Communities Against Gatwick Noise Emissions (CAGNE)

Gatwick Airport Northern Runway project DCO application

PINS Reference Number: TR020005

SUBMISSIONS ON BEHALF OF CAGNE

DEADLINE 8 (7 August 2024)

INTRODUCTION

1. These submissions are made by CAGNE at Deadline 8. They contain CAGNE's Post-Hearing Submissions following ISH9 concerning proposed requirements and linked issues in relation to socio-economics. They also contain CAGNE's response to the Applicant's submissions on *Finch*.

2. Further detailed submissions post-ISH9 on the topics of:
    a. Noise – by expert consultants Suono – are appended at Appendix 1;
    b. Air quality – by expert consultants Air Pollution Services ("APS") – are appended at Appendix 2. APS' submissions also highlight the continued inadequacies in the Applicant's model, despite the Applicant's attempted response to APS at REP6-090.

3. In addition, appended to these submissions:

    a. At Appendix 3 is CAGNE's report setting out its concerns about airspace modernisation; and
    b. At Appendix 4 is housing research requested by the ExA relating to the housing fund discussed at ISH9. The data has been sourced from CPRE's website: https://www.cpresussex.org.uk/news/gatwick-airport-second-runway-application-housing-provision-issues/. CAGNE notes that the website effectively reproduces CPRE's response to the ExA's question on housing, given in REP3-115, so that part of the website is not provided at Appendix 4.

POST ISH9 SUBMISSIONS

Req.	Text as set out in the draft DCO	ExA's Recommended Amendment/ Insertion:	ExA's Reasons and Notes	CAGNE comment
31	**Wastewater** At present, Requirement 31(3) reads as follows (emphasis added): (3) The commencement of dual runway operations must not take place until— (a) Work No. 44 (wastewater treatment			CAGNE has set out its concerns with the unlawful tailpiece contained within this requirement in some detail at REP7-129. In short, Requirement 31 is unacceptable, as it allows the Applicant to resile from building the onsite wastewater treatment works in the event some alternative agreement is reached in future with Thames Water ("TW"). The Applicant has failed to provide the data that would allow the ExA to properly scrutinise whether TW's assets at Crawley can sustain the additional wastewater that would be generated.

	works) has been completed; and (b) an application has been submitted for an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 for the operation of Work No. 44 (wastewater treatment works), unless otherwise agreed in writing by Thames Water Utilities Limited.			As such, that option cannot be properly scrutinised by the ExA as part of the examination process. It is not appropriate for the Applicant and TW to have the scope to reach an agreement behind closed doors on what is such a fundamental issue for the DCO. In light of the UKSC's decision in *Finch*, this approach is not lawful. Public participation is integral to lawful assessment of environmental impacts, and the mitigation of effects is something with which the public must have the opportunity to engage: see §§18-21; 63, 105 and 109. The current requirement allows an option that completely subverts public participation. Furthermore, as set out at REP7-129, having regard to relevant guidance and case law, CAGNE considers the words underlined in the left-hand column to be an unlawful tailpiece. The wording creates a risk that the Applicant will seek to make significant changes to the development post-examination in a way that deprives third parties of the opportunity to comment. That is something both case law and the Government warn against. If the DCO is allowed with this requirement in place, there would remain total uncertainty as to how wastewater will be dealt with. The Applicant states they want flexibility. That is not appropriate when they have not provided the data that

				evidences their proposed alternative would be satisfactory. In addition, CAGNE notes that whether or not the wastewater plant is built on site has implications for other elements of the DCO, including the number of parking spaces that would be provided. This is a further reason that there must be clarity within the DCO. Finally, CAGNE's members consider this issue of particular importance in light of recent monitoring showing marked increases in pollution in the River Mole.[1]
15,16	**Air noise envelope, Air noise envelope reviews** Text to be replaced by wording in next column.	**Air noise limits** (1) From the commencement of dual runway operations, the operation of the airport shall be planned to achieve a predicted air noise level LAeq that: for an average summer day is at least 0.5 dB less than the value calculated for an average summer day in 2019; and for an average summer night is at least 0.5 dB less than the value calculated for an average summer night in 2019.	**Reason** For example, ANPS 5.60 "The benefits of *future technological improvements should be shared between the applicant and its local communities, hence helping to achieve a balance between growth and noise reduction*" and "*include clear noise performance targets*" **Informative**	CAGNE supports the need for a revised restriction and makes two submissions. First, in Appendix 1, Suono proposes a restriction that addresses both the concerns of the ExA, the JLA and the Applicant as the central case. Second, and alternatively, CAGNE supports the ExA's approach, but with one suggested amendment. It accords with policy that supports noise reduction over time and sharing of benefits. **Suono's Proposed Restriction** Suono considers that through setting limits from the Central Case (presented by the Applicant as its core case), alongside a sensible review process to be implemented in the future, the ExA can achieve

