



GATWICK AIRPORT NORTHERN RUNWAY PROJECT

PLANNING INSPECTORATE'S REFERENCE: TR020005

LEGAL PARTNERSHIP AUTHORITIES

CLOSING POSITION STATEMENT

DEADLINE 9: WEDNESDAY 21 AUGUST 2024

Crawley Borough Council (GATW-AFP107)

Mole Valley District Council (20044578)

Mid Sussex District Council (20044737)

West Sussex County Council (20044715)

Reigate and Banstead Borough Council (20044474)

Surrey County Council (20044665)

East Sussex County Council (20044514)

Tandridge District Council (GATW-S57419)

CLOSING POSITION STATEMENT

1. INTRODUCTION AND OVERVIEW

1.1. This Closing Position Statement is made on behalf of:

- 1.1.1. Crawley Borough Council
- 1.1.2. Mid Sussex District Council
- 1.1.3. West Sussex County Council
- 1.1.4. Reigate and Banstead Borough Council
- 1.1.5. Mole Valley District Council
- 1.1.6. Tandridge District Council
- 1.1.7. Surrey County Council
- 1.1.8. East Sussex County Council

1.2. These local authorities are host authorities and neighbouring local authorities affected by the Gatwick Northern Runway Project (“NRP”). They, together with Horsham District Council, have made joint representations to the Examination as the Joint Local Authorities (“JLAs”). They, including Mole Valley District Council in relation to legal obligations/agreements matters, have formed a Legal Partnership and have made representations to the Examination as the Legal Partnership Authorities. The local authorities in West Sussex have made representations as the Joint West Sussex Authorities. The local authorities in Surrey have made representations as the Joint Surrey Councils. Mole Valley District Council and East Sussex County Council have also made representations on certain matters as individual local authorities. All of the local authorities have agreed with the matters set out in this Closing Position Statement.

1.3. Whilst Horsham District Council, a constituent member of the JLAs, has supported the submissions made by the JLAs to date, and endorses the proposed changes to the required mitigation for NRP put forward in this Closing Position Statement, Horsham District Council has an objection in principle to the NRP and so is not a party to this Closing Position Statement. Horsham District Council is separately setting out its own position at Deadline 9. Thus, for the remainder of this Closing Position Statement, reference to the JLAs does not include Horsham District Council.

1.4. The over-arching position of the JLAs is that they cannot support the making of a Development Consent Order (“DCO”) for the NRP if made in the form of either (a) the draft DCO as sought by the Applicant at Deadline 8 [REP8-006] or (b) the draft DCO as recommended to be amended by the Examining Authority (“ExA”) in [PD-028]. In the view of the JLAs, both of these draft DCOs have shortcomings such that they would not adequately ensure that the unacceptable impacts of the NRP for the local communities and businesses of the areas represented by the JLAs would be adequately

controlled, mitigated, or compensated for. Those impacts are not outweighed by the claimed benefits of the NRP and are not simply a 'price that has to be paid' for the delivery of the NRP.

- 1.5. However, if a draft DCO were to be made in a form which incorporates the amendments put forward by the JLAs (via the Legal Partnership Authorities) in [REP8-163], together with the refinements submitted at Deadline 9, which include additional measures to control and regulate the impacts of the NRP, the JLAs would not then object to the making of a DCO. A key difference between the JLAs' amendments to the draft DCO and those proposed by either the Applicant or the ExA, is that the JLAs' version maintains the essential elements of the JLAs' proposals for Environmentally Managed Growth ("EMG") to ensure that the NRP does not have the potential to impose unacceptable impacts on local communities and local businesses.
- 1.6. Whilst the Applicant has asserted that it would elect not to implement a DCO that included the EMG controls sought by the JLAs, the Secretary of State ("SoS") should not be swayed by such a claim. First, with due apologies to the late Mandy Rice-Davies, *'they would say that, wouldn't they'*. It is in the Applicant's commercial interests to contend, at this stage of the process, that it would not implement a consent that contains restrictions it does not wish to see imposed. However, no prudent commercial body would in fact make a definitive decision on what it would (or would not) do in a future state of affairs. A prudent commercial body would not make that assessment in advance of knowing all the circumstances as they existed at the time that a DCO decision was made, noting of course that it is intended under any of the versions of the draft DCO that the Applicant would have (by virtue of Requirement 3), a five year period to decide whether to begin development, running not from the date of the DCO decision but from the date that it was clear there could be no legal challenge (or no further legal challenge) to the decision. In reality, the Applicant would not make any irrevocable decision not to implement the NRP for as long as the DCO remained available for implementation, whatever it might assert now.
- 1.7. Moreover, a prudent commercial body would also want to take into account the position of its various competitors before deciding whether to implement a DCO for the NRP. That would include the regulatory frameworks applicable at both Luton and Heathrow Airports, as well as the state of play on their own expansion proposals (noting that a decision on Luton's current proposals for expansion is due on 4 October 2024). Thus, no weight should be given to the Applicant's somewhat churlish claim that, if it could not play on its own terms, it would not play at all.
- 1.8. Second, if the SoS shares the view of the JLAs that particular controls, including EMG, are necessary to make the NRP development acceptable in planning terms, there can be no rational basis for making a DCO which did not include such controls. Unacceptable development, which lacks necessary controls, does not become acceptable in planning terms simply because the Applicant contends that otherwise it will not happen. In considering this issue, it is important to keep in mind that the EMG controls sought by the JLAs do not impose restrictions that go beyond the parameters that the Applicant has already assessed. What they seek to do is to provide confidence that the

assessed parameters should not be exceeded, combined with effective sanctions which would only be applicable in the event of any exceedances.

1.9. The structure of this Closing Position Statement is as follows:

- 1.9.1. Introductory matters and overview (this section)
- 1.9.2. The approach to decision making (section 2)
- 1.9.3. Key matters of principle (section 3)
- 1.9.4. Detailed concerns (section 4)
- 1.9.5. Conclusion (section 5)

1.10. The Closing Position Statement does not seek to repeat the detailed exposition of the JLAs' case as advanced through the Examination but to summarise the key outstanding matters and to signpost to where that more detailed case can be found in the submitted documents. Where the JLAs' position has changed in response to changes proposed by the Applicant to address their concerns, the Closing Position Statement sets out the up-to-date and final position. Save as regards documents submitted at Deadline 9, documents are referred to by their Examination Library references.

2. THE APPROACH TO DECISION-MAKING

2.1. The NRP includes more than one NSIP within its description of development (as well as associated development). It is, however, a single and indivisible project, and its component parts cannot be meaningfully severed. This is common ground (and is confirmed by the Applicant in paras 1.5.18 and 1.5.19 of the Planning Statement [APP-245] and again in para 1.1.10 of the Applicant's Position on Section 104 and Section 105 of the Planning Act 2008 [REP6-095]).

