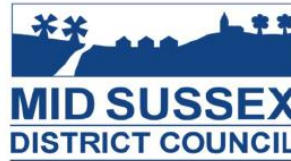




**Horsham
District
Council**



Gatwick Airport Northern Runway Project

Examination Ref: TR020005

Response to REP6-093] - 10.52.3 The Applicant's Response to Deadline 5 Submissions - Response to JLA's' EMG Framework Paper

Deadline 7: 15 July 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)

1. Introduction

- 1.1 The Joint Local Authorities (JLAs) have prepared this document to respond to the Applicant's response [REP6-093] to the JLA's Deadline 5 Submission, The requirement for an Environmentally Managed Growth Framework (EMGF) Paper [REP5-093].
- 1.2 This follows on from the introductory EMGF paper submitted at Deadline 4 [REP4-050] to which the Applicant responded at Deadline 5 [REP5-074] and this was further responded to by the JLAs at Deadline 6 [REP6-100].
- 1.3 At Deadline 6, the JLAs submitted a separate Paper – JLAs' Proposed Control Document setting out an Outline Approach to Environmentally Managed Growth (EMG Framework) [REP6-100] which sets out:
 - The purpose of the Outline EMG Framework
 - The Outline Approach including Control through slot allocation and Limits and Thresholds
 - Governance;
 - The Environmental parameters
 - Suggested Requirements relating to EMG Framework.
- 1.4 The JLAs will cross refer to their Deadline 6 submission in responding to the Applicant's critique.
- 1.5 The purpose of the EMGF is to put forward the setting of a series of limits for key environmental parameters relating to air quality, noise, greenhouse gases and surface access. These limits are supported by a series of associated thresholds to enable early warning of potential exceedance of the environmental limits to be set triggering a requirement for forward looking consideration of how a breach might be avoided. The principle of the approach is to provide confidence in the local community that the Airport will be required to maintain environmental performance within strict limits based on the Environmental Assessment submitted and amended during the examination.
- 1.6 This paper will set out:
 - the reasons why the Applicant's proposed mitigation approach is not effective and proportionate, focusing on the four environmental topic areas.
 - why the EMGF is reasonable and necessary to make the Northern Runway proposals acceptable in planning terms; and
 - Additional controls which would need to be incorporated within the Applicant's mitigation proposals and Control Documents should the EMGF not be progressed.

2. Concerns with the Applicant's proposals

- 2.1 For the reasons set out for each of the environmental topics below, the Applicant's current proposals are not considered to be effective and proportionate as they would effectively allow growth in passengers and aircraft movements using the airport to continue, with potential adverse effects beyond those assessed, in circumstances where commitments relating to air quality, greenhouse gases, surface access or noise have not been met. Effectively, any mitigations are likely to be retrospective, i.e. growth in activity at the Airport would already have occurred and, given that slots cannot be taken back from airlines (see paragraph 2.2.6 of Appendix A to **REP6-087**), it cannot be certain that mitigation would be effective in controlling impacts.
- 2.2 Whilst the Applicant's control documents suggest action plans to mitigate the effects, these largely rely on changing the behaviour of passengers or airlines. There can be no guarantee that these measures would be successful and, if not, there is no effective mechanism of controlling the environmental implications of airport growth. The JLAs do not consider this to be acceptable.
- 2.3 In relation to noise, the Applicant appears to have recognised (in Appendix A to **REP6-087**) the requirement for advance monitoring and the need for action ahead of a breach of the Noise Envelope, However, there is no explanation provided as to how it would address any breach of any other environmental limit. Similar control mechanisms in relation to holding back the declaration of additional capacity and/or the allocation of slots are also required for the other key environmental topics and it is for this reason that a more comprehensive approach as set out in the JLAs' EMGF proposal [**REP6-100**] is required.

3. Why an EMGF would be reasonable or necessary to make NRP development acceptable in planning terms

- 3.1 Contrary to the Applicant's stance in REP6-093, the EMGF approach is not entirely backward looking. It is not the intention of the JLAs that growth should be stopped or slowed if environmental commitments are being met and nor does the proposal stop or slow growth where environmental commitments are being met. The EMGF proposal is intended to establish an environmental management system that provides assurance that environmental standards will be achieved and in such a way minimises business risk while ensuring that the community is afforded protection and has certainty. This is in accordance with aviation policy.

- 3.2 The whole point of setting Thresholds is to provide a check that these commitments are delivering the intended outcomes and to allow forward looking mitigation plans to be put in place in time to prevent a breach of any assessed environmental limit.
- 3.3 However, should a limit be breached or a commitment not delivered, for whatever reason, the JLAs consider action to halt growth until the matter has been remedied to be entirely proportionate

Enforcement under the Planning Act 2008

- 3.4 Planning enforcement is raised by Applicant in its response to the JLAs' EMGF proposals [REP6-093] in the context of the SACs. In paragraph 5.1.11 of its response the Applicant says "in circumstances where GAL failed to comply with the SACs it would be in breach of the corresponding requirement to the draft DCO (requirement 20), enabling enforcement action to be pursued by the JLAs in that extremely unlikely event."
- 3.5 In relation to the noise envelope requirement, at paragraph 6.1.14, the Applicant says "in the event of persistent breach, enforcement action may be taken under the Planning Act 2008. An ultimate sanction under such Planning Act 2008 enforcement procedures could be the imposition of a court injunction, to prevent continued operations which result in breaches of the Noise Envelope contour limits".
- 3.6 More generally, in the conclusions section at paragraph 7.1.7, the Applicant says "The JLAs control over any breach is unaffected by the fact they are not responsible for approving monitoring and forecasting reports or air noise envelope reviews, as the Planning Act 2008 provides them with a basis to seek to enforce any breach of a DCO requirement in the highly unlikely circumstances that arises."
- 3.7 The Authorities do not dispute the explanation of the Planning Act enforcement regime provided above. Failure to comply with the terms of a DCO (including a requirement) without reasonable excuse is an offence under s.161 of the Planning Act 2008 ("PA2008"), with punishment being a fine. Persistent or anticipated criminal activity can also result in injunctive relief being sought.
- 3.8 However, there are two important points that need to be drawn out in response to any proposition that the Planning Act enforcement regime could provide a satisfactory solution for the issues raised by the Authorities when compared with the proposed EMGF regime.
- 3.9 First, the punishment for an offence of breaching a requirement is a fine. A guilty verdict and the imposition of a fine are of course very serious sanctions for an airport operator, and the Authorities do not make light of them. But imposition of a fine does not necessarily result in action being taken in the same way that the EMGF would, especially if the immediate

financial benefits of breaching a requirement are greater than the eventual level of any fine.