[1] See https://www.rivermoleriverwatch.org.uk/post/rising-pollution-in-the-river-mole-through-early-summer-our-tests-reveal

		(2) Five years after the commencement of dual runway operations, and every fifth year thereafter until 2049, the operation of the airport shall be planned to achieve a predicted air noise level LAeq that: for an average summer day reduces by at least a further 0.5 dB; and for an average summer night reduces by at least a further 0.5 dB. (3) Before the commencement of dual runway operations, and annually thereafter, the undertaker shall have submitted to the independent air noise reviewer and have had approved by the independent air noise reviewer an operating plan ahead of the following summer operating season that shows that the noise limits set out in (1) and (2) shall be achieved. (4) As soon as reasonably practicable after the end of each summer operating season, after the commencement of dual runway operations, the undertaker shall publish their report to the independent air noise reviewer	The ExA has based this draft operational noise requirement on scenario 3 of ICAO's 'Global trends in Aircraft Noise' 'technology improvements of 0.2 EPNdB per annum for all aircraft entering the fleet from 2024 to 2050.' It is intended to provide a clear expression of benefits sharing for all those likely to be adversely affected by aircraft noise, time for the Applicant to develop any necessary supporting processes, and an incentive for the aviation industry, which it can respond to.	a similar level of noise reduction to that which they appear to seek through their proposed requirement wording in a manner that makes the Applicant's raised concerns redundant. **The ExA's Proposed Restriction** Alternatively, CAGNE endorses the ExA's concerns about the current drafting of the noise envelope and supports the updated wording proposed. CAGNE also endorses the comments made in this regard by the JLAs at ISH9. CAGNE considers that the basic principle of the mechanism proposed by the ExA addresses a number of concerns regarding sharing of benefits and the need for progressive reduction over time. In light of the massive growth that is planned, including via inevitable changes to flight paths through airspace modernisation to enable this growth (FASIS), CAGNE considers the noise envelope needs to be stringent to comply with policy. While the Applicant states it will use the same flight paths, this is not controlled by the DCO. Suono has previously raised concerns about airspace modernisation/ FASIS by way of comparison with the current situation at Dublin Airport [REP1-138 §1.2] which is a practical example of expansion of a new parallel runway that, once built and operating, has resulted in planes flying a different flight path than that assessed,

		showing the calculated noise performance of the airport informed by actual noise measurements, compared with the noise limits set out in (1) and (2) with an explanation of any exceedances. (5) If the independent air noise reviewer, in consultation with the host authorities, considers that any exceedances reported in (4) are caused by factors within the control of the undertaker, the undertaker shall modify its approach to the development of its operating plan for the following year to meet the noise limits set out in (1) and (2).		causing noise impacts on communities that were not predicted or scrutinised. Gatwick's number one airline provider, easyJet, also made clear in their RR that the proposal is not feasible unless modernisation of airspace (is undertaken.[2] The Applicant in contesting the ExA's requirement at ISH9 sought to resile from its own analysis that aircraft will get quieter over time due to modernisation and upgrade of the fleet.[3] CAGNE's consultants Suono have previously raised concerns that noise levels for some of these modernised aircraft have not been justified [such as in REP4-099 section 17]. The ExA's new proposed requirement would ensure that the Applicant's promises in relation to quieter modernised aircraft in future will have to be realised. CAGNE does request one change to the ExA's draft wording, which is that oversight should be by the local authorities and not the CAA. This is a point CAGNE has made on a number of previous occasions.[4] The CAA is not seen as independent by local people, as it is partly financed by the aviation