2.2. Whilst, in terms of land area and built development, the airport-related development within the NRP comprises its largest overall component, there are also more than one highway-related development(s) qualifying as NSIPs within the proposed works which constitute the NRP. The JLAs accept that the highway-related development involves alteration of a motorway (the M23 Spur), alteration of a highway where the speed limit is expected to be 50 miles per hour or greater (part of Airport Way), and alteration of other highways (part of Airport Way, South Terminal Roundabout, North Terminal Flyover Link, and North Terminal Roundabout), where National Highways is the highway authority, so that these requirements in s.22(3)(b) and (c) and s.22(4)(a),(b), and (c) of the Planning Act 2008 ("PA 2008") for the highway-related development are met. The JLAs have assumed that the respective size thresholds are met but are disappointed that the Applicant has not provided specific information on the measured areas of the highways works (as requested in the Joint Surrey Local Impact Report ("LIR") [REP1-097] at para 4.2 and in the Joint West Sussex LIR [REP1-068] at para 6.2). It is therefore not precisely clear how many highway-related developments comprising individual NSIPs are included in the NRP. Nonetheless, it is not in dispute that the NRP does include highway-related development falling within the scope of s.22 PA 2008.

- 2.3. The JLAs and the Applicant do not agree on how the statutory provisions in s.104 and s.105 PA 2008 apply in relation to the NRP. The JLAs' position is set out in paras 4.3 to 4.10 of [REP1-097], in paras 6.3 to 6.10 of [REP1-068], in their responses to ExQ1_CS.1.27 in [REP3-135], in Appendix II of [REP5-094], and in [REP7-107]. The JLAs remain of the view that the application falls to be determined in accordance with s.104 PA 2008 because there is a National Policy Statement (the 2015 version of the National Networks NPS – “NNNPS”) which has effect in relation to development of the description to which the application relates (namely the highway-related development which is an integral and non-severable part of the application for the NRP).
- 2.4. The JLAs are also of the view that the application is not in accordance with the NNNPS because the application includes so much development (namely the airport-related development) which is not addressed by the policies of the NNNPS. That airport-related development is not capable of being regarded as in accordance with the NNNPS because the policies of the NNNPS simply have no relevance or application to that part of the development.
- 2.5. However, there is no policy in the NNNPS which states (or even implies) that development which is not addressed by the NNNPS, such as airport-related development, may not be granted development consent. Thus, whilst s.104(3) PA 2008 imposes a duty on the SoS to decide the application in accordance with the NNNPS (unless stated exceptions apply), the NNNPS itself is silent on how an application such as the NRP should be determined. The NNNPS therefore does not provide the SoS with an adequate policy basis to decide how the application should be determined. In those circumstances, the SoS should decide the application having had regard to the matters set out in s.104(2) PA 2008.
- 2.6. Those matters include the NNNPS (s.104(2)(a) PA 2008), the LIRs of the Joint Surrey Authorities, the Joint West Sussex Authorities and East Sussex County Council (s.104(2)(b) PA 2008), and the Airports NPS (“ANPS”) (s.104(d) PA 2008), on the basis that it would be irrational for the SoS not to think this NPS both important and relevant to the decision, given the terms of paras 1.12, 1.14, and 1.41 of the ANPS and the extent of airport-related development included within the NRP).
- 2.7. For the reasons explained further below in relation to their outstanding concerns, the JLAs consider that those matters, and in particular the matters raised in their respective LIRs, indicate that a DCO should not be made, unless it includes the controls put forward by the JLAs.
- 2.8. In these circumstances, the JLAs do not consider that it is necessary to turn to s.104(7) PA 2008 (because the NNNPS does not provide sufficient guidance to allow it to be determined how the application should be decided). However, if s.104(7) PA 2008 were considered to be applicable, the JLAs would take the view that the exception it sets out would be satisfied because, unless any DCO includes all of the controls put forward by the JLAs in their representations and maintained in this

Closing Position Statement, the adverse impacts of the NRP would outweigh its benefits, and there would be no sound basis for making a DCO to authorise the NRP.

- 2.9. It should be noted that the JLAs have reached common ground with the Applicant that the JLAs' position on s.104 PA 2008 does not have the inevitable result that the application must be refused. Whether that should be the outcome (or not) depends upon the structure, substance, and adequacy of the control measures that are put in place. It does not depend on whether the application is considered only under s.104 PA 2008 (which the JLAs consider is the correct legal position) or under the 'hybrid' approach advocated by the Applicant, whereby the highway-related development is considered under s.104 PA 2008 and the airport-related development is considered under s.105 PA 2008. For that reason, the JLAs consider that there is no need for the SoS to make a definitive interpretation on the correct approach to s.104 and s.105 PA 2008 in order to make a lawful decision in this case. It would be open to the SoS to conclude that the matter was open to different legal interpretations, and that in the circumstances, the SoS would consider the application under both the JLAs' approach of applying only s.104 PA 2008 and under the Applicant's 'hybrid' approach of applying both s.104 and s.105 PA 2008. Either way, the JLAs do not consider that the ultimate outcome would be changed.
- 2.10. In this regard, the JLAs recommend that the SoS should follow the approach taken in the analogous case of the Net Zero Teesside Order 2024 (as referred to in [REP5-094] and [REP7-107]). In that case the SoS reached her conclusions in the alternative, both by considering the whole of the proposed development in that case under s.104 PA 2008 and by considering specified parts of the proposed development under s.105 PA 2008. By adopting such an approach, the question of which of the two provisions was to be applied to the proposed development (or to parts of it) became academic, and it was not necessary for the SoS to reach a definitive view on the issue. The JLAs see no reason why a similar approach could not be adopted by the SoS in the present case.
- 2.11. As a side note only, it can be observed that the High Court dismissed a judicial review challenge to the SoS's decision in the Net Zero Teesside case on 14 August 2024 (R (Boswell) v Secretary of State for Energy Security and Net Zero [2024] EWHC 2128 (Admin)) but the grounds of challenge did not concern the SoS's approach to s.104 or s.105 PA 2008 so it is unnecessary to provide any specific comments on that case.
- 2.12. A separate area of disagreement between the JLAs and the Applicant concerns the scope of matters that should be considered in relation to adverse impacts. The Applicant has argued that only effects that would be likely significant effects ("LSE") for the purposes of Environmental Impact Assessment ("EIA") should be regarded as adverse impacts which require to be mitigated or otherwise offset. The Applicant has repeatedly argued that impacts which fall below the level of LSE (in EIA terms) do not require mitigation (see for example paras 3.1.9, 3.1.20, 3.1.23, 3.1.33, 3.1.42, and 3.1.68 of the Applicant's Written Summary of Oral Submissions: ISH9 – Mitigation [REP8-106]). The point was

put starkly by the Applicant (in the specific context of air quality but the Applicant makes the same point more widely) at para 3.1.68 as follows “The air quality assessment undertaken by the Applicant... identifies no likely significant effects and therefore nothing that requires mitigation.” The JLAs do not agree that only LSE require mitigation or otherwise offsetting, with the corollary that adverse effects which are assessed to be less than significant (or are potential effects but not necessarily likely effects) can be put to one side and require no redress. The JLAs do not consider this proposition to be a correct understanding of either the regulatory regime provided by the PA 2008 or of the policy guidance in relevant NPSs.

