an ATM cap on an expanded 3 runway operational airport, the approach's pre-eminent objective was aimed at avoiding exceedance of agreed environmental limits, and thus also sought to give confidence to local communities that the Airport was serious about operating within such limits. The approach was fully supported by Gatwick Airport Limited's own planning consultant (see Heathrow-Project-Sheet.pdf (quod.com): "A key aspect of Quod's work was championing a new concept for UK aviation, known as Environmentally Managed Growth. This framework set out a long-term monitoring and management regime to assure that the effects of Heathrow's long-term growth and operations permanently remain within acceptable environmental limits"). The JLAs envisage an EMG approach operating within and complementing an ATM cap to provide an effective mechanism for minimising negative environmental impacts by aiming to prevent foreseeable adverse impacts, and should they occur ensuring they are dealt with as effectively and rapidly as possible.

25. With regard to the Luton Green Controlled Growth approach, whilst the airport operator is in effect a wholly owned subsidiary of Luton Borough Council, the JLAs consider that this should have no significant bearing on the applicability of such an approach relating to a private enterprise and that the main premise of the approach is based on securing safeguards towards ensuring the accepted environmental parameters for growth are not exceeded and providing confidence to the local communities accordingly. The draft DCO also proposes a passenger cap as well as Green Controlled Growth.

Governance

26. The JLAs proposals included a similar governance structure to that put forward through the Luton GCG approach. However, the JLAs would be happy to engage further with the Applicant and other stakeholders to establish an agreed governance and independent scrutiny approach and that this can be progressed independently should the DCO be approved by the Secretary of State. The JLAs however, would expect to have a significant role in the governance regime given their role as local planning and environmental health authorities (in accordance with the principles for the EMG approach set out in the JLAs submission at Deadline 5). This would include in the ongoing monitoring of the actual environmental effects of expansion and operations at the airport and involvement in the independent oversight of environmental effects associated with the operation of the airport. The JLAs do not consider that their role should be excluded or that their responsibilities as relevant planning authorities and environmental health regulators can or should be discharged by the CAA, which does not have any statutory responsibilities for such matters.

Conclusions

27. The imposition of the EMG approach is not aimed at controlling the growth of the airport for its own sake but is a measured and proportionate approach to safeguard the interests of the communities for whom the JLAs have planning and environmental health responsibilities, aimed at ensuring as far as possible, that environmental parameters are not exceeded and that sanctions are imposed where such exceedance is likely or has taken place and that such exceedances are corrected before further growth in Air Traffic Movements (ATMs) are accepted.

28. The Applicant's current approach does not provide such assurances and growth can be continued without any sanction beyond the application of ongoing action plans, excepting in part the approach towards the noise envelope proposals.

29. The Applicant has continually stated that they have confidence in their assessment work in establishing robust environmental targets and, should that be the case, they should have no concerns about their ability to bring forward the growth of the airport operations without any significant risk of exceeding the targets proposed. Should all commitments be met, no slowing of growth would be necessary.

June 24

APPENDIX II

Joint Local Authorities' Response

Deadline 6

JLAs' PROPOSED CONTROL DOCUMENT SETTING OUT AN OUTLINE APPROACH TO ENVIRONMENTALLY MANAGED GROWTH (EMG FRAMEWORK)

The Purpose of the Outline EMG Framework

1. This document sets out an outline approach for the establishment of an Environmentally Managed Growth (EMG) Framework to be secured as a certified document identified in Schedule 14 of the Draft Development Consent Order (DCO).

2. A new Part to be added to Schedule 2 to the DCO will set out requirements for the Applicant / Airport operator to engage with the Joint Local Authorities (JLAs) and other key stakeholders to prepare, consult on and establish a detailed EMG Framework based on the outline approach set out in this document. Appendix I below sets out initial draft wording for the Requirements.

   NOTE: the JLAs have submitted i the Requirements as an initial draft and would be happy to provide further iterations following comments from the Applicant, the ExA and other interested parties.

3. This Outline EMG Framework sets out a proposed approach for the setting of values of the thresholds and limits to be incorporated into the Framework, the requirements to undertake monitoring and reporting and for securing the independent scrutiny and governance of the Framework.

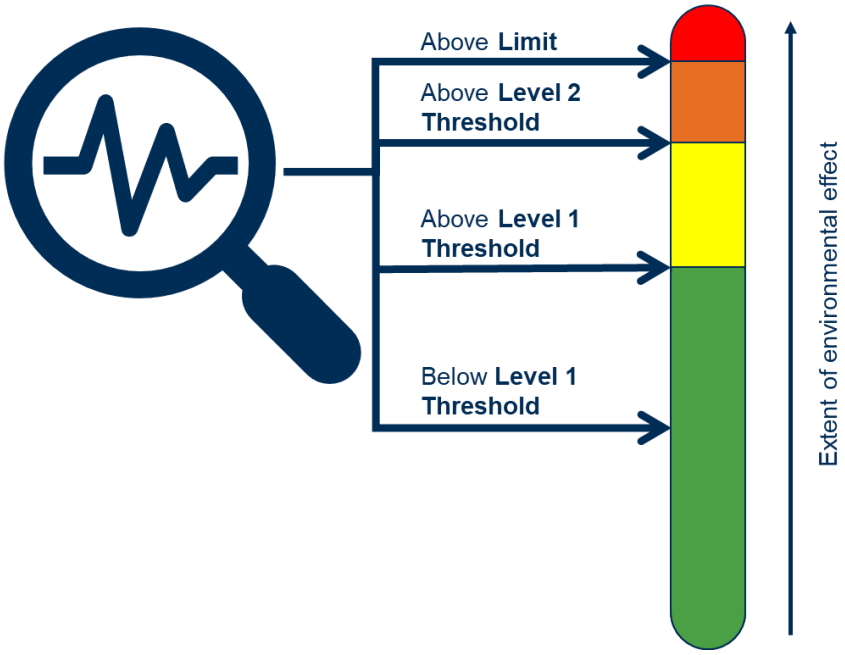
The Outline Approach

4. The Outline EMG Framework puts forward the approach for the setting of numerical values for a series of Limits for key environmental parameters based on the assessed impacts for air quality, noise, greenhouse gases and surface access. These Limits will be supported by a series of Thresholds to enable early warning of any potential increase in environmental effects, with the aim of ensuring that the ultimate environmental limits are not breached.

5. The approach has an explicit commitment to link growth at the airport to environmental performance and is based on the commitments set out in the dDCO and its control documents. The concept is illustrated in Figure 1

below. Growth could continue unrestricted where impacts are below a Level 1 Threshold following which there would be a requirement for enhanced monitoring and increasing levels of control on growth aimed at preventing a Limit being breached.

Figure 1: Concept of Thresholds and Limits



6. The airport operator will be required to continually monitor and regularly report on the extent of the environmental effects associated with the airport in four areas: Noise, Carbon, Air Quality and Surface Access. Monitoring will be triggered in advance of a Limit being reached and triggered by appropriate Thresholds that determine the appropriate action.