[2] RR-1256 (see REP3-113 - §§27-28). See Appendix 4 for full submissions on airspace modernisation.
[3] Including Updated Central Aircraft Fleet Report REP4-004
[4] REP2-072 at §3, REP7-129 at §10

				sector. It is the local authorities that best understand noise impacts on the local area. CAGNE also notes that the CAA has itself indicated its role should be defined in such a way that it could be transferred to a more appropriate body without needing a new planning application. This uncertainty supports CAGNE's submission that CAA is not the appropriate body for this role.[5] Suono have stated that in their expert opinion having regard to experiences at Luton, the local authorities are the appropriate bodies to deal with any breaches – the CAA has never done such tasks before.[6] Finally, even if the ExA does not adopt a requirement in the exact form proposed in Annex B, some change to the Applicant's proposed wording is clearly required. The Applicant's current approach to the noise envelope is inadequate, for the reasons set out by the JLAs and by Suono in REP7-128.
18	**Noise insulation scheme** Text to be replaced by wording in next column	**Receptor based mitigation** (1) Within not more than 3 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker shall submit for approval	**Reason:** For example, ANPS 5.68 '*Development consent should not be granted unless the Secretary of*	Detailed comments from Suono on the updated sound insulation requirements are provided at Appendix 1. The Applicant's responses continue to be deficient.

[5] REP5-083 at §1.4
[6] REP6-122 at §10, REP7-128 at §§11-12.

		by the relevant local planning authority a forecast list of premises forecast to be eligible premises at the commencement of dual runway operations. (2) Within not more than 6 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker must take appropriate steps, having consulted with the relevant local planning authority, to notify the owners and occupiers of all premises on the approved list (1) that the premises has been approved for the design, installation, and maintenance of a package of measures that may include ventilation, noise insulation and methods to reduce solar gain to achieve an internal noise environment consistent with guidance. (3) Within not more than 12 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker must, subject to access being granted to the premises, carry out a survey of all the premises on the approved list and submit, for approval by the relevant local	*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*.' **Informative** It is considered that local planning authorities should play a role in the design of receptor based mitigation, particularly on behalf of local communities. Designs proposed may affect the appearance of the local built environment and	

		planning authority, proposed designs for all premises on the approved list. (4) The designs submitted by the undertaker and the consideration of them by the relevant local planning authority must have due regard for guidance including Sound Insulation and Noise Reduction for Buildings BS 8233 British Standards Institution (2014), Methods for rating and assessing industrial and commercial sound BS 4142 British Standards Institution (2014), Acoustic design of schools: performance standards BB93 Department for Education (2015) and Acoustics— Technical Design Manual 4032 Department for Health (2011) as relevant. (5) Subject to agreement by the owner of the premises and access being granted to the premises, the design approved by the relevant local planning authority shall be installed and commissioned before the commencement of dual runway operations.	may involve features that would normally require consent, including listed building consent. The take up of such schemes may also be improved through the involvement of the local planning authorities by providing assurance to owners and occupiers that due process has been followed and the designs offered have been appropriately scrutinised against relevant standards.	
20	**Surface access**	**Surface access** 20 (1) From the date on which the authorised development begins the	To ensure that the impacts of the development as	CAGNE is supportive of this approach and endorses the comments made by the JLAs at ISH9.

	20. From the date on which the authorised development begins the operation of the airport must be carried out in accordance with the surface access commitments unless otherwise agreed in writing with CBC and National Highways (in consultation with Surrey County Council and West Sussex County Council).	operation of the airport must be carried out in accordance with the surface access commitments unless otherwise agreed in writing with CBC and National Highways (in consultation with Surrey County Council and West Sussex County Council). (2) First use of the following airport facilities shall not be permitted until the mode shares set out below have been demonstrated to have been achieved in the Annual Monitoring Report unless otherwise permitted by CBC. a) At least 54% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following: • Simultaneous operational use of the northern runway: and • Pier 7 and associated stands. b) At least 55% of passengers travelling to the airport used public	described in the Transport Assessment and the consequential effects set out in the Environmental Statement are not greater than those assessed within the Application.	The ExA's proposals give some much-needed certainty that the Applicant will deliver on what it has claimed, ensuring the environmental effects do not exceed those assessed. CAGNE has previously raised the lack of certainty the Applicant's drafting of Requirement 20 currently gives in terms of securing the surface access commitments.[7] Requirement 20 must ensure that the surface access commitments are directly assessable rather than through a secondary mechanism.