- 3.10 An injunction could be sought if, for example, there were persistent breaches of a requirement, and again while not downplaying the seriousness of that (not least because breach of an injunction could lead to imprisonment), it is likely that any injunctive relief would be limited to a requirement that the breach complained of cease and/or be remedied. In turn, it is difficult to conceive of a situation where (taking a failure to meet the mode share targets in the SACs as an example) an injunction could directly require that the mode share targets be met by way of positive action by the Applicant. On the other hand, the EMGF contains an inherent direct method of dealing with such a breach by the imposition of controls within the framework itself.
- 3.11 Secondly, the enforcement processes under the Planning Act raise a number of practical issues which do not arise in the EMGF proposals. Again, without downplaying the importance of the Planning Act enforcement regime, the procedure in taking a prosecution through to a verdict is likely to be lengthy, both in terms of gathering evidence (to the criminal standard of proof) and potential delays in the court process. So far as injunctions are concerned, there would be further evidential hurdles to overcome; injunctions are generally a sanction of last resort and a court is unlikely to entertain an application for an injunction unless there is evidence of either a previous conviction (or convictions), very strong evidence of the likelihood of a successful conviction, and/or evidence of further, continuing breaches notwithstanding a conviction/ongoing prosecution. When this is taken into account together with (in some cases) the processes that are inherent in the control documents (notably the action plan regime in the SACs) this could result in a very lengthy period between the initial concerns being raised and disposal of the matter in the courts. The JLAs would submit that these difficulties would not arise to the same extent under the EMGF where, as mentioned above, there is an inherent mechanism for dealing with failure to meet the relevant standards. It is acknowledged that the EMGF proposals would themselves be secured by requirements, but overall, the EMGF would provide a more effective and efficient mechanism for dealing with failure to comply with agreed standards.

4. Air Quality

- 4.1 Specific Concerns regarding the Applicant's **Air Quality** approach and why EMGF is the local authorities' recommended approach is set out below.

Technical

- 4.2 The Applicant argues in para 3.1.4 (REP6-093) that since the local authorities do not dispute the overall findings of the air quality

assessment [APP-038], then there is no justification for the introduction of environmentally controlled growth. It should be noted the local authorities continue to work through remaining technical queries with the Applicant.

- 4.3 However, there is uncertainty associated with the outcomes of the air quality assessment concerning whether the commitments set out in the Surface Access Commitments (SAC) [REP6-031] will be achieved and what the implications of this would be for air quality. There is also uncertainty on what level of air quality mitigation may be provided by measures within Carbon Action Plan as these are not reported by the Applicant.
- 4.4 Further information has been requested on potential air quality effects if modal shift is not achieved as planned by the Applicant. This has been set out by the local authorities previously [REP3-117] and we have requested information from the Applicant on how the outcomes of the air quality assessment would change as a result of a failure to achieve SAC commitments (e.g. mode shift). The Applicant has refused [REP5-073] to provide this information and therefore an EMG approach was proposed to manage this uncertainty.
- 4.5 It is also noted that the Applicant sets out why an EMG approach was appropriate for Heathrow and not Gatwick, due to the risk of likely significant air quality effects in the former and the absence of this in the latter. The local authorities note that similar air quality effects to those at Gatwick were predicted for the proposals for the London Luton Airport Expansion and the operator in that instance did choose to provide reassurance to local authorities with their Green Controlled Growth.
- 4.6 The thresholds and limits for air quality are currently those set out in the national air quality standards table below.

| Pollutant | Air Quality Objective: Concentration | Air Quality Objective: Measured as |
|---|--|---|
| Nitrogen Dioxide (NO ₂) | 200µg/m ³ not to be exceeded more than 18 times a year | 1-hour mean |
| Nitrogen Dioxide (NO ₂) | 40µg/m ³ | Annual mean |
| Particulate Matter (PM ₁₀) | 50µg/m ³ , not to be exceeded more than 35 times a year | 24-hour mean |
| Particulate Matter (PM ₁₀) | 40µg/m ³ | Annual mean |
| Particulate Matter (PM _{2.5}) | 20µg/m ³ | Annual mean |

| Pollutant | Air Quality Objective: Concentration | Air Quality Objective: Measured as |
|---|---|------------------------------------|
| Particulate Matter (PM _{2.5}) | interim target 12µg/m ³ by January 2028: | Annual mean |

- 4.7 The thresholds included in the EMG framework proposed by the JLAs align closely with the guidance given in Local Air Quality Management Technical Guidance (LAQM(TG22)) on the levels of monitoring data (and/or screening assessment results) which are deemed sufficient to identify a risk of exceedance is likely (or has occurred). The three threshold levels proposed in the EMG (20% of Air Quality Standards (AQS), 10% of AQS and Exceedance AQS) are therefore not considered to be unreasonable by the JLAs, but are considered to be necessary to make the Northern Runway proposals acceptable by building in controls to avoid circumstances where declaration of a new Air Quality Management Area (AQMA) may become necessary (para 5.11 National Networks National Policy Statement (NNNPS)).
- 4.8 This approach is also considered necessary because whilst the Applicant's assessment of no likely significant effects based on current air quality standards is accepted (subject to ongoing discussions), there is no acknowledgement on the part of the Applicant of the possibility that these may change over the lifetime of the Project in their response to JLA EMG Proposals [REP6-093]. Reference to '*reporting on relevant updates to national standards or legislative requirements*' are referenced in the revised draft AQAP [REP6-064] but only in relation to monitoring. No information is provided on how mitigation may need to be increased in response to any tightening of standards. The review cycle proposed in the revised draft AQAP [REP6-064] is very infrequent at a reporting frequency of 5 years, compared to LAQM reporting which the JLAs are required to undertake annually. This means that a new standard could be in place for several years without any reporting or further action triggered.
- 4.9 The current UK air quality objectives were adopted over 20 years ago, and it is likely given the current scientific and medical evidence on the effects of air pollutants on human health and the recent tightening of EU air quality standards and WHO target values, that this assessment position will not remain static for the lifetime of the operation. GAL's own assessment shows that by 2038 residential locations in the vicinity of the airport will still be exposed to levels of NO₂ above the new EU air quality standards and WHO guidelines. It is therefore reasonable to consider that future exceedances of relevant future air quality standards could occur as a result of the project.