7. If monitoring were to indicate at any point that a Limit was in danger of being breached, then a plan must be produced by the Applicant to explain how that breach will be avoided. The plan would be subject to approval by an independent scrutiny body. If any one of the environmental Limits were to be breached, further growth should be stopped and mitigation will need to be implemented. Ultimately, further airport growth would be constrained until environmental performance returned to below the defined Limits.

Control through Slot Allocation

8. It is recognised that any EMG approach will need to function within existing mechanisms, such as the Airports Slot Allocation Regulations 2006 processes, to control how growth occurs in line with the airport's environmental commitments and targets being met.

9. The number of slots is determined by the airport's 'capacity declaration'. A capacity declaration is made twice per year and is used to establish co-

ordination parameters for each of the summer and winter seasons. These co-ordination parameters set out the maximum capacity available for allocation to aircraft operators considering the functional limitations at the airport such as runway, apron, terminal, airspace, and environmental restrictions and typically relates to hourly or sub-hourly limits.

10. To comply with the global process of ensuring that the slots that the airlines hold are coordinated across all of the airports in their network, capacity declarations are required to be made approximately 7 months in advance of the operations to enable long-term planning of flight schedules by airlines (i.e. a capacity declaration will typically be made in September governing the number of slots available for the following summer period April-October). This process requires forward planning of the ability to declare additional capacity or allocate additional slots to prevent environmental limits being breached, hence the use of Thresholds to ensure that the release of new capacity is managed in line with environmental targets. Should a Limit be breached, controls would be required to ensure that growth did not continue and give rise to unacceptable environmental effects and should include:

    - overall limits on the number of slots that can be allocated;
    - reductions in declared capacity so that additional slots cannot be allocated within the already declared capacity;
    - introduction of local rules, subject to agreement with the airlines, to reduce the number of slots allocated.

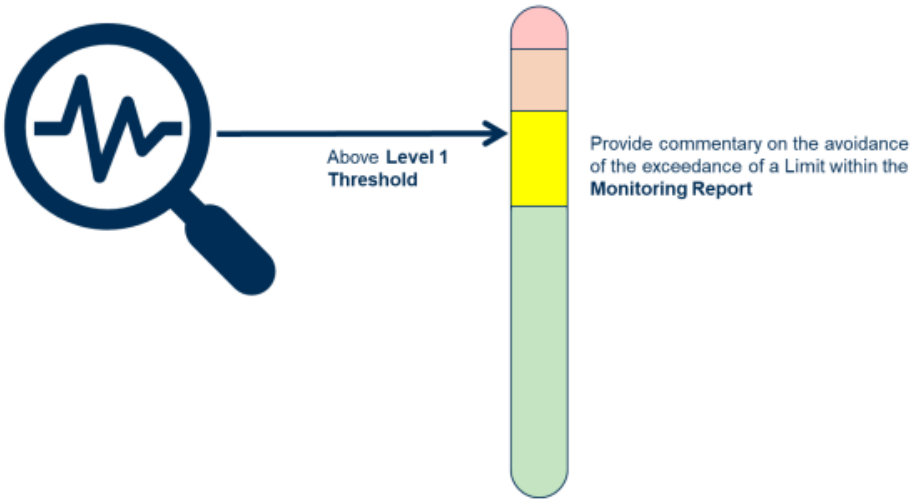
Limits and Thresholds Approach

11. The basic principles of how the Thresholds and Limits would work to manage growth are set out below. While environmental effects remain below all Thresholds and Limits, the airport will operate as it does today, subject to ongoing monitoring and reporting of environmental effects as required by the various management plans.

Level 1 Thresholds

12. If, when preparing a Monitoring Report, the airport operator identifies that any individual environmental effect is above the relevant Level 1 Threshold, the Monitoring Report must include commentary on the avoidance of the exceedance of a Limit, including but not limited to any forecasts of future impacts. That commentary could include, for example, if the airport operator considers any interventions or measures that are needed or already planned to be brought forward in the forthcoming year that will mitigate the effects of future growth against the Limits, as displayed in Figure 2. It is important to note that it is not envisaged that growth would stop should a Level 1 Threshold be breached. However, it may be appropriate to introduce proportionate controls or mitigations, which might include initiatives such as the setting of noise related budgets to control the allocation of slots as discussed further under the noise topic below.

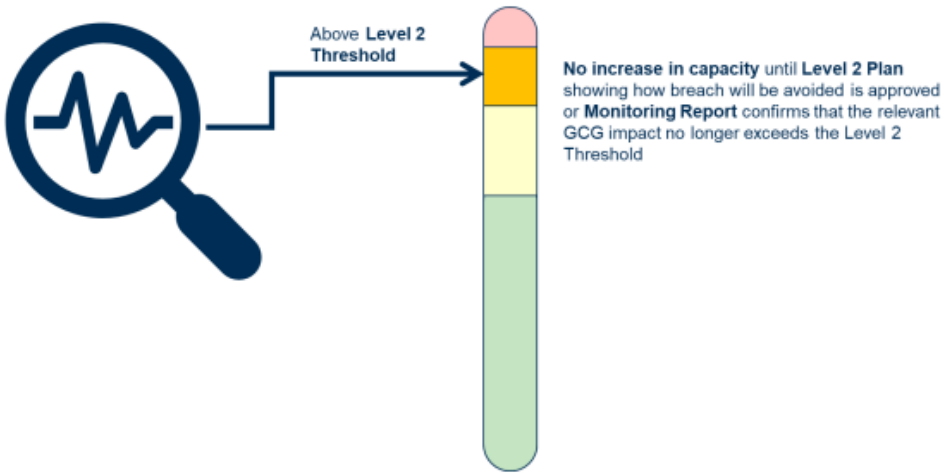
Figure 2: Actions above a Level 1 Threshold



Level 2 Thresholds

13. Where a Level 2 Threshold has been exceeded, unless otherwise agreed by the Environmental Scrutiny Group ("ESG"), (see paragraph 22 below) the airport operator must ensure that any future airport capacity declarations (being hourly runway capacity parameters) do not increase from the existing capacity declaration until either; (a) the ESG has approved a Level 2 Plan, or (b) a Monitoring Report confirms that the relevant effect(s) no longer exceeds the Level 2 Threshold. However, within an existing capacity declaration, new slots will still be permitted to be allocated, as illustrated in Figure 3 below.