[7] REP7-127.

		transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following: • The South Terminal Hotel Phase 2 on the former car park H; and • The use of multi storey car Park Y. c) Not more than 44.9% of staff travelling to the airport were car drivers in the monitored year. Should this car driver mode share be exceeded then the Undertaker shall not use the South Terminal Office (on former car park H).		
New		**Removal of permitted development rights relating to the provision of additional car parking** Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 8, Class F – Development at an airport (or any order revoking and re-enacting that Order with or without modification), no additional car parking shall be provided at the airport unless otherwise permitted by CBC.	To ensure that the impacts of the development as described in the Transport Assessment and the consequential effects set out in the Environmental Statement are not greater than those assessed within the Application.	CAGNE is supportive of the ExA's proposal. CAGNE also takes the view that further permitted development rights should be removed, as set out in REP2-072, to ensure further unassessed growth does not take place by way of, for example, provision of a new terminal.

21	**Carbon action plan** 21. From the date on which the authorised development begins, the authorised development and the operation of the airport must be carried out in accordance with the carbon action plan unless otherwise agreed in writing with the Secretary of State.	**Carbon action plan** 21. From the date on which the authorised development begins, the authorised development and the operation of the airport must be carried out in accordance with the carbon action plan unless otherwise agreed in writing with the Secretary of State (<u>following consultation with CBC</u>).	To ensure that the relevant planning authority can use its knowledge of the local area to advise the Secretary of State. Additionally, the CAP should be modified to make provision for CBC to be provided with the Monitoring Report and to be consulted on any Action Plan required in the event that further interventions are required and to be consulted when the CAP is reviewed.	First, CAGNE agrees that there should at the very least be a role for the local authorities within Requirement 21. However, a key concern for CAGNE is that the Carbon Action Plan ("CAP") does not have teeth, with no immediate enforcement consequences in terms of airport growth if promises are not kept. Accordingly, the local authorities should have further powers to enforce embedded within the Requirement. At the same time, while CAGNE supports there being a role for local authorities, it is also concerned that CBC would not currently have the expertise or resources to provide proper oversight. For that reason, CAGNE also submits that funding should be made available for local authorities to use external expertise. One example is that it is not clear to CAGNE that the Applicant has considered either within the CAP or within "Decade of Change" the scope 3 emissions that would arise from waste burnt at offsite incinerators. Secondly, CAGNE has also submitted previously there should be strict carbon limits or a carbon cap with a stepped trajectory embedded within the DCO requirements including on scope 3 aviation

				emissions (and other scope 3 emissions)[8] – together with consequences if such limits are not met. In particular, CAGNE adopts what the Aviation Environment Federation has set out as regards a carbon cap [REP1-114, REP3-158] and their justifications for it. Similarly, CAGNE supports the principles behind the JLAs approach to Environmentally Managed Growth ("EMG") (in REP7-102). While the Applicant says it does not control aviation emissions, the same could be said regarding aircraft noise, and yet the Applicant is content for the noise envelope to apply. Furthermore, following the reasoning of the UKSC in *Finch* at §103, if the airport did not expand, and therefore did not provide the additional infrastructure needed for more flights, then those emissions would not take place (there being no evidence before the examination that they would happen anyway elsewhere.) In this regard, CAGNE considers there should be real consequences in terms of growth if emissions are not reduced as promised. At REP2-072 CAGNE provided some suggested draft wording for such a carbon cap. In light of

[8] See REP2-072 at §6.

				Finch, CAGNE suggests slightly amended wording which includes scope 3 emissions within the carbon cap scheme: ***Carbon cap scheme (X)*** *(1).—Dual runway operations shall not commence until a scheme setting out maximum annual carbon emissions from airport operations and flights, including scope 3 emissions, has been submitted and approved in writing by CBC (in consultation with RBBC, NVDC, TDC, HDC, SCC, WSCC and KCC) ("the carbon cap scheme"). This shall include a target to achieve net zero scope 1 and 2 emissions by 2030, as set out in the Carbon Action Plan.* *(2) The undertaker shall be required to submit an annual monitoring report of carbon emissions to CBC (in consultation with RBBC, NVDC, TDC, HDC, SCC, WSCC and KCC), setting out whether the annual emissions caps provided by way of sub-paragraph (1) have been met.* *(3) The undertaker shall not be permitted to declare any further capacity for commercial air transport movements from the airport where two consecutive annual reports identify that the carbon cap limit has been exceeded during the previous 24 months of the operation of the airport until an annual monitoring report has been approved by CBC (in consultation with RBBC, NVDC, TDC, 3 HDC, SCC, WSCC and KCC) which confirms compliance*