- 2.13. The JLAs acknowledge that both the NNNPS and the ANPS suggest that their references to effects, impacts, and benefits, should be understood in an EIA context to mean LSE (paras 4.15 of NNNPS and para 4.13 of ANPS). However, both of those references are in the guidance specifically addressing EIA and concern what information is required for the purposes of EIA. They should not be regarded as a general statement that only effects which are assessed as LSE are relevant when applying the policies of the NNNPS or the ANPS to a proposed development.
- 2.14. Such an approach would be inconsistent with the requirements of s.104(7) PA 2008 which requires the SoS to consider whether “the adverse impacts of the proposed development would outweigh its benefits”, with neither these adverse impacts nor these benefits being qualified or limited to only those which constitute LSE for EIA purposes. It is a simple (and unconstrained) matter of planning judgment for the SoS to determine the nature, breadth, and range of the matters which constitute “the adverse impacts of the proposed development” and the nature, breadth, and range of the matters which constitute “its benefits”. It would be bizarre if the SoS was required to consider all and any adverse impacts and benefits found to arise (whether LSE or not) when complying with the statutory duty in s.104(7) PA 2008 but was restricted when applying the policies of either the NNNPS or the ANPS to only a consideration of the LSE of the development.
- 2.15. Such an approach would also suggest that the NNNPS and the ANPS were seeking to subvert the statutory regime (as set out in s.104(7) PA 2008) in para 4.3 of the NNNPS and para 4.4 of the ANPS by confining the planning balance there described to only a balance of positive and negative LSE. Such a restricted interpretation of the planning balance is not consistent with either the terms of paras 4.4 of the NNNPS or 4.5 of the ANPS, which are both explicit that relevant benefits and impacts may be identified either in the NPS “or elsewhere”. This would make no sense at all if such impacts and benefits were necessarily (because of paras 4.15 of the NNNPS and 4.13 of the ANPS) confined only to matters that were LSE for the purposes of EIA.
- 2.16. The JLAs therefore reject the Applicant’s fundamental starting point that the NRP should only be expected to address LSE. This mistaken proposition is embedded in the Applicant’s formulation of the application and has unjustifiably coloured the Applicant’s whole approach to the provision of mitigation. It is therefore unsurprising that the JLAs maintain that elements of that mitigation are

inadequate, (albeit it can be noted that agreement has been reached as regards mitigation for certain matters through negotiations on the DCO Section 106 agreement).

- 2.17. One further disagreement between the Applicant and the JLAs concerns the question of whether it is the JLAs' responsibility to provide detailed evidence to corroborate their concerns and that, absent such detailed evidence, those concerns should be disregarded in the decision-making process. The Applicant's position in this regard is illustrated at paras 3.1.9 and 3.1.42 of the Applicant's Written Summary of Oral Submissions: ISH9- Mitigation [REP8-106], which seek to suggest that the JLAs have an obligation to present technical evidence to refute the Applicant's case. However, under the PA 2008 the JLAs are not in an adversarial role or defending a decision that they have made (such as a refusal of planning permission). Through their respective LIRs (which have a statutory function by virtue of s.60(2) and s.104(2)(b) PA 2008 (and s.105(2)(a) PA 2008 to the extent relevant)), the JLAs have provided the SoS with their assessments, in accordance with s.60(3) PA 2008, "giving details of the likely impact of the proposed development" on their respective areas and parts of their areas. The level of detail required for the LIRs to achieve this purpose is not prescribed in the statutory regime (or addressed in any guidance).
- 2.18. The inquisitorial nature of the DCO Examination does not require the JLAs to discharge any onus of proof, or to present some 'rival' alternative analysis of equivalent detail to that provided by the Applicant. It is sufficient for the JLAs to identify their concerns regarding the assessments provided by the Applicant in support of its application, identifying any inadequacies and shortcomings in those assessments, and it is the task of the SoS (informed by the recommendations of the ExA) to evaluate the matters raised by the JLAs in their LIRs (and subsequent supporting representations), together with all other important and relevant matters, when reaching her conclusions. In this case, the JLAs have provided a great deal of detail to explain their concerns, and to identify the inadequacies and shortcomings in the Applicant's assessments (including the provision of detailed technical work commissioned by the JLAs). Those criticisms are properly made and are adequately supported in the JLAs' successive representations, and there is no requirement on the JLAs to go further and to present alternative assessments, as if they were the Applicant.

3. KEY MATTERS OF PRINCIPLE

Policy compliance

- 3.1. The JLAs have set out above why they do not consider that the application, taken as an indivisible and integrated whole, is in accordance with the only NPS which has effect in relation to the NRP, namely the NNNPS. Whilst the JLAs are content that, with the imposition of appropriate controls, especially as regards surface access, the highway-related components of the NRP could be found to be in accordance with the policies of the NNNPS which seek to address the acceptable parameters for development which relates to alterations to the national road network (namely the M23 Spur and its associated junctions), that position cannot be sensibly stretched to embrace the

NRP as a whole, so much of which constitutes development (especially within the Airport) which falls wholly outside of the policies of the NNNPS.

- 3.2. The same conclusions apply to the updated NNNPS (2024), which does not have effect in relation to the NRP (see para 1.16).
- 3.3. The ANPS does not have effect in relation to the NRP (paras 1.15 and 1.41), but it is an important and relevant consideration (paras 1.12, 1.14 and 1.41). The Applicant has taken too much from the statement in the ANPS (para 1.39) that “the Government has confirmed it is supportive of airports beyond Heathrow making best use of their existing runways” because that “supportive” stance has to be seen in the context of, and is inevitably qualified by, the policy that immediately follows, “We consider that any proposals should be judged on their individual merits by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts” (para 1.39). The fact that the Government also (para 1.42) “accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need that is met by the provision of a Northwest Runway at Heathrow” is no more than one factor to be considered when assessing the individual merits of the NRP. It does not detract from the requirement to consider the NRP on its own “individual merits”. Necessarily, that requirement does not carry with it any implication (one way or the other) as to what the ultimate conclusion should be. Consequently, the “supportive” stance in favour of best use does not take the Applicant very far at all.
- 3.4. Further comment is made below on the ANPS policies on assessing environmental impacts, particularly as regards noise, surface access, and air quality, but in summary the JLAs consider that the Applicant has neither adequately assessed nor (save where resolved via the Section 106 Agreement measures) appropriately mitigated and/or compensated for these impacts, such that there will be material residual adverse effects if the NRP were to be approved (without the additional controls put forward by the JLAs). As a consequence, the JLAs maintain that the NRP, as proposed by the Applicant, is not in accordance with the policies of the ANPS that relate to these environmental topics. The JLAs also have long-standing concerns about the Applicant’s assessment of need and demand for the NRP and its calculation of the scale (and distribution) of economic benefits that would result from the carrying out of the NRP. These concerns are also the subject of further comments below. However, the summary position is that, having regard to these matters, the JLAs do not consider that it has been sufficiently demonstrated and evidenced that the benefits of the NRP would outweigh its adverse effects, and this very much counts against the NRP in terms of compliance with the policy in para 4.4 of the ANPS.
- 3.5. A similar position pertains with regard to the NRP’s accordance with other aviation policy. The Aviation Policy Framework (2013) (“APF”) is clear that (para 5) “The aviation sector is a major contributor to the economy and we support its growth within a framework which maintains a balance

between the benefits of aviation and its costs, particularly its contribution to climate change and noise". The APF also qualifies its support for making best use of existing airport capacity (para 1.24): "However, we recognise that the development of airports can have negative as well as positive local impacts, including on noise levels. We therefore consider that expansion at these airports should be judged on their individual merits, taking careful account of all relevant considerations, particularly economic and environmental impacts."