Figure 3. Actions above a Level 2 Threshold



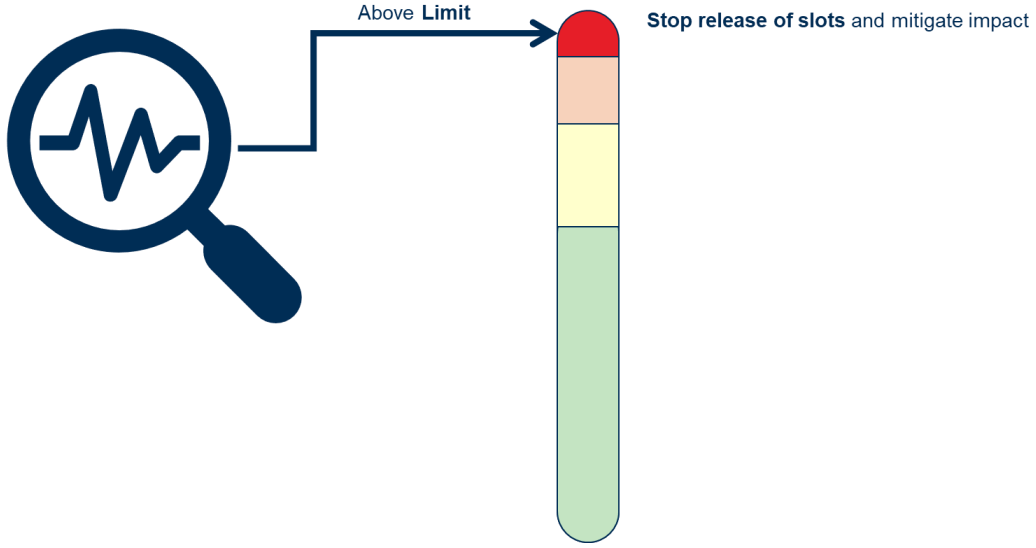
Limits

14. A Mitigation Plan will be required whenever Monitoring Reports show that any relevant environmental effect(s) has breached a Limit, unless it is certified by the ESG that a breach is due to unforeseen circumstances beyond the control of the airport operator.

15. Similarly, where a Level 2 Threshold and Limit for the same environmental topic have been exceeded and breached respectively (for example, the exceedance of a Level 2 Threshold for passenger mode share and a breach of a Limit for staff mode share) the production of a combined Mitigation Plan can also discharge the separate requirement to produce a Level 2 Plan for the exceedance of the Level 2 Threshold (as set out above), at the discretion of the airport operator.

16. When the breach of a Limit has occurred, unless otherwise agreed by the ESG, the airport operator will not increase declared hourly runway capacity above the existing capacity declaration and nor should any additional slots be allocated (above the existing number of allocated slots in the previous calendar year or the two equivalent scheduling seasons - summer and winter) until monitoring confirms the relevant environmental effect has fallen below the relevant Limit.

Figure 4: Actions above a Limit



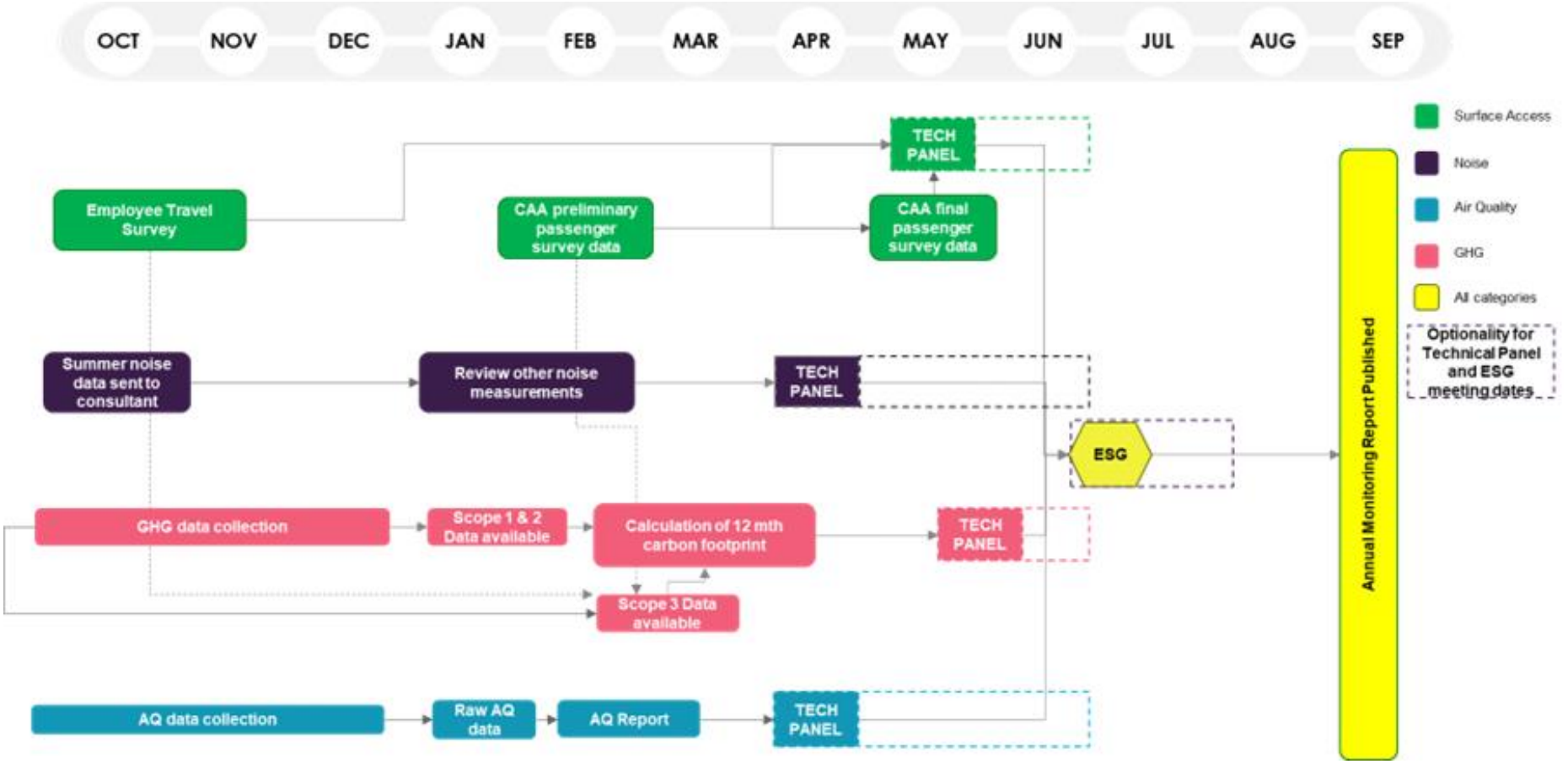
17. A Mitigation Plan will need to set out the airport operator's plan for bringing the environmental effect(s) back below the Limit, within as short a timeframe as is considered reasonably practicable. The Mitigation Plan must include analysis to demonstrate that this will be the case and include a programme for the implementation of any required mitigation, and the mitigation will subsequently need to be delivered according to these timescales.

18. Mitigation must be implemented by the airport operator in accordance with the approved Mitigation Plan. Where a Mitigation Plan put forward by the airport operator has not been effective within the timescales set out within the approval Mitigation Plan, the airport operator must prepare and submit a new Mitigation Plan.