- 4.10 If air quality standards were to remain at the current level for the operational lifetime of the Project, then based on the Applicant's current assessment of no significant effects, no controls would be triggered as a consequence of the EMG thresholds.
- 4.11 On the other hand, in a future scenario where air quality limits may be tightened, the Applicant's argument that these controls are not needed would therefore be unsafe, with uncontrolled growth allowed to continue even where breaches were potentially happening.
- 4.12 If air quality standards were to change in future, the current controls within the DCO provide no mechanism to manage this uncertainty and would allow uncontrolled growth to continue even where breaches were occurring. The air quality thresholds proposed in the EMG framework act as a tracker which follows the national air quality standards. If the limit values for the AQ standards changes over time the thresholds will still be relevant and provide reassurance to local authorities that measures will be put in place to avoid the need for exceedances of the air quality standards which may result in the declaration of new AQMAs.

Governance

- 4.13 In para 3.1.6 (REP6-093) the Applicant cites the provision of an Air Quality Action Plan in the S.106 agreement as "more than sufficient response to the air quality assessment". However, the AQAP (as acknowledged by GAL) is provided largely as a retrospective reporting document for measures it has taken (over the last 5 years).
- 4.14 The main operational measures listed in revised draft AQAP [REP6-064] are those in the Surface Access Commitments and the Carbon Action Plan. The Applicant points to the role of these control documents in the management of air quality risks within the AQAP.
- 4.15 However, it is not clear within these control documents how a failure to achieve commitments would be remedied. Indeed, air quality does not even form part of the monitoring of the effectiveness of the SAC. In addition, the SACs provide no controls with consequences for missing targets such as mode shift, and in the situation where missed targets are retrospectively identified, the airport operator is only required to identify further actions. Similarly for those measures within the CAP which are not specifically controlled by Government Policy, there is no specific reporting requirements or controls/consequences provided if targets are not met.
- 4.16 It is also unclear how the Applicant would respond to any change in National air quality thresholds. An EMG approach would therefore help

manage the lack of effective monitoring and provide a clear pathway for further investigation and management.

Alternative changes to Applicant's controls should EMGF not be accepted

- 4.17 The Applicant's current controls for operational air quality are based on the measures listed in the following documents: Surface Access Commitments and Carbon Action Plan (SAC and CAP).
- 4.18 The measures in these documents lack effective monitoring and/or consequences for failing to meet targets. An EMG approach would therefore help manage the lack of effective monitoring and provide a clear pathway for further investigation and management in the event of breaches of limits or failure to meet targets which have been relied upon in the assessment.
- 4.19 If the EMG framework proposed by the JLAs is not accepted, the following changes would be required to the existing control documents and the AQAP:
- SAC – incorporation of air quality monitoring, clear approaches to reduce traffic increases if measures don't operate as expected or if new tighter air quality standards are brought into legislation (e.g. how further measures would be deployed) and sanctions for non-compliance with targets;
 - CAP – assessment and reporting on the level of air quality mitigation provided by measures within CAP with sanctions where measures are not implemented; and
 - AQAP – In the absence of an environmentally managed growth approach the applicant needs to have in place a forward looking air quality action plan (not backward as currently proposed [REP6-063. Annex 5 para 1.2.2) that sets out the following: -Proposed measures; start date for measure and end date for the measure; and also the level of pollution reduction that each measure is likely to deliver either as a concentration reduction on the Horley Gardens Estate, the Hazelwick AQMA or tonnage released to atmosphere as appropriate. This needs to be set out for both the embedded measures i.e. all of the surface access commitments and the additional measures being drawn from the carbon action plan. As all of the surface access commitments have been assumed to be implemented in full within the air quality modelling work submitted for the DCO, a clear understanding of the impact of the measures on air quality in the action plan allows the extent to which pollutant concentrations might deviate from those forecast to be assessed in the event that certain surface access measures are either falling behind or do not occur in practice. If needed the failed or failing surface access actions can then be off set by additional measures from the carbon action plan that give a comparable pollutant reduction. The AQAP will have to be aligned with the SAC approach described above and the current AQAP frequency of reporting increased to annual or bi-annual reporting from 5 years.

5. Green House Gas Emissions

Technical Concerns

- 5.1 The Applicant has set a number of greenhouse gas reduction targets, usually in alignment with government policy, and presented a range of possible mitigation measures for further consideration. The JLAs are concerned, however, on the level of ongoing enforcement on greenhouse emissions, including consequences if targets are not being met, and considers an EMG framework would act as a safety net and provide this reassurance.
- 5.2 The Applicant appears to be taking a reactive approach to managing greenhouse gas emissions, failing to set thresholds or limits to support sustainable growth. This contrasts with best practices, such as the Luton Airport Green Controlled Growth Framework.
- 5.3 For context, reporting of greenhouse gas emissions in the ES Greenhouse Gas Chapter [APP-041] are reported under four key sources:
- Airport Buildings and Ground Operations (ABAGO)
 - Surface Access Journeys
 - Construction and
 - Aviation

It is proposed that only emissions from ABAGO and Surface Access Journeys would fall within the EMG Framework. Aviation emissions will be controlled by Government Policy (primarily Jet Zero) while Construction emissions do not occur in proportion with the rate of airport growth. In addition, Construction impacts are being managed through the Construction Carbon Management Plan [REP3-107] which has been developed in line with PAS 2080, best practice for carbon management.

Governance

ABAGO

- 5.4 As set out under the Applicant's CAP [APP-091], GAL will publish an Annual Monitoring Report to report its progress and compliance with the ABAGO commitments in the CAP. This report will be published publicly on GAL's website to inform the general public and the Transport Secretary of State on GAL's progress in implementing its Net Zero commitments on ABAGO.

Surface Access Journeys

- 5.5 GAL will produce an Annual Monitoring Report to set out progress on the Surface Access Commitments. Progress is reported to an Airport Transport Forum Steering Group (TFSG) on a quarterly basis. The TFSG consists of

GAL, local highways and planning authorities, transport operators and agencies, businesses and passenger representatives. There is no specific mention of greenhouse gas emissions being included as part of this reporting or what action will be taken if greenhouse gas emissions from surface transportation are not reducing in line with targets.