				with the carbon cap limit identified to have not been complied with during the previous 24 months of the operation of the airport or forecast to not be complied with (as is relevant in the circumstances).
New		**Employment, skills and business implementation plan** taken together with **Housing Fund**		CAGNE supports the inclusion of these two proposed new requirements. However, these requirements do not resolve CAGNE's fundamental concerns regarding where workers will come from and where they will live. CAGNE has submitted a report showing there is a lack of workforce locally and difficulty for those further afield accessing jobs (REP1-149). Key factors include poor rail links and limited affordable public transport options, nearby local authority areas having comparatively low levels of unemployment, and high housing prices. The areas around Gatwick (not just limited to Crawley) are already experiencing a crisis of housing affordability, homelessness and social housing waiting lists. CPRE national office (as stated at ISH9) has extracted relevant data from data collected by universities on behalf of a coalition of rural advocates and housing associations.[9] The data is enclosed at Appendix 3.

[9] An independent study was conducted by the University of Kent and University of Southampton on behalf of a coalition of rural advocates and housing associations. The final report, Homelessness in the Countryside: A Hidden Crisis (March 2023) does not contain the underlying data, which was provided separately to CPRE.

				Provision of a housing fund does not resolve the fundamental problem that there is also a lack of land locally to build on in Crawley; new greenfield sites will be required that are outside the Local Plan. If houses are built further out, surface access is expensive and limited in the areas it covers.
25	**Operational waste management plan** (1) The replacement CARE facility (Work No. 9) must not be brought into routine operation until the undertaker has submitted an operational waste management plan to West Sussex County Council for approval. (2) The operational waste management plan submitted under sub-paragraph (1) must be substantially in accordance with the operational waste management strategy.	**Operational waste management plan** (1) Works to construct the replacement CARE facility (Work No. 9) must not commence until an operational waste management plan has been submitted to and approved in writing by West Sussex County Council. (2) The operational waste management plan submitted under sub-paragraph (1) must be substantially in accordance with the operational waste management strategy. (3) The airport must be operated in accordance with the operational waste management plan approved by West Sussex County Council unless otherwise agreed in writing with West Sussex County Council.	To bring forward the approval of the OWMP ahead of the construction of the replacement CARE facility. This would be to prevent a situation where the existing CARE facility has been removed and the replacement facility has been constructed but can't be brought into operation if the OWMP is not approved.	While CAGNE supports this requirement, it does not address the serious concern that as part of the DCO process the Applicant has not provided any analysis of the quantity of waste it will produce and where that will go. The UKSC in *Finch* made it clear that there is a legal obligation to provide sufficient evidence on which to base an assessment (§§74-75). There Applicant must (or should have) estimates of the quantity of waste and a basic idea of where the waste would go. As such, a key environmental impact has not been properly assessed or scrutinised. The issue of unlawfulness in light of the UKSC's decision in *Finch* arises again, because the Applicant's approach thwarts the requisite public participation. It also deprives the ExA of important information, both from the Applicant and from those who would engage with and comment on the Applicant's information, meaning that, contra §152 of *Finch*, the essential legal obligation to ensure that a project which is likely to have significant adverse effects on the environment is authorised

	(3) The airport must be operated in accordance with the operational waste management plan approved by West Sussex County Council unless otherwise agreed in writing with West Sussex County Council.			with full knowledge of these consequences has not been fulfilled.
New		**Air Quality Monitoring** In consultation with the host authorities, and prior to the commencement of dual runway operations, the undertaker shall develop an operational air quality monitoring and management plan, which shall be implemented following the commencement of dual runway operations,	Reason: For example, 5.35 to 5.41 of the ANPS regarding monitoring the effectiveness of mitigation measures included in the authorised development.	CAGNE is fully supportive of Air Quality being included as a requirement within the DCO. Paying to monitor within the s.106 does not suffice. However, the ExA's proposal does not go far enough. This position is set out in the report by APS at Appendix 2, who conclude: "*It is important that where the air quality monitoring with the Proposed Development demonstrates the effect on air quality is greater than the EIA demonstrated, that there are mechanisms in place to mitigate these unpredicted effects*". APS state that a cap on the number of flights permitted would be required if the real effects exceed the ES predicted effects, until the effect is mitigated or agreed to be acceptable.