19. Figure 5 below shows how the timescales for the process should work, taking into account the timescales over which monitoring information is

likely to become available including the timescale for the production of noise contours following the end of the relevant 92-day summer period and the availability of the passenger mode share data from the Civil Aviation Authority passenger surveys. The other monitoring activities are indicative and based on what should be considered feasible.

20. The key timescale is aimed at ensuring that any Mitigation Plans that may require adjustments to the airport's declared capacity or additional controls such as Quota Count (QC) budgets or limits on the total number of slots that can be allocated) are known before the capacity declaration for the summer of the next year in September each year.



Source: Luton Airport Green Controlled Growth Explanatory Note

21. The detailed monitoring will need to commence from the first year of operation of the Northern Runway Project ("NRP") so that if there is a prospect that any Threshold or Limit could be exceeded or is projected to be exceeded, action can be taken in 2031. Otherwise, any action to limit slot allocation or the declaration of capacity would be too late to have any effect in preventing a breach.

Governance

22. It is proposed that the processes described above should be overseen by an independent Environmental Scrutiny Group with access to independent Technical Advisory Panels comprised of specialist consultants and/or officers. The ESGs and Technical Advisory Panels will need appropriate powers to fulfil their role. The composition of the ESG should be subject to discussion and consultation with the JLAs and other key stakeholders including National Highways and the CAA. Terms of Reference would need to be drawn up for the ESG and the Technical Advisory Panels and funding for their operation provided by the Applicant. The terms of reference would include the ability to make investigations, require information, require action by the Applicant (including the adherence to specific controls, the taking of action to mitigate effects, correct breaches or other action as may be reasonable in the circumstance), the ability to vary the terms of the noise envelope and noise insulation scheme in light of changing circumstance and the ability to determine changes to operation that may not require changes to planning permission but that may result in increases in capacity.

The Environmetal Parameters

Aircraft Noise

23. The Noise Envelope and the EMG Framework have similar principles and functions and hence the noise section of EMG is being defined as the Noise Envelope for the Proposed Development, so there is a single control process for aircraft noise which this is integrated with the wider control processes which form EMG.

24. The measures to define the aircraft noise Limits and Thresholds are the area enclosed by the actual mode for the following:

- Summer day 51 dB LAeq 16h(day) contour;
- Summer night 45 dB LAeq 8h (night) contour;
- Summer day 60 dB LAeq 16h(day) contour;
- Summer night 55 dB LAeq 8h(night) contour;

- The area under the contour of the extent of an average of one additional aviation noise induced awakening during the 92 day summer period.

With thresholds set at 80% and 90% of the limit.

25. The Limits are to be aligned to the five-year Noise Action Plan (NAP) cycle and reflect the outcome of discussions on the Noise Envelope from the DCO examination.

26. Other measures are to be monitored and reported annually within agreed ranges and appropriate banding of the noise contours. These are to include the Lday, Levening, Lnight, Ld,e,n, overflight data, N65 and N60 number events, population within specified contours.

27. As well as specific noise limits, the noise envelope should incorporate operational limits upon which the achievement of the noise envelope limits is predicated or for reasons of certainty. An example of the former would be the proposal to incorporate DfT night noise ATM and quota count (QC) limits and the latter limiting the use of WIZAD (Route 9).

28. To ensure the noise envelope fulfils policy requirement to remain relevant, there needs to be a formal mechanism to review and amend the parameters that comprise the noise envelope limits, the limit values and the thresholds values. The same applies for those items referred in paragraph 26 above that measured and monitored but do not form binding limits.

29. The mechanism by which the Noise Envelope would work would be to limit the total number of slots that can be allocated by conditioning slots so that they must be utilised by aircraft with appropriate Quota Counts (QC) performance. This would require the application of forward looking QC budgets consistent with noise contour predictions. Such budgets would need to be implemented from the outset of the operation of the NRP to ensure that the rapid growth anticipated in the early years following opening did not result in an exceedance of the Limit before appropriate forward looking controls could be introduced. Initially slot release would also be dependent on the success of the noise insulation scheme to achieve policy objectives to avoid exposure.

Air Quality

30. The air quality pollutants proposed to be included in the Framework are particulates (PM_{10}, $PM_{2.5}$), nitrogen dioxide (NO_2), and any other pollutant (current or in the future) that has a UK limit value and or objective value. The air quality objective values as used in the air quality assessment of the consented NRP DCO are proposed to be used within this Framework.

31. The Framework should consider locations affected by not just road traffic associated with the airport, but also all other sources of emissions

associated with the airport and should be based on a review of affected road networks (ARN) for each scenario and the monitoring included in the Environmental Statement.

32. It is proposed that the Air Quality Action Plan (AQAP) agreed as part of the DCO consent be integrated into this Framework. This is proposed as additional air quality measures in the AQAP would need to be introduced and implemented should elevated pollutant concentrations be identified through the Framework review.

33. The following thresholds are to be applied with the required monitoring or mitigation actions:

- **Level 1 Threshold**: Measured / modelled concentration at 80 % of relevant UK limit or objective value. **Level 1 Action**: Airport to review embedded mitigation measures to ensure they are working as intended, determine the current airport contribution and if the airport is causing the increase in pollution.

- **Level 2 Threshold**: Measured / modelled concentration at 90 % of relevant UK limit or objective value (para 6.15 - Institute of Air Quality Management Guidance on Planning for Air Quality, (Jan, 2017) states that concentrations within 10% of an objective may be described as being close to an objective) **Level 2 Action**: Update the review of airport pollutant contributions. If the airport is the source of the elevated pollution (in whole or part) then the airport is to produce a series of agreed additional mitigation measures from the air quality action plan to ensure on going compliance with the relevant standard(s) within 6 months of the Level 2 value being breached. The reduction in concentrations delivered by the additional mitigation measures is to be proportionate to the airport's contribution to the elevated concentrations. Annual monitoring results would be needed to demonstrate the effectiveness of any additional mitigation measures.

- **Air Quality Limit:** At or above UK Limit or objective value. **Limit Action:** The actions set out in Level 2 are to be repeated and further additional mitigation identified beyond those identified at Level 2 and these measures be implemented. No additional slots can be allocated until an agreed set of measures to reduce pollution are in place and monitoring demonstrates improved air quality. Annual monitoring results would be needed to demonstrate the effectiveness of any further mitigation.

34. As the Framework for air quality is linked to air quality levels that are measured over annual durations, the review cycle for the Framework is to be annual. Additionally, every 5 years a broader review of air quality monitoring data should be undertaken to identify if additional monitoring sites should be considered. A clear set of sifting criteria should be agreed to identify the core set of monitoring sites that would be included in the Framework and which monitoring sites would be included in the

wider pool of air quality monitoring that would be considered in the 5 yearly review.

35. Provision should also be included within the Framework to incorporate any new air quality thresholds which may change over time. It is proposed that, if new thresholds are introduced, a review of which new monitoring sites should be included in the Framework should be undertaken. This should be completed within 6 months of any new threshold (e.g. air quality objective value) being introduced by the Government.