- 3.6. This approach is carried forward in the Making Best Use policy (2018) ("MBU"), which notes (para 1.22) that "As airports look to make the best use of their existing runways, it is important that communities surrounding those airports share in the economic benefits of this, and that adverse impacts such as noise are mitigated where possible", and the policy itself (para 1.29) is clear that "We therefore consider that any proposals should be judged by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations. This policy statement does not prejudge the decision of those authorities... It instead leaves it up to [the decision maker]... to consider each case on its merits".
- 3.7. The post-pandemic guidance in Flightpath to the Future (2022) ("FttF") maintains the same overall approach but recognises the importance of strict environmental criteria as setting the parameters to acceptable growth (p.7) "*We continue to be supportive of airport growth where it is justified and our existing policy frameworks for airport planning provide a robust and balanced framework for airports to grow sustainably within our strict environmental criteria.*" Footnote 5 explains that the most up to date policies are to be found in the ANPS and in MBU. FttF also recognises that the Government's supportive stance on growth is qualified by the need to remain within environmental obligations (p.26) "*the Government remains supportive of airport expansion where it can be delivered within our environmental obligations.*" Whilst footnote 13 specifically refers to climate change obligations, the Government's environmental obligations also include those set out in the Environmental Noise (England) Regulations 2006 and in the Airports (Noise-related Operating Restrictions) (England and Wales) Regulations 2018, both of which implement earlier EU requirements.
- 3.8. Thus, the question of whether the NRP can claim support from national policy turns on an assessment of its individual merits and in particular on how the balance is to be struck between the claimed benefits and the residual adverse impacts. The "*supportive*" stance in the ANPS and in MBU is supportive of nothing more than the general principle of favouring airport expansion where it can take place in an acceptable manner. It does not pre-empt or pre-judge what the decision should be in any individual case, which must be assessed on its "*individual merits*" and is, therefore, necessarily a case-specific judgment for the SoS, having regard to all relevant considerations relating to that case. The JLAs' position at the end of the Examination is that the scale of the claimed economic benefits has not been adequately or robustly demonstrated (and there has been a failure to assess whether there are countervailing disbenefits at the local authority level), and that there are residual adverse impacts that have not been appropriately mitigated or compensated for, such that the planning balance is against the making of the DCO, unless the SoS puts in place the additional

controls and mitigation measures put forward by the JLAs. Only with those additional controls and mitigation measures could it be concluded that the NRP satisfied national policy.

- 3.9. Specific comments on national noise policy are made separately below in the section on noise, but the same conclusion applies.
- 3.10. A similar conclusion applies with regard to the local policy framework provided by the development plans of the constituent JLAs whose policies are relevant to the NRP. These policies and their requirements are outlined in the LIRs.

Need and Demand

- 3.11. The JLAs recognise that Gatwick Airport, as currently configured, is constrained as to the numbers of passengers that can be accommodated, especially at peak times, and, to that extent, there is a need case for expanding its capacity. It is the JLAs' view, based on the expert aviation advice it has received from York Aviation LLP ("YAL"), that there are practical limits on the amount of growth that Gatwick can achieve without the NRP (i.e. the Future Baseline). YAL assess the Future Baseline to be no more than some 57 million passengers per annum (mppa) by 2047 because of those constraints, in contrast to the Applicant's assessment of 67 mppa. In some respects, the YAL assessment that the Future Baseline is more constrained than the Applicant contends is the case could be said to reinforce the case for some expansion of Gatwick's capacity.
- 3.12. YAL has also assessed that, if the NRP is in place, the Applicant would potentially be able to grow capacity at Gatwick to some 75-76 mppa by 2047, in contrast to the Applicant's assessment of 80.2 mppa (from a higher Future Baseline). The net growth attributable to the NRP is, therefore, potentially greater in YAL's assessment than it is in the Applicant's assessment (some 18-19 mppa in YAL's view and some 13 mppa in the Applicant's view). It should, however, be noted that the YAL assessment that the Applicant could achieve 75-76 mppa is an assessment of the realistic ceiling on throughput with a two runway operation and does not bring in to account the effects of potential development taking place elsewhere, which might serve to suppress the achievement of that scale and rate of growth over the period to 2047 (as explained at para 22 of Appendix B of [REP7-104]). Obviously, the SoS is already seized with decision-making responsibilities in relation to some of that potential development (notably at Luton and at London City Airport), and it will be for the SoS to take account of any such decisions, and their implications for the scale and rate of growth attainable by the NRP, if they have been made before the decision in the present case. One such decision is the decision of 19 August 2024 to approve revised conditions for London City Airport. In relation to growth, the JLAs make no specific comments about that that decision beyond the general point above. Any other comments will follow at Deadline 10 in accordance with the ExA' Rule 17 request of 20 August 2024.

- 3.13. The Applicant has regrettably but repeatedly made submissions which misrepresent the position put forward by YAL, particularly in relation to the capacity deliverable in the Future Baseline case, including in Section 2 of [REP8-108] (its ISH9 post-hearing submission). Notwithstanding an action from the ExA and the Applicant's confirmation in para 2.1.3 of [REP8-112] that meetings would be held in relation to both forecasts and catalytic economic effects, it is disappointing that only the second of those meetings took place. Such a meeting on forecasts would have allowed a final opportunity for the Applicant to share evidence (as indicated at para 2.2.45 of [REP8-108], and as had been alluded to at ISH9), regarding how it was going to achieve greater spreading of traffic over the year as would be necessary to achieve its Future Baseline forecast. This missed opportunity is particularly relevant in the light of the ExA's Rule 17 request [PD-027] to the two principal airline customers at Gatwick seeking updates on ongoing performance issues at the Airport, which have obvious relevance to any realistic assessment of the throughput achievable without the NRP. The lack of such evidence being provided only serves to reinforce YAL's repeatedly expressed concerns that the Future Baseline as assessed by the Applicant is unrealistic.
- 3.14. The detailed reasons to explain why YAL's assessments of both the Future Baseline and the NRP case differ from those set out by the Applicant have been rehearsed in successive submissions, and reference is made to that material: [REP1-099] (paras 11-60), [REP3-123] (sections 4 and 5), [REP4-049], [REP4-052] (paras 23-50), [REP6-099] (Appendices III and IV), [REP7-104] (Appendix B), and [REP8-166] (pp.4-6). The JLAs consider that, for the reasons set out there, the YAL assessments are more credible and should be preferred.
- 3.15. Whilst in YAL's assessment Gatwick Airport's total contribution to meeting the overall demand for passenger movements is lower than as assessed by the Applicant (75-76 mppa compared to 80.2 mppa), the potential growth delivered by the NRP is greater (18-19 mppa compared to 13 mppa). It might therefore appear that YAL's assessment strengthens the need case for expansion by means of the NRP. However, any assessment of that case needs to look beyond the mere quantum of passenger throughput that could be accommodated by the NRP. That is only one component on the benefits side of the planning balance.
- 3.16. Translating that increased throughput into economic benefits is a complex task and one where YAL (and the JLAs) disagree with both the approach taken and the conclusions reached by the Applicant. There are three key aspects to this (as set out in [REP8-167]). These can be summarised as, first, the overstatement of the scale of national benefits from the expansion by reason of the NRP due to the erroneous assumption that the growth attributable to the NRP is, at a national level, all incremental growth in aviation activity, with no allowance being made for displacement of aviation activity from other airports, where passengers divert to Gatwick once the NRP is in place and operational. This concern is unaffected by any conclusion that the NRP will (in YAL's view) ultimately achieve a greater increment in passenger throughput than as assessed by the Applicant, because any such greater growth will also be subject to a displacement effect.