				CAGNE has submitted on a number of occasions that the DCO should include a binding commitment to ensure air quality impacts are kept below significant levels, with consequences including fines if these are breached (as with the Noise Envelope).[10] Again, in this regard CAGNE supports the thinking behind the JLAs' approach to EMG. The Applicant's air quality modelling seeks to demonstrate there would not be significant effects. They should be required to adhere to those conclusions. It is entirely usual for requirements to ensure that impacts stay within significance thresholds, if keeping impacts within those thresholds is necessary for the development to be acceptable. CAGNE is clear that such a requirement is necessary. That the Applicant is so resistant to such a requirement suggests they do not have confidence in their own assessments. The Applicant must carry out monitoring before the commencement of the operations to understand the impact of the dual operation to be able to monitor the effect of the scheme. Once a clear plan for monitoring is in place, if the magnitude of effects which were presented in the

[10] See e.g. REP4-094.

				EIA are exceeded, the Applicant needs to be held accountable. CAGNE considers it is particularly important that such requirements are included within the DCO in light of the serious deficiencies in the modelling that CAGNE's consultants Air Pollution Services have identified on a number of occasions.[11] While the Applicant purported to respond to some of these concerns in REP6-090, the critical points have still not been addressed, as explained by APS in their report at Appendix 2. Furthermore, as CAGNE's experts highlighted at ISH7, national air quality thresholds are only going to get stricter in future. CAGNE therefore also submits that the DCO should also be forward-looking and, as with noise, included a binding stepped approach to improvement of air quality whereby emissions have to improve over time (or alternatively a mechanism for reviewing the standards when new thresholds come into play). This is essential to protect local communities from a development that will operate with associated harmful effects for decades to come, when the rest of the country moves towards more stringent standards.

[11] see e.g. REP4-095, REP1-140

				On monitoring more generally, CAGNE supports the JLAs' suggestions on funding. The Applicant should fully fund UFP monitoring even without a national standard and the use of 'low-cost' sensors for monitoring of pollutants like NO_2 is not appropriate (they are not sufficiently accurate).
New		**Odour management and monitoring plan**		CAGNE considers that there must be enforcement mechanisms included within the DCO requirements so that the local authorities can ensure odour impacts are kept to acceptable levels. Particular concerns from CAGNE include odours from the waste sorting site and unknowns from alternative fuels.

RESPONSE TO THE APPLICANT'S SUBMISSIONS ON *FINCH*

4. At §150 of *Finch*, Lord Leggatt emphasises that the fact that national policy supports certain development does not mean that the decision-maker must ignore the further fact that the proposed land use is one which would contribute to global warming or that the decision-maker must "*adopt an interpretation of what constitute such adverse effects which is contrary to reality*". He finds at §153 that the political context and the economic, social and other policy factors at play in such decision-making mean that it is more important for the decision-maker to have comprehensive, high-quality and clear environmental information, especially about climate change impact. For the reasons already

given by CAGNE, the JLAs, AEF and NEF,[12] which are reinforced by ***Finch,*** the ExA does not have that comprehensive, high-quality and clear information.

5. The Applicant's response on ***Finch*** in REP 7-079 effectively accepts that the GHG emissions from inbound flights should be included and, as a basic way of assessing them, doubles the emissions associated with outbound emissions (§§44-45). However, the Applicant fails to integrate this information into Chapter 16 of the EA. At the very least, the information in Tables 16.9.9 and 16.9.10 and 16.9.13 should have been updated. The contextualisation, including against the UK Carbon budget and against the sectoral budget, should also be redone.

6. The Applicant argues that, as inbound emissions from international flights are not included within the UK Carbon Budgets, the relevant contextualisation cannot be undertaken against those budgets (§43). But the Applicant itself has not required absolute methodological parity with the UK Carbon Budgets in order to use them as the relevant context. Quite the opposite – the UK Carbon Budgets, and in particular the 6th Carbon Budget, does not apply the assumptions regarding fleet improvement, SAF uptake and introduction of zero emission aircraft, but the Applicant applies those assumptions[13] and yet still contextualises against the 6th Carbon Budget.