Alternative changes to the Applicant's controls should EMGF not be accepted.

ABAGO

- 5.6 Unlike Surface Access Journeys, there is no dedicated group, such as the Airport TFSG, to hold the Applicant accountable for its ABAGO commitments. Therefore, it is recommended that the Applicant establishes a similar group, involving relevant local authorities and stakeholders, to meet at regular intervals. Integrating local authorities and stakeholders will provide them with an opportunity to comment on the Applicant's progress, encouraging the Applicant to decarbonise in alignment with its ABAGO objectives.
- 5.7 If the EMGF is not accepted, the ABAGO Annual Monitoring Report should be enhanced to clearly outline the carbon reduction trajectory and associated carbon thresholds leading up to the ABAGO 2030 and zero emissions by 2040 targets. This will demonstrate the Applicant's progress towards these objectives and provide early warnings if the Applicant is not decarbonising as committed.
- 5.8 This approach will enable the Applicant to take corrective action when thresholds are crossed. If annual reduction targets are not met, the Applicant should report to the forum on the actions to be taken and the measures to limit further growth until greenhouse gas targets are achieved.
- 5.9 This will enable the Applicant to implement preventive measures rather than reactionary ones, ensuring that the Applicant remains on course with its ABAGO commitments as outlined in the CAP [APP-091].
- 5.10 In addition, it is recommended that the Applicant extends its emission scope beyond scope 1 and 2, and accounts for scope 3 emissions within its target.
- 5.11 As outlined in the CAP [APP-091] the Applicant has devised a strategy to balance any remaining emissions originating from sources under GAL's jurisdiction with removals before pledging to achieve 'zero emissions' for GAL's direct Scope 1 and 2 emissions starting in 2040. However, the Applicant does not currently pledge to offset any Scope 3 emissions.
- 5.12 Therefore, it is proposed that where any Scope 3 emissions are incorporated into the CAP [APP-091], they should 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 CAP [APP-091]

Limit even where issues beyond their control have affected their ability to limit gross GHG emissions.

5.13 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 Application 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. The JLAs suggest a linear reduction in emissions across the following commitments:

- Net zero by 2030: A linear reduction to achieve net zero in Scope 1, 2, and 3 emissions is necessary from the Applicant's inception in 2029 through to 2030. Offsets and removals are permissible (in line with the requirements set out below) 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 are permitted solely for the purpose of eliminating residual emissions within Scope 3 from 2040 onwards.

Therefore, both of these trajectories would then constitute the 'limit' on emissions to achieve both of these aims.

Surface Access Journeys

5.14 Should EMG not be accepted the Transport Annual Monitoring Report should be explicitly strengthened to include the reporting of greenhouse gas emissions against reduction targets. Where reduction targets are not being met on an annual basis then the Applicant should report to this forum what action will be taken and what actions to limit further growth will be taken until greenhouse gas targets have been met.

5.15 As proposed by London Luton Airport in their Green Controlled Growth Framework, the JLA consider GAL should offset net surface access journeys where committed thresholds are being exceeded.

6. Surface Access

Technical Concerns

6.1 It has long been the JLAs concern that the assessment has relied on the mitigation being delivered in the real world. This mitigation, however well meaning and collaborative, will be one of best and ongoing endeavours.

6.2 As practitioners, we are fully aware of the challenges of developing robust traffic models and the uncertainties around modelling the responses to higher charges (parking and forecourt access). That we have raised issues with the modelling throughout the process is in recognition of this difficulty.

- 6.3 Furthermore, as practitioners, we have a long history with influencing travel behaviour locally. It is a difficult and uncertain process. What the Applicant is trying to achieve is to influence journeys over a broad area and almost over the whole day. We whole heartedly support it but fear that if the challenge is too great, it is our networks that suffer whilst increasing passenger growth compounds the problem.
- 6.4 The JLAs understand the SAC process but welcome the Applicant's explanation in REP6-093 all the same. Our concern is that upon commencement of dual runway operation, the Applicant has only three years before the commitments commence. Under the Applicant's proposal, the growth is frontloaded and the mitigation follows. Whilst monitoring and planning will occur during this time, the JLAs are in the position that there is no certainty that the SAC1-4 will be met upon commencement of the SAC.
- 6.5 EMG would provide the necessary assurance that should the SAC mode share targets not be met, passenger growth would be slowed to allow time for mitigation to be effective. EMG allows growth to continue with a 5% tolerance of SAC 1-4. It would only be stopped at the point when it was definitively clear that the surface access target or limit was not achieved. All of this could occur under a similar monitoring and reporting regime as the SAC.
- 6.6 At paragraph 5.1.15 of The Applicant's Response to Deadline 5 Submissions – Response to JLAs' EMG Framework Paper, [REP6-093] the Applicant suggests that EMG proposes no further airport growth in situations where totals are only 0.1% under passenger or staff mode share targets. This is incorrect as it is proposed that growth would be restricted at 5% below the 55% sustainable transport mode share target. Fundamentally, EMG is a backstop. The Applicant has full control to use its toolbox of measures and policies as it sees fit. The Airport would still be able to grow if slightly missing the SAC (within 5% of 55%) but not if it breached the target by more than that amount. This is considered to be a pragmatic approach which aligns the severity of the breach of the SAC modal split targets, with the severity of the mitigation. In contrast with the Applicant's current approach, where they appear to be suggesting that there should be no appropriate control or limit on growth should the SAC modal split commitments be significantly missed.
- 6.7 However, in paragraph 5.1.17 of the Applicant's Response to Deadline 5 Submissions – Response to JLA's EMG Framework Paper [APP6-093] the Applicant states, "There is no ceiling on what the SoS can impose on GAL in any mitigation plan were the circumstances to merit such intervention ...". The JLAs are of the view that any controls must include controls on growth at the airport.

Alternative changes to Applicant's controls should EMGF not be accepted.

- 6.8 The JLAs have submitted changes required to the SAC [REP6-031] at deadline 7 and have sought specific clarification from the Applicant as to what could be included by the Secretary of State to address any breach of the SAC modal split commitments and that this would include limits on the growth of the airport.