Green House Gases (GHG) Emissions

36. Under the Carbon Action Plan (CAP) and its related commitments, agreed through a consented DCO, the greenhouse gas emissions from airport buildings and ground operations (ABAGO) and surface access transportation (Scope 3 emissions) are to be controlled via the EMG Framework.

37. The Scope 3 Emissions are to be expressed as a net limit, inclusive of any offsetting that the airport operator may choose to implement. This will allow the airport operator to take steps to ensure that carbon emissions, net of any offsetting, remain within the agreed Limit even where issues beyond their control have affected their ability to limit gross GHG emissions.

38. In terms of setting limits, for ABAGO Scope 1 and 2 emissions, the Applicant has committed to achieving net zero by 2030. In addition, in line with Jet Zero, the Applicant has committed to zero emissions by 2040 for Scope 1 and 2 emissions. To achieve this, it is proposed that a trajectory will need to be presented to reduce reliance on removals by 2040. In the absence of any data or timed commitments, a linear reduction in emissions across the following commitments would seem appropriate as the limit:

- Net zero by 2030: A linear reduction to achieve net zero in Scope 1, 2, and 3 emissions is necessary from the Applicant's DCO commencement in 2029 through to 2030. Offsets and removals in line with the requirements stipulated in Section d) are permissible for the elimination of residual emissions across all emission Scopes; and
- Zero emissions by 2040: A linear decrease in Scope 1 and 2 emissions to reach absolute zero is mandated from 2030 to 2040. Offsets and removals[5] are permitted solely for the purpose of eliminating residual emissions within Scope 3 from 2040 onwards.

39. For Surface Access emissions, these emissions are presented in Chapter 16 of the Environmental Statement **[APP-041]** as a 'total' rather than net effect of the Proposed Development. Consequently, based on the alignment of this trajectory with the UK net zero policy, this trajectory of

emissions would constitute a reasonable 'limit' on emissions over the Proposed Development's lifespan.

40. The use of thresholds would follow the approach set out for Air Quality whereby the Level 1 threshold would be set at 90% of the 'Limit' emissions trajectory; and the Level 2 threshold set at 95% of the 'Limit' trajectory.

Surface Access

41. The metrics to be applied to the Framework are the maximum percentage mode shares for 'non-sustainable' passenger travel and 'non-sustainable' staff travel not to be exceeded. These limits function to promote the uptake of 'sustainable' travel, including public transport and active travel and are consistent with the mode shares for passengers and staff utilised within the surface access modelling, further details of which are reported in the Transport Assessment **[REP3-058]**of the DCO submission.

42. The detailed definitions of 'sustainable travel' and 'non-sustainable travel' in the context of passenger and staff travel are:

- "Sustainable travel" includes:
    - A "public transport" journey is one where the majority of the journey (measured by proportion of overall travel time) is made by rail, local bus, regional/express bus or coach or any other commercially operated shared transport services available for public use;
    - An "active travel" journey is one where the majority of the journey is made on foot or by cycle modes;
- A "shared travel" journey is one where the majority of the journey is made by a private car or other road vehicle containing more than one staff member (including the driver), and all of those staff members are travelling to or from the Airport. This includes group travel solely in relation to a journey to work at the Airport and car-sharing for more than one Airport employee. It does not include any journeys resulting in employees dropped off or picked up.
- "Non-sustainable travel" is not defined in the Surface Access Commitments but includes travel by modes other than those above, such as car and taxi and is irrespective of the tail-pipe emissions of those vehicle.

- "Air passengers" are those travelling to or from the airport using the surface access networks. They do not include passengers transferring between flights within the Airport;

- "Airport staff" are those who are employed directly by the Applicant or any other employer at Gatwick and who class the buildings and operational areas of the airport as their main place of work (in accordance with employer and employee travel surveys) within the Airport boundary;

43. The thresholds and limits will need to be based on the analysis of the full underlying Civil Aviation Authority dataset with appropriate adjustments to take account of 'main mode', rather than the currently reported summary of 'main mode'. This will ensure that multi-legged journeys (e.g. driving to an offsite car park, with the short final leg undertaken by shuttle bus) will be accurately reflected as a car journey. Monitoring of air passengers and staff travel is outlined in Surface Access Commitment 16.

44. We refer to the mode share for non-sustainable travel in the table below, which is the residual of the SAC. The Level 1 Threshold should be set at the residual of the SAC target and Level 2 threshold at 2.5% of the residual of the SAC target whilst the Limit is set at 5% of the residual of the SAC target. This is reflected in the table below:

EMG Surface Access limits and thresholds

Commitment		Non-sustainable travel mode share (standard)
1 Air passenger journeys to and from the Airport to be made by public transport (rail, local bus, regional/express bus or coach or another commercially operated shared transport service for public use);	Limit	47%
	Level 2	46%
	Level 1	45%
2 Staff journeys to and from the Airport to be made by public transport, shared travel (a journey made by private car containing more than one person) and active modes (walking and cycling);	Limit	47%
	Level 2	46%
	Level 1	45%

45. A monitoring report will be required every six months (winter/summer seasons) and reflect travel patterns for the preceding 12 months and will contain, as per Surface Access Commitment 16:

    - The data collected in the preceding year;

    - Parking capacity on-airport

- Outcomes from the staff travel survey (every other year);
- The number and mode share of journeys made by air passengers;
- The number and mode share of journeys made by airport staff;
- The measures currently in use, including the committed interventions and any additional measures which the Applicant has chosen to implement to achieve its mode share commitments;
- Any identified trends from the latest and previous data;
- The anticipated future trajectory of mode shares and progress towards achieving the committed mode shares; and
- Proposals for introducing, changing or withdrawing certain measures or interventions.

46. The first monitoring report will need to be produced six months after the commencement of dual runway operations to provide confidence that mode share targets are being met in time to influence the ongoing declaration of capacity for growth for the third year of operation, in line with the Surface Access Commitments.

APPENDIX I

Gatwick Airport (Northern Runway Project) DCO

Joint Local Authorities

Suggested Requirements relating to Environmentally Managed Growth Framework

Notes:

The JLAs suggest that Schedule 2 be divided into parts, in the same way as the draft London Luton Airport Expansion DCO is. The EMGF Framework requirements would sit within their own Part of the Gatwick Airport (Northern Runway Project) DCO. The proposed requirements are based heavily on the Luton draft.

The paragraph numbering would need to be adjusted according to where the Part was slotted in.