- 3.17. Separately, the JLAs note that the Applicant has submitted as an Additional Submission [AS-164] (at interim Deadline 8A) a new sensitivity test of the national economic benefits, using updated WebTAG guidance, especially as regards GHG costs. This has not changed the Applicant's approach of not allowing for displacement in the assessment (as above), and has not corrected the flaws in the assessment of air fare benefits (as explained at para 64 of [REP1-099]), but it does show that the Applicant itself is now reporting a 30% reduction (from £21.6 bn to £16.2 bn) in the net present value ("NPV") of the national economic benefits of the NRP. Allowance for displacement would obviously impact on (and reduce by an unassessed amount) the revised NPV now presented.
- 3.18. Second, there is concern as to the robustness of the assessment of catalytic employment effects because of the methodology used to assess the relationship between an airport's growth and the creation of local employment, which does not take any account of either the extent to which local passengers use local airports or the extent to which any given airport draws passengers from a much wider catchment area, and how these factors may change over time. Both of these matters are relevant to assessing the linkage between local employment and growth at any particular airport. The Applicant's approach uses a theoretical construct, applied in two somewhat dated academic studies, to estimate how big an airport locally should be, based on a range of variables, and then correlates that with total employment. The approach then assumes that this theoretical relationship remains constant over time, regardless of any changes in the catchment area of the airport or the characteristics of passengers using it. YAL does not consider this to be robust in the context that the UK is uniquely well placed in having robust empirical data (CAA survey data) that would enable a robust relationship to be derived, accepting that there is cross-causality to the extent that growth in local employment gives rise to faster growth in airport passengers and vice versa.
- 3.19. The key problem with the Applicant's adoption of the theoretical approach is that it is simply not possible to verify the validity of the 'elasticity' derived to estimate total employment related to airport growth. Hence, the scale of local employment generated by the growth attributable to the NRP may have been understated, which has two potential consequences: it renders the assessment of catalytic effects unreliable (because they arise once the local employment has been netted off) and it potentially exacerbates the local labour market pressures that would flow from increased levels of local employment (which is also related to the third concern), or alternatively the scale of local employment may have been overstated, so exaggerating the economic benefits. The shortcoming of the Applicant's approach is that there is no way of knowing which position is the case.
- 3.20. The third concern is the failure to assess (as opposed to merely presenting information on) the impacts of the employment created by the NRP on the local labour market, at a local authority scale. The Applicant has not provided any analysis as to whether the provision of additional employment at Gatwick by reason of the NRP will, at the local authority scale, create pressures for the local labour market in terms of the supply of labour to fill jobs that are needed in the local area, with

particular reference to low-paid sectors such as social care, health care, and child care. This concern is further reinforced if the YAL assessment of the scale of growth attributable to the NRP is preferred, because it is likely that the NRP would create increased levels of employment. This is borne out by the sensitivity testing undertaken by the Applicant in [REP5-081], which suggests that if the YAL assessment of passenger growth is used, the NRP jobs increment will increase in 2038 and in 2047 (Table 5.9.3).

- 3.21. The consequence of these concerns is that, notwithstanding that YAL consider that the NRP will be able to achieve a greater incremental passenger throughput than as assessed by the Applicant, the corollary is not (as the Applicant has asserted) that the benefits of the NRP would be greater. The economic benefits of the NRP remain unclear and uncertain, especially as regards their extent and whether there are any countervailing economic disbenefits, because of the above concerns and, as a result, limited weight can be given to the benefits side of the planning balance, notwithstanding the JLAs acceptance of a generalised need for Gatwick to expand in order to address its capacity constraints.

Noise

- 3.22. As set out above, the question of whether the NRP can claim support from a suite of policies which are broadly supportive of aviation growth “*within a framework which maintains a balance between the benefits of aviation and its costs*”,¹ is dependent upon whether adverse environmental impacts can be satisfactorily mitigated in this individual case. At present, the noise impacts of the NRP are one of the areas where there is still considerable outstanding disagreement between the Applicant and the JLAs.
- 3.23. It is the JLAs’ position at the end of the Examination that the Applicant has provided insufficient information for the SoS to be confident that the noise impacts of the NRP will be satisfactorily mitigated, and also that the controls on noise proposed by the Applicant provide insufficient certainty that communities will be adequately protected from unmitigated noise impacts.

Assessment of noise effects

- 3.24. The ANPS sets out the Government’s expectations for noise assessment in an aviation DCO context. It states (para 5.52) that the noise assessment in the Environmental Statement should include the following:
- *“A description of the noise sources;*
 - *An assessment of the likely significant effect of predicted changes in the noise environment on any noise sensitive premises (including schools and hospitals) and noise sensitive areas (including National Parks and Areas of Outstanding Natural Beauty);*
 - *The characteristics of the existing noise environment, including noise from aircraft, using noise exposure maps, and from surface transport and ground operations associated with the project, the latter during both the construction and operational phases of the project;*

¹ Aviation Policy Framework (2013), para 5, pg 9.

- *A prediction on how the noise environment will change with the proposed project; and*
- *Measures to be employed in mitigating the effects of noise.*

These should take into account construction and operational noise (including from surface access arrangements) and aircraft noise. The applicant's assessment of aircraft noise should be undertaken in accordance with the developing indicative airspace design. This may involve the use of appropriate design parameters and scenarios based on indicative flightpaths."

3.25. Throughout the Examination, the JLAs have raised concerns about the extent to which the information provided by the Applicant satisfies the suggested requirements for a comprehensive noise assessment, as set out in the ANPS. These concerns were raised at the outset in the LIRs submitted by the various Surrey [REP1-097], West Sussex [REP1-068] and East Sussex [REP1-070] councils.

3.26. In particular, the JLAs suggested that air noise data should be provided for a range of other metrics, in addition to the primary LAeq 16hr and 8hr metrics used to define the lowest observed adverse effect level ("LOAEL") and significant observed adverse effect level ("SOAEL") in the ES Chapter 14: Noise and Vibration [APP-039].²

3.27. The JLAs have consistently requested that noise contours for the following should be provided:

3.27.1. All metrics under single mode operation ([REP1-097], para 12.177).

3.27.2. Noise-induced awakening contours, showing the total with the baseline growth and the additional amount anticipated as a result of the NRP, with one additional noise-induced awakening constituting the threshold of SOAEL in the context of the ANPS (and a significant noise effect in terms of EIA) :[REP1-068], para 14.52; [REP1-097], para 12.121.

3.28. In denying that additional contours are required or would be beneficial to the ExA in making its recommendation, the Applicant has cited the strong correlation identified by the CAA in the 2014 Survey of Noise Attitudes ("SoNA") between the LAeq metric and sleep disturbance/annoyance from aircraft noise (see, for example, the response on NV1.10 in [REP4-031]). SoNA is relied upon to suggest that alternative metrics would not add anything of value to the noise assessment process despite the full wording of the SoNA suggesting the contrary. It has also been suggested that there is no foundation in policy for requiring the provision of further information on noise impacts or the use of either supplementary or additional metrics. This has been the Applicant's position throughout the Examination.