7. Noise

Technical Concerns

- 7.1 The Noise Envelope has its origins in Aviation policy and is intended to be the primary control for managing noise in the context of UK policy from the airport. The policy is discussed in the EMGF paper [REP5-093].
- 7.2 The Applicant presented the proposals for the Noise Envelope in [APP-177]. Limits were based on the area under the 51 dB Leq 16 hour day and 45 dB Leq 8 hour night (based on the 92 day summer season average mode contours).
- 7.3 The size of the contours are directly related to the number of air transport movements (ATMs are driven by demand in the form of passenger numbers) and the fleet mix. The Applicant's adoption of slow transition fleet was challenged by the authorities as being overly conservative and favoured the central case transition which would result in smaller noise envelope area. The Applicant subsequently updated their fleet mix assumptions and presented information in [REP6-055](#). Due to this relationship, the JLAs' comments on forecasting and capacity must be taken into consideration as it informs the potential extent of the areas affected.
- 7.4 The JLAs are of the view that this is still overly conservative and that the central case is still achievable and would incentivise the adoption of quieter fleet technology. Notwithstanding this the area is still considered to be inflated as the demand profile information from York Aviation suggests a lower baseline and growth.
- 7.5 In considering the noise metrics that should be used to set the limits it is worth noting that on departure, the noise emissions are dominated by engine thrust. As the planes level out thrust can be reduced, in this way departure noise tends to be characterised by noise contours that are higher levels closer to the airport. By contrast noise from arrivals is dominated by noise from the airframe. This tends to be quieter than departure noise but it affects properties at greater distance from the airport. Hence to ensure that more people do not become exposed to the higher levels of noise the JLAs have suggested the areas under the 60 dB LAeq 16h and 55 dB LAeq 8h should also be a limit. This assures that, in accordance with policy requirements both the total adverse and significant adverse effects are managed.

- 7.6 The JLAs also suggested that the one additional noise induced awakening metric should be adopted as a threshold in the noise envelope. The reasons why the JLAs consider this is appropriate are set out in a separate response at D7 to the Applicant's somewhat misleading comments in [REP6-081](#).
- 7.8 It is important to distinguish between the Leq 8hour and additional noise induced awakenings. The additional noise induced awakenings deals with *objective* sleep disturbance whereas the Leq deals with *subjective* sleep disturbance.
- 7.9 The JLAs consider that the suite of metrics referred to above are more relevant to local concerns than those proposed in the current noise envelope. The JLAs concur with the Applicant's comments about the need for simplicity in the noise envelope. However, it should not be simplified to such an extent that appropriate controls are not in place and it therefore defeats the purpose of the control and is not policy compliant. We note here that the Airports National Policy Statement: new runway capacity and infrastructure at airports in the south east of England states:
- "5.68 Development consent should not be granted unless the Secretary of State is satisfied that the proposals will meet the following aims for the effective management and control of noise, within the context of Government policy on sustainable development:*
- *Avoid significant adverse impacts on health and quality of life from noise;*
 - *Mitigate and minimise adverse impacts on health and quality of life from noise; and*
 - *Where possible, contribute to improvements to health and quality of life."*
- 7.10 To address the policy requirement that the noise envelope's framework remains relevant (Airports National Policy Statement) there needs to be regular review of the noise envelope framework. At present this will be conducted by the CAA without any local community representation to ensure local concerns are accounted for unlike the JLAs' position.
- 7.11 The reviews that are conducted by the CAA occur as a regular review or an extraordinary review as a result of three criteria. Neither in extraordinary reviews or regular reviews is the Applicant required to take into consideration the publication of new scientific material, legislation or policy. Technological changes are taken into consideration as a result of fleet forecasting.
- 7.12 In relation to new science, all parties have referred to the Aviation Night Noise Effects study (ANNE) and the Aviation Noise Attitudes Survey that should be published well in advance of the proposed opening date of the new runway, yet there is no ability to review and amend the noise envelope to take account of their findings. The noise envelope review provisions focus solely on the Applicant's operational inputs without

consideration of how environmental limits may need to be adjusted with resultant effect on operations. It is entirely possible that before the development commences operation, the proposed noise envelope will be undermined by new research and no longer be relevant which is contrary to policy requirements.

- 7.13 Thus either the decision on the permission should be delayed until the research is published and additional health assessment performed or substantial amendments need to be made to the Applicant's noise envelope to ensure that reviews occur promptly when new knowledge occurs that is material to the consideration of the noise envelope and the envelope then defined on that basis.
- 7.14 We refer to the need for forward looking QC budgets as an appropriate operational indicator under Governance below.

Governance

- 7.15 The Noise Envelope proposes a governance structure comprising the Applicant, the Civil Aviation Authority and the Secretary of State as arbiter. There is no involvement of the local community representatives in the decision making. The JLA proposal by contrast offers local representation and accountability whilst still engaging specialist skills as may be required. It is inclusive rather than exclusive. It is founded on a model that is tried and tested. It should provide assurance, confidence and transparency.
- 7.16 Governance also includes ensuring that there is good stakeholder relationship through good communication, engagement and building trust. The noise envelope being exclusive undermines this. Given the position of balancing the rights of individual as outlined in the EMGF paper, this is critical. The JLA proposition provides the opportunity for the Applicant to address that and for a degree of accountability that might not otherwise exist.
- 7.17 The JLAs do not consider that the Applicant has adopted a risk management approach which is core to good corporate governance and in this respect environmental governance. It is core to achievement of the environmental performance standard (ie the noise limits). The JLA paper on EMGF [REP5-093] discussed the importance of outcome based measures but also the need for assurance that these would be achieved through the collection and consideration of operational indicators that are linked to the predictions. The JLAs referred to the use of the QC budget that would operate alongside the noise forecasts to predict and help manage in season compliance with the predictions and the release of capacity (with conditions or otherwise) such that growth could be achieved without breaching the noise envelope. This provides assurance that the noise limits will not be breached.
- 7.18 While the Applicant has offered more information on the process to re-assure that the limits will not be breached. The discovery of that is still

less assured and occurs over a longer period than under the proposal in the JLA submission. Therefore, the JLA's proposal permits a more timely response and provides assurance and confidence in the system that it will deliver compliance.