SCHEDULE 2

PART 2

REQUIREMENTS ABOUT ENVIRONMENTALLY MANAGED GROWTH

Interpretation

In this Part [and Part [X] of this Schedule (appeals)]—

"airport capacity declaration" means the parameters in relation to hourly runway capacity submitted by the airport operator for slot allocation in accordance with regulation 6 of the slots regulations;

"competent person" means a person who has sufficient training and experience or knowledge to undertake monitoring and reporting under this Part;

"consultation period" means the period of 28 days starting on the date of the provision of a relevant report or plan unless another time period is agreed by the undertaker and the ESG;

"council regulation" means Council Regulation (EEC) No 95/93 of 18 January 1993 as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018(**1**);

"Outline EMG Framework" means the document certified as such by the Secretary of State under article 52 (certification of documents, etc.);

"ESG" means the Environmental Scrutiny Group established under paragraph 1(3);

"exempt flights" means unplanned air transport movements which do not carry commercial passengers, which includes but is not restricted to—

flights operated by relief organisations for humanitarian reasons;

flights operated by the armed forces for military purposes; or

(**1**) 2018 c. 16.

flights which otherwise qualify under a particular occasion or series of occasions which are to be disregarded pursuant to a notice published by the Secretary of State under section 78(4) or 78(5)(f) of the 1982 Act or set out in guidance published by the Secretary of State in connection with those provisions;

"existing capacity declaration" means—

(a) in relation to a summer season, the last airport capacity declaration issued by the airport operator prior to the date of the submission of the Monitoring Report for a summer season; and

in relation to a winter season, the last airport capacity declaration issued by the airport operator prior to the date of the submission of the Monitoring Report for a winter season;

"existing number of allocated slots" means—

(a) in relation to a summer season, the aggregate of the number of slots (in respect of the summer season in the year the Monitoring Report was submitted)—

which were eligible for historic precedence at the start of the season together with any slots that became eligible for historic precedence during the season (in each case as determined by the slot co-ordinator for the purposes of article 8 of the council regulation); plus

any other slots allocated by the airport operator's slot co-ordinator; and

(b) in relation to a winter season, the aggregate of the number of slots (in respect of the winter season prior to the date the Monitoring Report was submitted)—

(i) which were eligible for historic precedence at the start of the season together with any slots that became eligible for historic precedence during the season (in each case as determined by the slot co-ordinator for the purposes of article 8 of the council regulation); plus

(ii) any other slots allocated by the airport operator's slot co-ordinator,

in each case, excluding the number of exempt flights in the relevant season;

"Level 2 Plan" means a plan which sets out—

(a) details of any proposed actions which are designed to avoid or prevent exceedances of a Limit; and

the proposed programme for the implementation of those actions;

"Level 1 Threshold" means, subject to sub-paragraph (2), each of the air quality, noise, greenhouse gas emissions or surface access thresholds of that description identified in the EMG Framework;

"Level 2 Threshold" means, subject to sub-paragraph (2) and paragraph 0 (exceedance of air quality Level 2 Limit or Threshold) of this Part of this Schedule, each of the air quality, noise, greenhouse gas emissions or surface access thresholds of that description identified in the EMG Framework;

"Limit" means, subject to sub-paragraph (2) and paragraph 0 (exceedance of air quality Level 2 Limit or Threshold) of this Part of this Schedule, each of the air quality, noise, greenhouse gas emissions or surface access limit of that description identified in the EMG Framework;

"Mitigation Plan" means a plan which sets out—

(a) details of the proposed mitigation and actions which are designed to remove exceedances of a Limit as soon as reasonably practicable; and

the proposed programme for the implementation of that mitigation and those actions;

["Monitoring Plans" means the following plans which when completed will be included as appendices to the EMG Framework—

(a) an Aircraft Noise Monitoring Plan;

(b) an Air Quality Monitoring Plan;

(c) a Greenhouse Gases Monitoring Plan; and

(d) a Surface Access Monitoring Plan,

or any variations to those plans approved under paragraph 1(4)(5) of this Schedule;]

"Monitoring Report" means a report submitted to the ESG containing monitoring and assessments, prepared by competent persons, of whether a Level 1 Threshold, Level 2 Threshold, or Limit have been exceeded in accordance with the Monitoring Plan;

"slots regulations" means the Airports Slot Allocation Regulations 2006(**2**);

"Technical Panel" means a forum of individuals and bodies who are able to provide suitable independent technical support to the ESG; and

"terms of reference" means—

(a) for the ESG, the terms of reference which must be set out in the EMG Framework and any amendments agreed in accordance with paragraph 1(3)(4) (Environmental Scrutiny Group) of this Schedule; and

for each Technical Panel, the terms of reference which must be set out in the EMG Framework and any amendments agreed in accordance with paragraph 1(3)(9) (Environmental Scrutiny Group) of this Schedule.

References to a Level 1 Threshold, Level 2 Threshold, and Limit are to be construed as references to those thresholds and limits which may be revised in accordance with the EMG Framework and paragraph 1(7) (review of implementation of this Part) of this Schedule.

References to the 1982 Act, or guidance associated with that Act, are, for the purposes of this Part, to be construed as a reference to those provisions or guidance as amended, substituted or replaced, and with such modifications as are required in those circumstances.

The time periods in paragraphs 1(4) (monitoring of permitted operations), 1(5) (exceedance of a Level 2 Threshold), 1(6) (exceedance of a Limit) or 1(7) (review of implementation of this Part) of this Schedule apply unless another time period is agreed by the undertaker and the ESG or it is modified in accordance with the process in paragraph 1(7) (review of implementation of this Part) and references to the time period in those paragraphs are to be construed as references to any agreed or modified time periods.

EMG Framework

—(2) No part of the authorised development is to commence until an EMG Framework has been submitted to and approved in writing by [the Secretary of State] in consultation with the host authorities so far as it relates to their respective functions.

The EMG Framework submitted pursuant to sub-paragraph (1) must be [substantially] in accordance with the outline EMG Framework.

Exceedance of air quality Level 2 Threshold or Limit

For the purposes of this Part of this Schedule, unless otherwise agreed between the undertaker and the ESG, the exceedance of a Level 2 Threshold or Limit relating to air quality requires—an exceedance of the [relevant Level 2 Threshold for air quality as identified in the EMG Framework];

Environmental Scrutiny Group

—(3) The undertaker must establish a body referred to as the Environmental Scrutiny Group ("ESG") as soon as reasonably practicable following the making of this Order and in any event no later than 56 days prior to the due date for submission of the first Monitoring Report under paragraph (4) (monitoring of permitted operations) of this Schedule.

The undertaker will request the attendance of the following individuals and competent officers of the following authorities to a meeting held by the ESG—

CBC;

Horsham District Council;

Mid Sussex District Council;

(**2**) S.I. 2006/2665.

MVDC;

National Highways;

RBBC;

Surrey County Council;

TDC;

West Sussex County Council;

representation from a slot allocation expert;

an independent chairperson appointed in accordance with the terms of reference; and

an independent aviation specialist appointed in accordance with the terms of reference.

The individual and competent officers in sub-paragraph (2) constitute the members of the ESG for the purposes of this Order from—

in the case of the independent chairperson, the independent aviation specialist and the slot allocation expert, the date of their appointment in accordance with the terms of reference; and

in the case of any other individual or competent officer, the date approval is provided by the independent chairperson in accordance with the terms of reference,

and the membership of the ESG may include such additional individuals or bodies as agreed by the ESG and the undertaker.