3.29. The JLAs disagree for several reasons:

² Table 14.4.6 gives figures of 51 dB Leq 16hr for the daytime LOAEL, 45dB LAeq 8hr for the nighttime LOAEL, 63dB LAeq 16hr for the daytime SOAEL and 55dB LAeq 8hr for the nighttime SOAEL.

- 3.29.1. **First**, nothing in national aviation or noise policy precludes the use of supplementary or alternative metrics or alternative thresholds in the assessment of LSE. The ANPS' requirements for noise assessment are cast in broad terms and clearly contemplate such assessments being flexible and sensitive to the specific characteristics of the noise environment.
- 3.29.2. **Second**, there is a longstanding downward trend in what is considered to be an acceptable level of noise exposure, both in terms of research into the impact of noise on health and levels of community annoyance and in terms of Government policy. Prior to SoNA, the Air Transport White Paper 2003 and APF both gave a figure of 57dB LAeq 16hr as the threshold for the "onset of community annoyance", above which a meaningful proportion of a population were likely to be highly annoyed by aircraft noise. SoNA lowered the figure to 54dB LAeq 16hr. The outcome of the Aviation Night Noise Effects ("ANNE") study is also currently awaited, which will inform the Department for Transport's future policy and regulatory controls in this area.³ While the ExA cannot pre-empt future Government policy, in the circumstances, the JLAs suggest that a precautionary approach should be taken to the health risks of considerable additional noise, and especially additional night noise.
- 3.29.3. **Third**, as regards the impact of night noise, there is already considerable evidence of adverse health impacts from sleep disturbance due to aircraft noise (see [REP5-094] at para 8.17, p. 10). The World Health Organisation ("WHO") Night Noise Guidelines for Europe (2009), recognise 40dB L_{night} as "*a health-based limit value of the night noise guidelines (NNG) necessary to protect the public, including most of the vulnerable groups such as children, the chronically ill and the elderly, from the adverse health effects of night noise.*" In 2018, after a further review, the WHO strengthened its position in the Environmental Noise Guidelines for the European Region, stating: "*For night noise exposure, the [Guideline Development Group] strongly recommends reducing noise levels produced by aircraft during night time below 40 dB L_{night}, as night time aircraft noise above this level is associated with adverse effects on sleep.*" This alternative LOAEL threshold formed the basis of a sensitivity test at Heathrow during airspace change options appraisal work (see REP1-097, paras 12.115–12.116). Unlike Heathrow, Gatwick does not operate a voluntary night flight ban for any part of the DfT night flight period 23:30 – 06:00. It is therefore even more crucial that the full effects of the NRP on nighttime noise disturbance are properly understood. Further details of research into night noise impacts on health are set out in [REP5-094] at para 8.17, p. 10.

³ The ANNE Study is funded by the Department for Transport and based at St George's University of London, in collaboration with NatCen Social Research, Noise Consultants Limited, and the University of Pennsylvania. It is expected to conclude in 2025. <https://www.sgul.ac.uk/about/our-institutes/population-health/projects/aviation-night-noise-effects-study-faqs>.

- 3.29.4. **Fourth**, there is precedent for the use of the one additional awakening contour; both in a DCO context in the Northampton Gateway Rail Freight Interchange Order 2019, Schedule 2, Part 1, Requirements 23(2) and 23(3), and in an aviation context, as the metric is used by Heathrow in its noise action plans.
- 3.30. Additionally, the JLAs also suggested at para 8.18 of [REP5-094] that overflight contours should be provided for aircraft movements up to an altitude of 4,000ft. This suggestion was made in the context of an ongoing disagreement between the parties as to the future use of the WIZAD tactical offload route and whether or not its increased use would require airspace change, or indeed airspace change with greater use of an early turn south from the runways, similar to WIZAD, in order to ensure that the growth in movements envisaged with the NRP can be safely and expeditiously accommodated within the broader airspace. The provision of contours for aircraft movements up to 4,000ft would be in line with the altitude-based priorities set out at page 17 of the Government's Air Navigation Guidance 2017, which specifically notes at para 3.3(a) that "*in the airspace from the ground to below 4,000 feet the government's environmental priority is to limit and, where possible, reduce the total adverse effects on people*".
- 3.31. The JLAs also remain concerned about the way in which ground noise has been assessed. They consider that the information provided by the Applicant on ground noise has been presented in such a way as to make it difficult accurately to determine the impacts and the effectiveness of the proposed mitigation. Specific concerns outstanding are:
- 3.31.1. The fact that different metrics were used to assess different ground noise sources, with the Lamax metric being used in the assessment of engine ground running, end around taxi noise and Auxiliary Power Units ("APUs"), whereas the LAeqT metric was used for other ground source noises such as aircraft taxiing ([REP1-068], para 14.40). No clear methodology was set out to identify LSE using the Lamax metric.
- 3.31.2. The failure to provide ground noise and cumulative air an ground noise contours ([REP1-068], para 14.50, [REP1-097], para 12.143).
- 3.31.3. The impact of the removal of the existing western bund during the construction period for the replacement bund ([REP1-068], para 14.7).
- 3.32. As set out above in section 2 (on the approach to decision-making), relevant material planning considerations may include environmental impacts which are not LSE for the purposes of EIA. Nothing in national policy prohibits the consideration of non-standard and supplementary metrics, such as those set out in the LIRs and in other representations by the JLAs throughout the examination, when determining the noise impacts of the NRP. Given the scale of expansion that is proposed, and the area potentially affected, the JLAs consider that the range of broader noise impacts they have highlighted are clearly material considerations for the ExA and the Secretary of State.

Proposed controls on noise

- 3.33. For the avoidance of doubt, the JLAs maintain the view that EMG is the most appropriate mechanism to ensure that the adverse impacts of the NRP on noise are satisfactorily mitigated. However, they have also sought to engage with the proposals put forward by the Applicant and the ExA. While these proposals, especially those of the ExA, go some way towards addressing the JLAs' concerns, they do not displace EMG as the preferred approach to noise.

The Noise Envelope

- 3.34. A range of concerns about the design of the Noise Envelope were set out in the various LIRs, as well as the Crawley Borough Council PADSS [REP2-040]. These included serious concerns about the pre-application consultation process.⁴
- 3.35. However, the most substantive unresolved disagreements as the Examination has progressed have been in the following areas:
- 3.35.1. The appropriate fleet transition mix for setting noise contour limits.
 - 3.35.2. Concerns over timing of exceedances and response.
 - 3.35.3. Securing operational controls such as Quota Count ("QC") budgets to ensure forecasts are achieved in practice.
 - 3.35.4. Competent authorities for monitoring purposes.
 - 3.35.5. Securing night noise controls through the DCO.
- 3.36. The ExA published Annex B to the ISH 9 Agenda including revised Requirements 15 and 16 relating to the noise envelope [EV20-001]. At Deadline 8 the JLAs submitted proposed revisions to the Annex B requirements and new draft requirements ([REP8-163], pages 111–116). The JLAs proposed amendments to the Noise Envelope were:
- 3.36.1. Embedding local authorities in the noise envelope decision making process.
 - 3.36.2. Clarifying the details of the operational management plan that forms part of the noise envelope process.
 - 3.36.3. Setting a lag for the slot release at 18 months.
 - 3.36.4. Prescribing the reporting of critical information.