- 7.19 It is also important to note here that limitations on the review of the noise envelope make it inflexible and unresponsive to changes and therefore possibly irrelevant in a very short timescale, certainly shorter than the life of the development.
- 7.20 Furthermore, complying with and being able to demonstrate compliance with policy is also a factor and the JLAs have stated elsewhere that they have different views over the interpretation of policy.
- 7.21 In summary there are not only technical concerns with the proposal but also wide ranging governance concerns. It is the view of the JLAs that for these reasons the noise envelope is not policy compliant including with ANPS para 5.68.

Alternative changes to the Applicant's Controls should EMGF not be accepted.

- 7.23 The proposals above and those contained within the EMGF should be incorporated into the noise envelope, not simply because they are in the EMGF but because the EMGF was designed to address the various issues arising from the noise envelope to produce a more robust environmental management system in the context of airport expansion and the noise impacts of that.
- 7.24 Whilst the JLAs continue to believe that the EMGF approach is to be preferred, they are cognisant of the Applicant's proposal (Appendix A to REP6-087) to commence the monitoring of noise and the AMFR process for the Noise Envelope 2 years ahead of the NRP operation. Assuming this process is rigorous and effective [and subject to the appropriate involvement of the LPAs in the process], this would address many of the JLAs concerns regarding the effectiveness of the noise control regime, subject to broader concerns on the metrics included. This requirement would need to be formally incorporated in the Noise Envelope controls. Further comment on the Applicant's revised proposal in Appendix A and its effectiveness in controlling a breach is contained in a separate paper appended to this submission.
- 7.25 If the EMGF approach is not accepted than the JLAs would also want to see forward looking QC budgets for day and night, set at the level of the Noise Envelope (noting that there remain concerns over the level at which this is initially set if growth is slower than claimed by the Applicant). Although the Applicant has previously sought to make the point that these are not a perfect measure in Appendix A to REP6-087, it proposes to use these to manage the allocation of slots should a risk of a breach of the Noise Envelope be identified in the AMFR. Hence, the JLAs can see no reason why such budgets could not form part of the Noise Envelope

requirement, accepting that the precise number of the budget would need to be subject to calibration against noise outcomes and updated accordingly.

8. Conclusion

- 8.1 In order to ensure effective controls are included with the DCO to ensure the airport's growth will remain within the environmental performance commitments set by the Applicant, thus avoiding any impacts beyond those assessed, the JLAs maintain that an EMGF is an effective and proportionate approach for certain key environmental factors. The JLAs consider the Applicant's current proposals do not achieve this as they would allow growth in passengers and aircraft movements to continue when commitments have not been met, with potential adverse effects on local communities.
- 8.2 Should an EMGF approach not be considered appropriate, changes as set out above need to be made to the Applicant's mitigation proposals and Control documents, in order to make the Northern Runway proposals acceptable in planning terms.

Appendix A



Gatwick North Runway Project

Comments on Appendix A to the Applicant's Response to ISH8 Actions - Noise [REP6-087]

Appendix A - Avoidance of Noise Envelope Breaches

1. This submission provides comments on the Applicant's explanation and updated proposal on how it intends that a breach of the Noise Envelope limits would be addressed.
2. Central to the JLAs' concerns is the concept of certainty that the acceptable environmental limits as assessed and taken into account in the planning balance should not be exceeded and that this requires anticipatory controls that prevent a breach from occurring. The importance of this is highlighted by the Applicant's explanation of the Statutory Slot Allocation Process as set out in section 2 of Appendix A [REP6-087]. In particular, paragraph 2.2.6 highlights that once airlines have historic rights to slots, these cannot be taken back through the slot allocation process and, hence, any action required to reduce the number of allocated slots below those with historic precedence could only be achieved with the agreement of the airlines¹.
3. The Applicant seeks to rely on the fact that, to date, not all slots, once allocated, retain historic rights due to 'use or lose it' provisions or, indeed, airlines returning slots to the slot pool for reallocation. This has historically ensured a buffer of slots within the slot pool to enable it and the slot coordinator to manage so that capacity and potentially environmental limits are not exceeded. There are two potential weaknesses with such an approach:

It cannot be guaranteed that there would necessarily be sufficient slots returned to the pool in any future year to ensure that a breach could be remedied by this alone; and

It assumes that the capacity has been declared so as to be compatible with the relevant environmental limit, in this case the Noise Envelope.

4. This reinforces the view that there need to be forward looking controls that anticipate the circumstances where a breach might arise and hold back the declaration of capacity or the allocation of slots within the already declared capacity so as to ensure that other mitigation measures are effective at controlling the environmental impact, such as noise. It is for this reason that the JLAs continue to believe that a system of Thresholds and Limits under an Environmentally Managed Growth Framework (EMGF) [REP6-100] should be in place to

¹ Albeit there is a mechanism whereby the Government could consult and impose a new operating restriction at an airport under retained EU Regulation 598/2014 covering Airport Noise Related Operating Restrictions

control the pace of growth through slot release until the environmental implications are demonstrably being managed within the limits assessed and that these should encompass the other relevant environmental topics not just noise.

5. Without prejudice to the JLAs' view that a comprehensive EMGF approach is required, we now comment on the workability of the proposed approach as outlined by the Applicant in relation to Noise and suggest ways in which it could be improved.

The Risk

6. As previously proposed (see paragraph 7.1.2 of **REP6-056**), the Applicant set out that the first compliance monitoring report (AMFR) should be submitted to the CAA by the 1st of July following 12 month anniversary of the operation of the NRP. Assuming that dual runway operations commence in Spring 2029 (in line with the Applicant's proposal²), this would mean that the first AMFR would be produced at the earliest in 2030 based on a forecast of noise to 2035, provided that the noise contour results are produced by the CAA no later than 1st April for the preceding year's performance. This would mean that the earliest intervention in terms of limiting the declaration of capacity would be for summer 2031, although as noted at paragraph 3.1.16 of Appendix A to **REP6-087**), this could be delayed a year should the Applicant not consider a breach likely but where this is overturned by CAA and the Secretary of State. In these circumstances, the ability to intervene would be delayed for a further year.
7. Without prejudice to our view as to the likelihood of demand to use Gatwick building up as rapidly as asserted by the Applicant, it is the Applicant's case, as shown on the graph at page 11 of Appendix B to **REP5-081**, that Gatwick would already have attained 345,000 annual commercial air transport movements in 2030 with the NRP. This already accounts for 45% of the total uplift in movements expected with the NRP (to 386,000 annual commercial air transport movements) above the Applicant's claimed Baseline Capacity in 2029 of 311,000 annual commercial air transport movements. If the ability to act was further deferred until the declaration for 2032 then 67% of the capacity made available with the NRP is already expected, by the Applicant, to have been taken up in 2031.
8. To attain such rapid growth, the Airport would need to have declared sufficient capacity as available in 2030 to ensure that airlines seeking new slots could attain them as close as possible to the times that they seek. The declaration would also need to provide flexibility for airlines to adjust their schedules to optimise the use of their aircraft, particularly so for the reasons explained by the Applicant at paragraph 2.3.16 of Appendix A [**REP6-087**] that airlines may need to adjust their schedules so as to ensure that they have workable new slots at both ends of a route for it to be operable (see comments from key airlines commented on at paragraph 4 of Appendix III to **REP6-099**). This is the key purpose of the coordination process at the slot conference, typically held around 2 months after the capacity is declared and following the initial allocation of slots for each airport by coordinators worldwide³.