The ESG must operate, meet and make decisions in accordance with its terms of reference unless—

otherwise agreed by the ESG and the undertaker, in accordance with the process set out in its terms of reference; or

where the ESG has not been established in accordance with sub-paragraph (1), otherwise agreed by the bodies listed in sub-paragraph (2)(a) to (g) and the undertaker.

The undertaker is permitted to attend the proceedings of the ESG and may make representations at the proceedings and present reports and plans to the ESG.

The undertaker must establish Technical Panels which will provide technical support to the ESG in relation to each of the following matters—

air quality;

greenhouse gas emissions;

noise; and

surface access.

The bodies invited to nominate a technical representative, and the appointment of an independent expert, to each Technical Panel will be determined in accordance with its terms of reference.

The technical representatives nominated under sub-paragraph (7) and the independent technical expert will constitute the members of the Technical Panel for the purposes of this Order from the date approval is provided by the independent chairperson of the ESG in accordance with its terms of reference.

Each Technical Panel must operate and make recommendations in accordance with its terms of reference unless otherwise agreed by the ESG and the undertaker, in accordance with the process set out in its terms of reference.

The undertaker is permitted to attend the proceedings of the Technical Panels and may make representations at the proceedings and present reports and plans to the Technical Panels.

Where the terms of reference impose obligations on the undertaker, the undertaker must act in accordance with the terms of reference.

Part VA (access to meetings and documents of certain authorities, committees and sub-committees) of the 1972 Act and the Public Bodies (Admission to Meetings) Act 1960(**3**) do not apply to the ESG, or any Technical Panel, or to its meetings or proceedings.

(**3**) 1960 c. 67.

In this paragraph—

"competent officer" means a local authority officer that has sufficient training and experience or knowledge to consider reports from technical specialists and use these to support a decision-making function linked to a planning consent;

"independent aviation specialist" is an independent and suitably qualified person specialising in aviation;

"independent chairperson" is an independent and suitably qualified person with appropriate aviation experience;

"independent technical expert" means an independent person that is suitably qualified or has significant technical experience in either air quality, greenhouse gas emissions, noise or surface access;

"slot allocation expert" means a representative of a body involved with, or an individual with suitable knowledge, skills and experience related to the implementation and / or operation of the Worldwide Airport Slot Guidelines (WASG), or any successor document to establish best practice for the allocation of airport slots; and

"technical representative" means a representative that is suitably qualified or has significant technical experience in either air quality, greenhouse gas emissions, noise or surface access and excludes elected representatives.

Monitoring of permitted operations

—(4) The undertaker must, in accordance with the Monitoring Plans, monitor—

noise from within the first year of operation of the Northern Runway ; and

air quality, greenhouse gas emissions and surface access from 1 January following the end of the calendar year in which this Order comes into force.

The undertaker must prepare and submit to the ESG—

in respect of noise, the first Monitoring Report no later than 31 July following the end of the calendar year in which this Order comes into force; and

in respect of air quality, greenhouse gas emissions and surface access, the first Monitoring Report no later than 31 July following the end of the first full calendar year after the date on which this Order comes into force; and

all subsequent Monitoring Reports on or before 31 July annually thereafter.

Monitoring Reports submitted under sub-paragraph (2) must be prepared in accordance with the Monitoring Plans, which may be amended in accordance with sub-paragraph (5).

Monitoring Plans in respect of noise must include details of dispensed movements for the previous 12 months, including reasons for the dispensation and what measures, if appropriate, would be introduced to reduce these incidents in the future.

The undertaker and the ESG may agree to amend the Monitoring Plans, and such agreement must not be unreasonably withheld.

The undertaker must make a Monitoring Report publicly available as soon as reasonably practicable following submission under sub-paragraph (1).

Exceedance of a Level 1 Threshold

Where a Monitoring Report submitted to the ESG under paragraph (4) (monitoring of permitted operations) assesses that a Level 1 Threshold has been exceeded, the undertaker must include in the Monitoring Report commentary on the avoidance of the exceedance of a Limit, including but not limited to any forecasts of future impacts.

Exceedance of a Level 2 Threshold

—(5) Where a Monitoring Report submitted to the ESG under paragraph (4) (monitoring of permitted operations) assesses that a Level 2 Threshold has been exceeded, the undertaker must, unless sub-paragraph

(3) applies and subject to sub-paragraph (11), submit to the ESG, and consult the ESG on, a draft Level 2 Plan no later than the expiry of the period of 21 days beginning on the day after the date on which the Monitoring Report was submitted to the ESG, unless another time period is agreed by the undertaker and the ESG.

Where a Monitoring Report assesses that more than one Level 2 Threshold has been exceeded in respect of a matter identified in paragraph (3)(6), the undertaker may address all of the exceedances which are reasonably considered to be related to one another in the same draft Level 2 Plan for the purposes of sub-paragraph (1) and in the same Level 2 Plan for the purposes of sub-paragraph (5).

This sub-paragraph applies where the ESG certifies, acting reasonably and in accordance with its terms of reference, that a Level 2 Threshold has been exceeded as a result of circumstances beyond the undertaker's control.

The undertaker must have due regard to any representations provided by the ESG on a draft Level 2 Plan during the consultation period and must provide the ESG with a written account of how any such representations have been taken into account as part of its submission under sub-paragraph (5)(a).

A Level 2 Plan must be—

prepared and submitted to the ESG no later than 14 days following the last day of the consultation period; and

approved or refused by the ESG, acting reasonably, no later than 28 days starting the day after the ESG has received the Level 2 Plan under sub-paragraph (a).

A Level 2 Plan may only be refused by the ESG under sub-paragraph (5)(b) where it reasonably concludes that—

the proposed actions will not avoid or prevent exceedances of a Limit; or

the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit.

Where the ESG has refused a Level 2 Plan, the undertaker must no later than 42 days starting the day after the decision of the ESG—

lodge an appeal under paragraph [X] (appeals to the Secretary of State); or

resubmit a revised Mitigation Plan to the ESG.

Where the ESG has failed to make a decision under sub-paragraph (5)(b) within the time period specified in that sub-paragraph, it is deemed to have approved the Level 2 Plan.

The undertaker must implement the Level 2 Plan approved by the ESG under sub-paragraph (5)(b).

Unless otherwise agreed by the ESG, where a Monitoring Report submitted to the ESG under paragraph (3) (monitoring of permitted operations) assesses that a Level 2 Threshold has been exceeded, and except where sub-paragraph (3) applies, the undertaker will ensure that any future airport capacity declaration does not increase from the existing capacity declaration until a Level 2 Plan has been approved by the ESG or by the Secretary of State under paragraph [X] (appeals to the Secretary of State) or a Monitoring Report confirms that the relevant environmental effect no longer exceeds the relevant Level 2 Threshold.