⁴ The JLAs' concerns regarding the adequacy of the Applicant's general approach to pre-application phase consultation and engagement are set out in a Joint Adequacy of Consultation Representation from Crawley Borough Council, East Sussex County Council, Horsham District Council, Kent County Council, Mid Sussex District Council, Mole Valley District Council, Reigate and Banstead Borough Council, Surrey County Council, Tandridge District Council and West Sussex County Council [[AOC-020](#)]. Further responses were submitted by individual authorities (see, for example, East Sussex County Council [[AOC-004](#)], Surrey County Council [[AOC-019](#)], West Sussex County Council [[AOC-023](#)])

3.36.5. Making provision for powers to require information

3.37. On 14 August 2024 the ExA published its proposed amendments for the DCO [PD-028]. It is apparent that the ExA has tried to respond to the concerns expressed by the JLAs, though specific amendments suggested by the JLAs have not been adopted.

3.38. The JLAs outstanding areas of concern are addressed thematically below.

Fleet transition

3.39. Modelling carried out by YAL on behalf of the JLAs has consistently revealed differences from the Applicant's position in terms of the anticipated baseline for future demand without the NRP, the rate at which the capacity provided by the NRP is realistically likely to be taken up, and the anticipated fleet mix used, amongst other things, to set noise envelope limits. In a technical note submitted at Deadline 4, YAL explained that its modelling indicated that the Original Central Case fleet transition provided a more appropriate basis for setting noise envelope limits than the Slow Transition Case ([REP4-052], paras 12, 29–42 61–63).

3.40. In Appendix 1 to [REP5-094], YAL responded to the Applicant's Updated Central Case fleet mix [REP4-004] and indicated that it still considered the assumptions made by the Applicant regarding the transition to new generation aircraft to be overly conservative. Its analysis confirmed its "provisional view that the Applicant's revised Central Case should rather be considered as a revised Slower Transition Case, with the most likely case being represented by the original Central Case" (para 11).

3.41. Despite some progress being made towards common ground on forecasting issues (see [REP6-091], [REP6-092], Appendices 3 and 4 to [REP6-099] and Appendix B to [REP7-104]), the JLAs continue to take the view that the Original Central Case should form the basis for determining the extent of the noise contour areas as secured by the noise envelope, rather than the Updated Central Case.

3.42. As set out in Appendix 1 to the JLAs' response to action points arising at ISH-09 [REP8-168], it is also notable that, in the JLAs' analysis, the Original Central Case contour areas map fairly closely onto the contour areas which would be secured by the ExA's proposed amendments to Requirements 15 and 16 of the DCO, at least until the mid-2030s, at which point there is greater uncertainty about the likely rate of technological improvement.

Response to exceedances of noise limits

3.43. There are outstanding concerns regarding the timing of controls within the noise envelope. The JLAs remain concerned that there should not be a lag, whereby communities suffer unmitigated noise

impacts in excess of what is predicted, while the Applicant puts in place operating measures to address any exceedances retrospectively.

- 3.44. It was in response to this concern that the JLAs developed their EMG proposal [[REP5-093](#)], which sought to provide a set of principles for effective, specific, and outcome-based environmental controls. A similar approach was taken by Luton Airport in the Luton DCO Examination process in relation to noise impacts.⁵ It remains the JLA position that this approach provides the most effective control.
- 3.45. There was considerable discussion over whether the controls in the Applicant's proposed noise envelope were forward-looking or retrospective at Issue Specific Hearing 8. In Appendix A to [[REP6-087](#)] and [[REP6-093](#)] the Applicant recognised the need for advance monitoring and action to pre-empt breaches of the noise envelope and presented a range of controls which could be employed to deal with exceedances. In the most recent version of the Noise Envelope proposal submitted by the Applicant at Deadline 8 [[REP8-085](#)], paragraph 7.1.3 has been amended to require the first Annual Monitoring and Forecasting Report to be submitted not more than three or less than two years prior to the anticipated commencement of dual runway operations. This is a positive development.
- 3.46. However, its revised drafting of the Noise Envelope [[REP8-085](#)] leaves ambiguity as to whether this two-year lag would continue to apply once the NRP is operational. The JLAs consider that the principle of release of additional slots (not just capacity declared) under the slot allocation process as part of the operational plan must continue to account for the 18-month lag between a non-compliance or potential non-compliance being identified and the time when any restriction on the allocation of slots could take effect in practice. Overall, there is still unacceptable doubt over whether the Noise Envelope as currently formulated would be sufficiently responsive to predicted exceedances of noise limits to address breaches before they occur.
- 3.47. The ExA offered an alternative proposed mechanism at Annex B to the Agenda for ISH9, in its suggested amendments to Requirements 15 and 16 of the DCO. The JLAs have responded to this proposal in [[REP8-163](#)] as set out above and provided further analysis in Appendix 1 to [[REP8-168](#)], which estimated that the ExA's proposed noise contour limits at ISH-09 would broadly track the Original Central Case until the mid-2030s, after which there is more uncertainty over how achievable they might be.
- 3.48. In the ExA's proposed schedule of amendments to the draft DCO published on 14 August 2024 [[PD-028](#)], the ExA have moved from absolute numerical limits for noise contours under proposed

⁵ London Luton Airport Development Consent Order Examination Library references [[REP11-011](#)] (for the Green Controlled Growth Explanatory Note) and [[REP11-013](#)] (for the Green Controlled Growth Framework). The final draft version of the DCO is [[REP11-091](#)]

Requirement 15 to a progressive percentage-based reduction in the size of the contours at five-yearly intervals. The commentary on the proposed requirement states that “Overall, 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 tools, including the conditioning of slots, the use of quota count budgets and quota count operational control; and*
- *an incentive for the airlines which they are able to respond to.”*

3.49. The JLAs remain broadly supportive of the principle behind the ExA’s proposed requirements and the goal of progressive reductions in the noise contour area over time. They also consider that percentage based reductions in area are likely to be more practicable than reductions based on numerical reductions, as proposed at ISH-9. However, there remain concerns over the timing of slot allocation and the ability for the Applicant to make changes to its operating plan if exceedances are reported in time to avoid further exceedances the following year. The JLAs consider it essential that it should be a requirement for the Applicant to set QC budgets applicable to slot allocation as part of the noise control process, not something merely left to its discretion.

3.50. The JLAs further suggest that there ought to be a mechanism for updating the noise envelope as and when new information becomes available ([REP6-100], Appendix II, para 28, [REP7-102], paras 7.10-7.11) The mechanism to achieve this is included within the JLAs’ proposed EMG requirements in Appendix 1 of [REP7-108] at para 9 of proposed Schedule 2. This would provide the Applicant with flexibility in circumstances where fleet transition or technological advances are slower than anticipated, and ensure that the benefits of faster transition or greater technological improvements are shared with communities, in line with Government policy.⁶

Competent authorities

3.51. The JLAs have consistently made the case that, for reasons of democratic accountability, and in line with the proper interpretation of EU Regulation 598/2014 (“Regulation 598”), as implemented by the Airports Noise Related Operating Restrictions (England and Wales) Regulations 2018 (“the 2018 Regulations”), local authorities should be the competent authorities for the purposes of monitoring noise restrictions under Article 6(3) of Regulation 598 and reg 4(1) of the 2018 Regulations (see, for example, [REP2-081]). There has been no movement on this issue, with the Applicant still intending for the CAA to carry out the role of Independent Air Noise Reviewer.