² The Applicant assumes a materially higher number of aircraft movements in 2029 with the NRP than in its Baseline Case (Table 10.1-2 of the Forecast Databook [**APP-075**]) which suggests opening in the first half of the year.

³ The timetable for slot allocation can be found at

<https://www.iata.org/contentassets/4ede2aabfcc14a55919e468054d714fe/calendar-coordination-activities.pdf>

9. The declaration of capacity will necessarily have been made by the Applicant based on the ability to accommodate peak demand. However, it is clear that such a declaration will leave spare slot capacity even in a peak week (see Figure 2 of **REP4-049**) and, as the Applicant points out (graph on page 25 of Appendix B of **REP5-081**), the average number of movements on an average day in the month will be lower than the peak day within the peak week. In other words, in order to accommodate 345,000 annual commercial aircraft movements in 2030, the Applicant will have had to declare substantially more capacity as being available for allocation taken over the season or year as a whole. If the Applicant is right, and this underpins the assertion of growth at the rate and to the extent that it forecasts, faced with no increase in declared capacity - noting that it is unlikely that the capacity declaration could be reduced without impinging on slots already allocated to airlines in the peak and for which they would likely have historic rights - it may be expected that the airlines would continue to grow materially within the capacity parameters already declared. In other words, simply halting the declaration of more capacity at that point would not prevent growth in 2031 or even beyond given the Applicant's aspiration to secure rapid take up of the new capacity with the NRP.
10. The process as set out leaves a high risk of growth continuing beyond a breach of the Noise Envelope (or other environmental limit) with no effective means of remedying that breach. The JLAs consider this risk to be unacceptable.

The Applicant's Proposed Approach

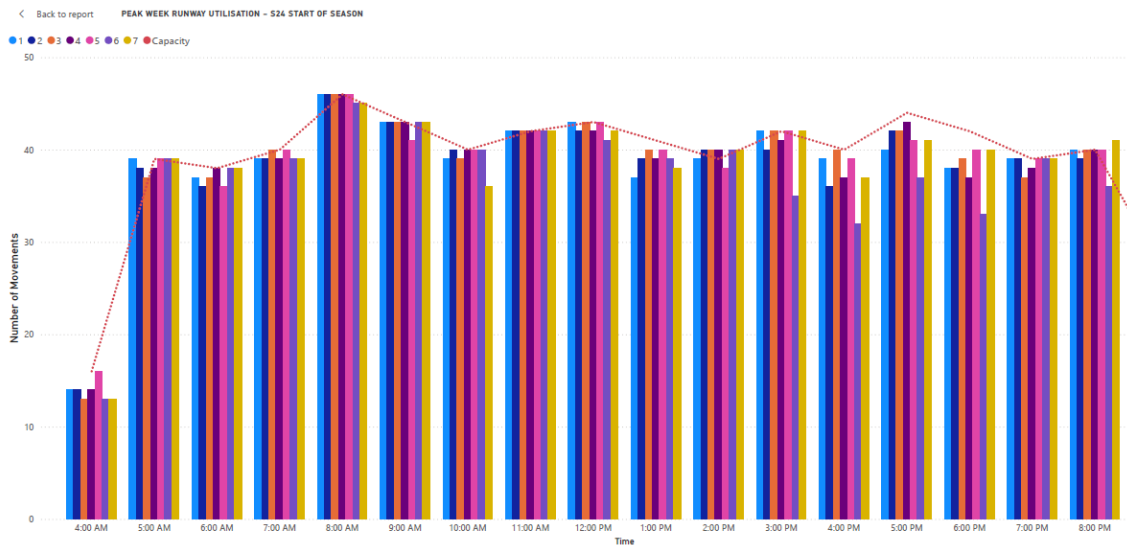
11. In Appendix A [**REP6-087**], the Applicant goes to some lengths to describe how it uses its business planning process and works with ACL to effectively decide who can be allocated new slots or not. The Applicant suggests, at paragraph 2.3.4 of Appendix A, how it could "*decide to not include the airline in the future plan*" or not to release a slot to a particular airline. It is unclear how the approach outlined by the Applicant fits with the requirement a) for neutrality, transparency and non-discrimination or b) the independence of the coordinator that are enshrined in the rules of slot allocation.⁴
12. The Applicant describes a process whereby it can micro-manage the declaration of capacity and the allocation of slots but notes that, ultimately, it must present the proposed capacity parameters to the Coordination Committee of airlines before formally confirming these to Airport Coordination Ltd. Just as the airlines reportedly last year refused to allow the Airport to increase the number of slots available for allocation (Appendix A to **REP6-087**, paragraph 2.3.13), presumably in light of the unacceptability of increasing the number of movements on a busy day with only a single runway due to the high levels of delay, the airlines may not accept the holding back of capacity available with the NRP unless the reasons are transparently stated. If the reason for holding back the declaration of additional slots is to be related to environmental reasons, this will have to be transparently evidenced such as, for example, through the setting of an advance noise quota count (QC) budget as the JLAs have advocated as required as part of the EMGF process.
13. Ultimately, the key point is that any capacity declaration will necessarily have some headroom within it otherwise the process of slot allocation would not be workable and the Applicant cannot, in practice, micro-manage the process to the extent claimed. The availability of spare capacity is evident even at Heathrow, as illustrated in **Figure 1** overleaf despite the Airport operating at full capacity.