7. Accordingly, it remains appropriate to contextualise against the UK Carbon Budgets. The Applicant should revised Chpt 16 of the ES and all the contextualisation against the UK's carbon budgets should be undertaken against the updated figures. Were the Applicant to do this, it would show that the revised emissions would amount to over 6% of the Sixth Carbon Budget, well beyond the indicative threshold of a project that can in itself materially affect achievement of the carbon budget.

[12] NEF Submissions at REP1-241 and REP4-124; AEF Submissions at REP1-114, REP3-158 and REP6-119; JLAs response to ExQ2 on *Finch* is at REP7-110 and CAGNE's is at REP7-129.
[13] ES Chpt 16 §§16.4.55-16.4.56.

8. The Applicant instead contextualises the revised aviation emissions (so excluding other sources) from the project against a global aviation emissions trajectory, using the ICAO trajectories (so not the IPCC budget) and still including the assumptions from the JZS High Ambition scenario. The result is that the aviation emissions from the expansion of Gatwick Airport alone would comprise 0.11% (or 0.16% WTT) of the global aviation emissions budget. A number of points follow:
    a. First, and importantly, the Applicant is wrong to suggest this is a small proportion. In fact, for a single project to amount to 0.11% or 0.16% of the global ICAO international aviation emissions trajectory is significant.
    b. Second, this shows that sectoral budgets for aviation should be included within the contextualisation.
    c. Third, there is no justification for the Applicant to apply the assumptions from the JZS High Ambition Scenario to this analysis.
    d. Fourth, ICAO produced the four scenarios discussed by the Applicant in §46 to illustrate how States could get to net zero to help support the negotiations that led to adoption by ICAO in 2022 of net zero as an aspirational global goal. Although ICAO adopted the aspirational goal it did not adopt any of the trajectories, so they do not provide a robust comparator.

9. The Applicant in §4 of their *Finch* submissions addresses the causative link between the project and the effect and states that the Supreme Court appears to apply the 'necessary and sufficient condition' test of causation to commodity manufacture. The Applicant's hesitancy is well-placed, as it could equally be said that Lord Leggatt did not choose to apply one test of causation to commodity manufacture. His analysis is in §121 of *Finch*. While it refers to manufacture of steel as an example where the commodity is not "*sufficient to bring about the effect*", it also identifies that the intervening acts are too indeterminate – which is a reference to the "*ordinary occurrence*" test in §§70-71.

10. In §5 of the submissions, the Applicant goes on to draw out what is described as an "*important principle*" that, if there is insufficient evidence available to find a conclusion that an effect is likely, that effect does not need to be assessed. If that is meant to suggest a principle where such effects are excluded entirely from mention in the ES (unless they have been screened out, with reasons given for that decision),

then it misunderstands §§74 and 77 of *Finch* by reading them in isolation. The true principle, in light of §§74-78; 20-21 and 61-64, is that, where an effect has not been screened out, information must be provided in the EIA process to explain why there is not a settled methodology or there is insufficient evidence to determine whether the effect is likely, and so will not be assessed, in order that the public can understand and engage with what is being asserted.

11. The Applicant also emphasises in §§1 and 3 of their submissions that it was common ground in *Finch* that it was inevitable that the oil produced from the site would eventually undergo combustion that would produce GHG emissions. That does not differentate the position in *Finch* from that here: it is equally inevitable that additional flights will cause GHG emissions and there is an equally well-established methodology for measuring such emissions. *Finch* applies with full force to the instant application.

12. Finally, the Applicant's response to the noise community group (GACC) focuses on the premise that the economic assessment does not translate easily, methodologically, to a GHG impact assessment. That ignores the fact that there is a clear causal connection between the harms from GHG emissions and economic cost, and a very well understood methodology for calculating those costs, which should have been applied: see NEF's submissions.[14] *Finch* clarifies that where there is factual and legal causation – as there is here, on both the 'but for' test and the ordinary 'intervening act' test (§§67-72) – and where current knowledge and methods of assessment allow for reasonable prediction (as opposed to conjecture and speculation), then those indirect effects should be included in the assessment. The economic cost of environmental harms (from global heating, but also from noise and other harms) can robustly be calculated and should be included in the assessment. That would address much of GACC's concern.

7 August 2024

[14] NEF Submissions at REP1-241 at §3.16 et seq.