Where a Level 2 Plan approved by the ESG or by the Secretary of State under paragraph [X] (appeals to the Secretary of State) specifies a period for which that plan will have effect then sub-paragraph (1) does not apply during that period unless—

an airport capacity declaration specifies the capacity of the airport is greater than any amount specified in the Level 2 Plan; or

the relevant Level 1 Threshold, Level 2 Threshold or Limit is different from the relevant Level 1 Threshold, Level 2 Threshold or Limit which applied on the date of the submission of the Level 2 Plan under sub-paragraph (5)(b).

Where a Monitoring Report assesses that there has been an exceedance of either one or more Level 2 Thresholds and an exceedance of one or more Limits under paragraph (6) in respect of a matter identified in paragraph (3)(6), the undertaker may decide to address all of these exceedances which are reasonably considered to be related to one another in the same draft Mitigation Plan for the purposes of paragraph (6)(1) and (7)(10) and in the same Mitigation Plan for the purposes of paragraph (6)(5).

Exceedance of a Limit

—(6) Where a Monitoring Report submitted to the ESG under paragraph (4) (monitoring of permitted operations) assesses that a Limit has been exceeded, the undertaker must, unless sub-paragraph (3) applies and subject to sub-paragraph (15), submit to the ESG, and consult the ESG on, a draft Mitigation Plan no later than the expiry of the period of 21 days beginning on the day after the date on which the Monitoring Report was submitted to the ESG.

Where a Monitoring Report assesses that more than one Limit has been exceeded, the undertaker may decide to address all of the exceedances which are reasonably considered to be related to one another in the same draft Mitigation Plan for the purposes of sub-paragraphs (1) and (10) and in the same Mitigation Plan for the purposes of sub-paragraph (5).

This sub-paragraph applies where the ESG certifies, acting reasonably and in accordance with its terms of reference, that a Limit has been exceeded as a result of circumstances beyond the undertaker's control.

The undertaker must have due regard to any representations provided by the ESG on a draft Mitigation Plan in the consultation period and must provide ESG with a written account of how any such representations have been taken into account as part of its submission under sub-paragraph (5)(a).

A Mitigation Plan must be—

prepared and submitted to the ESG no later than 14 days starting the day after the consultation period; and

approved or refused by the ESG, acting reasonably, no later than 28 days starting the day after the ESG has received the Mitigation Plan under sub-paragraph (a).

A Mitigation Plan may only be refused by the ESG under sub-paragraph (5)(b) where it reasonably concludes that—

the proposed mitigation and actions in the Mitigation Plan will not avoid or prevent exceedances of the Limit as soon as reasonably practicable; or

the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit as soon as reasonably practicable.

Where the ESG has refused a Mitigation Plan, the undertaker must no later than 42 days starting the day after the decision of the ESG—

lodge an appeal under paragraph [X] (appeals to the Secretary of State); or

resubmit a revised Mitigation Plan to the ESG.

Where the ESG has failed to make a decision under sub-paragraph (5)(b) within the time period specified in that sub-paragraph, it is deemed to have approved the Mitigation Plan.

The undertaker must implement the Mitigation Plan approved by the ESG under sub-paragraph (5)(b).

The undertaker must unless sub-paragraph (3) applies prepare and submit an updated Mitigation Plan no later than the expiry of the period of 21 days beginning on the day after the date on which—

the undertaker submits a Monitoring Report 2 years from the adoption of a Mitigation Plan under sub-paragraph (5)(b) which shows an exceedance of a Limit; or

a Mitigation Plan approved under sub-paragraph (5)(b) sets out a programme for a Limit not being exceeded and a Monitoring Report shows that an exceedance of a Limit which conflicts with that programme,

whichever is sooner.

Without limitation to seeking a local rule in relation to a Mitigation Plan under sub-paragraph (1) or Level 2 Plan under paragraph (5)(1), the updated Mitigation Plan submitted under sub-paragraph (10) must—

identify whether the application of a local rule (under the slots regulations) to reduce the existing number of allocated slots would reduce, avoid or prevent exceedances of the Limit where other measures cannot ensure an impact falls below the relevant Limit as soon as reasonably practicable; and

include the proposed programme for seeking in accordance with the slots regulations the introduction of a local rule identified under sub-paragraph (a).

The updated Mitigation Plan under sub-paragraph (10) must be approved or refused by the ESG no later than 28 days starting the day after the ESG has received the Mitigation Plan.

Where the ESG has failed to make a decision under sub-paragraph (12) within the time period specified in that sub-paragraph, it is deemed to have approved the updated Mitigation Plan.

The undertaker must implement a Mitigation Plan approved under sub-paragraph (12).

Unless otherwise agreed by the ESG, where a Monitoring Report submitted to the ESG under paragraph (4) (monitoring of permitted operations) assesses that a Limit has been exceeded, the undertaker will ensure that, until monitoring carried out in accordance with a Mitigation Plan or a Monitoring Report confirms the relevant environmental effect has fallen below the relevant Limit, any future airport capacity declaration—

does not increase from the existing capacity declaration; and

includes criteria to ensure that the total number of allocated slots (excluding any exempt flights) does not exceed the existing number of allocated slots.

Where a Mitigation Plan approved by the ESG or by the Secretary of State under paragraph [X] (appeals to the Secretary of State) specifies a period that plan will have effect then—

sub-paragraph (1); and

sub-paragraph (10),

do not apply during that period unless sub-paragraph (10)(b) applies.

Review of implementation of this Part

—(7) The undertaker must undertake a review of the implementation of this Part of this Schedule, including the review of any Monitoring Plans and arrangements for funding, no later than 3 years from the date on which this Order comes into force, and every 5 years following this initial review, and produce and submit to the ESG a report which sets out whether any improvements to the operation of this Part of this Schedule are considered necessary to ensure the efficient and effective operation of authorised development within the Limit.

The undertaker may, following a review carried out under sub-paragraph (1) or otherwise, submit an application to modify the specified periods to the ESG where it considers it necessary for effective implementation of this Part of this Schedule.

The undertaker must, following a review carried out in accordance with the EMG Framework, which concludes that there are grounds for a modification of a Level 1 Threshold, Level 2 Threshold, Limit, or Monitoring Plan, submit an application for that modification to the ESG.

The ESG must, acting reasonably, approve or refuse an application submitted under sub-paragraph (2) and (3) no later than the expiry of the period of 56 days beginning with the day after the ESG has received the application.

Where the ESG has approved an application submitted under sub-paragraph (2) or (3), the terms of reference are deemed to have been varied to give effect to that approval.

Where the ESG has failed to make a decision under sub-paragraph (4) within the time period specified, it is deemed to have approved the application.

References to the specified periods in this Part of this Schedule are to be construed as references to any modified periods approved under sub-paragraph (4) by the ESG or approved by the Secretary of State under paragraph [X] (appeals to the Secretary of State).

In this paragraph “specified periods” means any time period set out in relation to consultation, approval or submission of a Monitoring Report, Level 2 Plan or a Mitigation Plan.