⁴ Airport Slot Allocation Regulation 2006 and EU Regulation 95/93 as amended on the allocation of slots.

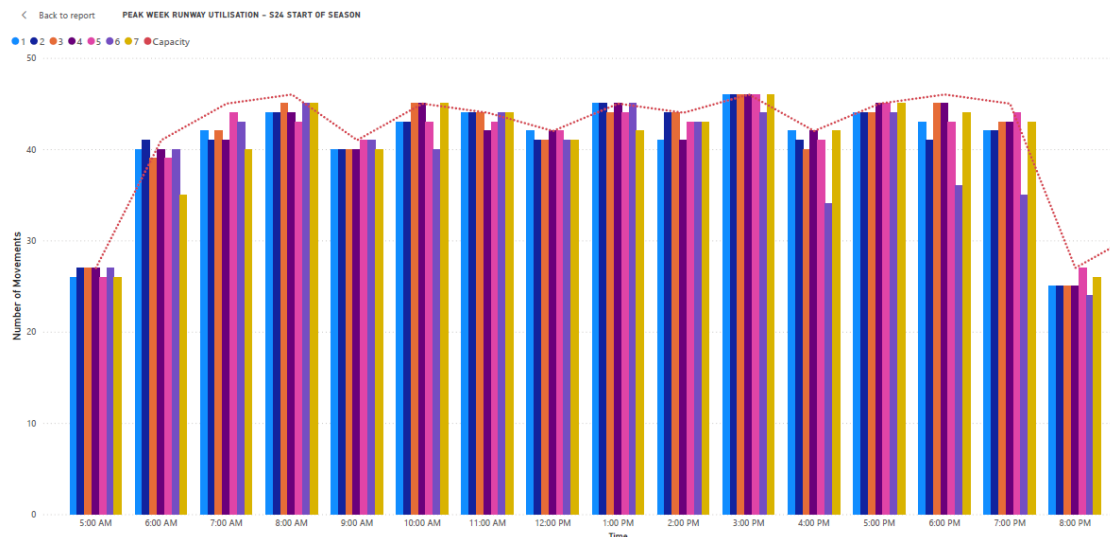
14. The Applicant then goes onto describe, in section 3 of Appendix A to **REP6-087**, how its proposed reporting process on noise (the AMFR) would interface with the slot allocation process.
15. At paragraph 3.1.8 of Appendix A to **REP6-087**, the Applicant accepts that, to be workable, its process for planning capacity release, to ensure that a breach of the noise envelope could not occur, would necessarily require it to plan with some headroom to allow it to ensure that the Noise Envelope is not breached. Hence, it is unclear why it rejects the adoption of the proposed Threshold based approach in the EMGF proposal [**REP6-100**] that is based on this forward looking concept. The purpose of setting a Threshold is to ensure that before capacity is released, the probability of avoiding a breach is expressly considered and a mitigation plan put in place before further capacity is released. It is important to note that the EMGF proposal does not propose that growth, delivering economic benefits, should be halted at a point 10% below the Noise Envelope but that this level of noise would trigger more intense monitoring and reporting. It is only at 5% of the Noise Envelope would the declaration of additional capacity be halted, with no additional slots to be allocated at the point when a breach occurs as a final back stop. This is considered a proportionate approach to the risk of a breach of the Noise Envelope. On this basis, it is unclear why the Applicant rejects EMGF at least for noise.

Figure 1: Heathrow Airport Slots Allocated against Declared Capacity (dotted line) for

Summer 2024 Arrivals



Departures



Source: Airport Coordination Ltd

16. At paragraph 3.1.19 of Appendix A to **REP6-087**, the Applicant appears to have recognised the risks inherent in the process, as outlined at paragraphs 6 to 10 above and now concedes that monitoring and the production of the AMFR should commence 2 years ahead of the opening of the NRP. This changes the position from that currently included within the Noise Envelope (**REP6-056**, paragraph 7.1.3) that monitoring would not commence until a 12 month anniversary of the 1st July following the operation of the NRP. This earlier reporting would provide some comfort that slots would not be released excessively on opening of the NRP if there was a risk of a breach of the Noise Envelope but this has not yet been incorporated into the Noise Envelope. The JLAs assumed an amended version of the Noise Envelope will be submitted at D7.
17. In section 4 of Appendix A to **REP6-087**, the Applicant sets out the steps it could take to ensure that the prospect of a breach could be managed to minimise the risk of it actually occurring. At paragraph 4.1.3, it suggests that one of the tools it would use would be

introducing a QC quota allocation for future seasons as a proxy for the Noise Envelope. This is precisely what the JLAs have been advocating and the JLAs can see no reason why working within such a QC budget, set by reference to the Noise Envelope, should not form part of the control mechanism regardless of whether a breach is forecast. This is an intrinsic part of the EMGF proposal and, if EMGF is not progressed, such a budget would need to be formally included as part of the Noise Envelope control mechanisms. This is important as we note that measures vi) and vii) of those proposed by the Applicant to manage any issues within season would require the agreement of the airlines and, hence, cannot be guaranteed. This is confirmed at paragraph 4.2.4, i.e. that there is no legal mechanism available to the Airport or to Airport Coordination Ltd to remove slots already allocated. The Applicant's proposed approach of relying on enforcement action under the Planning Act 2008 is addressed more fully in the main document, paragraphs 3.4 - 3.11 but it is unclear how this could overall legally bind slot allocation regulations.

Summary

18. The JLAs remain of the view that there is a need for a comprehensive approach to managing growth to ensure that environmental limits are not exceeded across the relevant environmental topics. This is set out in the EMGF **[REP6-100]**.
19. That said, the Applicant's proposal to bring forward the preparation of the first AMFR for noise to two years before the opening of the NRP would provide some comfort that the release of capacity would be managed from the outset to minimise the risk of a breach of the Noise Envelope and the JLAs expect the Noise Envelope to be so amended to ensure reporting ahead of NRP opening.
20. It remains the JLAs' view that there would also need to be a QC budget set in advance at the level commensurate with the Noise Envelope to minimise the risk of slots being allocated to airlines and aircraft that would likely lead to the Noise Envelope being exceeded and that this too should be incorporated into the Noise Envelope.