3.52. At the very least, the JLAs consider that a consultative role for local authorities, such as that set out in paragraph 5 of the ExA’s proposed amendments to Requirements 15 and 16, discussed at Issue

⁶ Aviation Policy Framework 2013 and Consultation Response on UK Airspace Policy 2017.

Specific Hearing 9, ought to be secured by the DCO. As organisations acting in the best interests of local communities, but still independent from them, local authorities are well placed to perform monitoring functions to ensure that controls on noise secured by the DCO operate as intended.

Night noise controls

- 3.53. A discrepancy exists between the DFT's nighttime noise regime, which limits air transport movements between 23:30 and 06:00, and broader policy on aviation noise which, in line with the LAeq 8hr metric, defines nighttime as 23:00 – 07:00. The JLAs raised concerns over lack of regulatory control over the 'shoulder' periods during Issue Specific Hearing 5 ([REP1-215]; page 4, paragraph 2).
- 3.54. The Applicant has consistently rejected the suggestion that the 'shoulder periods' should be given special consideration or be subject to additional controls via the DCO, stating that (i) the ongoing DfT consultation on night flight controls did not propose to change definition of nighttime and (ii) *"other controls must be taken into account and assumed to operate effectively."* ([REP1-066] para 2.2.1).
- 3.55. The DfT Consultation referred to was published on 22 February 2024 and considers proposals for night flight restrictions at Heathrow, Gatwick and Stansted from October 2025 when the current regime ends.⁷ It is correct that DfT are not proposing to change the definition of nighttime for the next regime, commencing in October 2025, however this is explicitly designed to be a bridging regime, operating until October 2028, while the outcomes of the ANNE study and the ongoing review of the evidence underpinning WHO guidelines on noise are awaited. The consultation explains that the outcomes of the ANNE study will *"inform questions such as whether there should be a change to the 6.5 hour night quota period"*. DfT has chosen a 3-year bridging regime instead of a 5-year regime because *"5 years was considered too long as we wish to be able to review the night flight regime again – once we have the evidence from the ANNE study and the aviation noise attitudes survey"*.
- 3.56. In the section on Stansted, the consultation notes that, following planning permission granted in June 2021 for the airport to serve up to 43 million passengers per annum, a planning condition has imposed a night noise limit on operations at Stansted for the full 8-hour period of 23:00 – 07:00. It also refers to:

"the Government's expectation that appropriate noise controls are usually best set locally through the planning system. This is the case at all other airports currently, except the noise-designated airports: Heathrow, Gatwick and Stansted. There are

⁷ Night flight restrictions: Heathrow, Gatwick and Stansted airports from October 2025, Published 22 February 2024, <https://www.gov.uk/government/consultations/night-flight-restrictions-heathrow-gatwick-and-stansted-airports-from-october-2025/night-flight-restrictions-heathrow-gatwick-and-stansted-airports-from-october-2025>.

airports which impact more people with night noise than Stansted, where the Government is content for local controls to be in place.”

3.57. Given that the DfT night noise controls regime is uncertain from October 2028, the NRP is not expected to be operational until the end of the decade, and that the night noise control regime is one of the assumptions on which the Applicant's noise modelling is based, the JLAs take the view that, at the very least, the current night noise controls should also be secured via the DCO. This would be in line with DfT's expressed preference for noise controls to be set locally through the planning system. The JLAs have proposed an additional requirement to this effect ([REP8-163], pp. 98–99).

WIZAD

3.58. The WIZAD tactical offload route is currently subject to very few controls. When defined it was not intended to be used more than very occasionally, due to the state of technology and the predicted demand for air travel at the time. However, as airport capacity and airspace capacity are interlinked, increasing airport capacity results in the congestion to the north of the airport that forces the WIZAD route to be used more often. In [REP 7-112] National Air Traffic Services Ltd highlighted that it is already being used for ground congestion which is contrary to its intended use and as such is being used to alleviate airport capacity issues. YAL also hold the view that the NRP will result in an increase in the use of WIZAD or in routes that follow a similar initial route overflying Horsham. Such routes are being brought forward as part of the FASI-S early deployment, contrary to the comments made by the Applicant in [REP7-083].

3.59. Notwithstanding the disagreement between the parties on whether the increasing use of WIZAD would require airspace change, the planning process can consider the effects of the NRP on communities overflowed by that route, and the extent to which the increased use of the route would be acceptable in planning terms. As a result, the JLAs are proposing a requirement to limit and control the route and protect residents from the impact of newly frequent overflying ([REP8-163, p.105).

3.60. Notwithstanding that airspace change is governed by a different process, the JLAs remain concerned that the Applicant has not presented any assessment to the Examination of the potential effects of the airspace change necessary to ensure that the growth in aircraft movements with the NRP can be accommodated in the wider airspace. As a consequence, there can be no certainty that the effects on communities, particularly those to the south of the airfield, have been properly assessed.

Ground noise

- 3.61. The JLAs' concerns about the Applicant's treatment of ground noise extend to the design and layout of physical and operational mitigation measures⁸. The JLAs take the view that a comprehensive Ground Noise Management Plan ought to be provided. It was originally envisaged that there would be a combined plan to control ground noise and fixed plant noise but it is apparent that separate plans are required given the nature of the sources. A hierarchy of control was proposed that commenced with quieter equipment, operational controls and physical barriers on site before requiring mitigation off site, but the Applicant does not appear to have provided any detailed information on operational controls for ground noise and whether additional controls are required as a result of the ground noise modelling. Moreover, as set out above, ground noise contours have not been provided.
- 3.62. Agreement has presently been reached on a section 106 obligation to control how often engine testing can occur and the action that the Applicant must take should testing exceed a certain threshold. The JLAs have also proposed new requirements to ensure controls on ground noise from aircraft not in flight and on fixed plant noise ([REP8-163], pp.102–104).

Construction Noise

- 3.63. The Code of Construction Practice (CoCP) has been updated [REP8-025] but several items which the JLAs have requested for inclusion remain outstanding, including a prohibition on percussive piling where practicable, a more robust complaint reporting mechanism, the adoption of Thames Tideway working hours, and the specification of temporary barriers to mitigate construction noise. These mitigation measures are relied upon in the construction noise and vibration assessments in Chapter 14 [APP-039], which cannot be relied on if the mitigation measures are not secured.
- 3.64. The JLAs' most recent advice on the contents of the CoCP is set out in [REP7-110] and it is still hoped that agreement may be reached on the outstanding points by the close of the Examination.

Proposed mitigation

- 3.65. The JLAs have expressed concerns about the design of the Noise Insulation Scheme ("NIS") since the LIR stage.⁹ The primary concerns were:

⁸ See [REP4-042] West Sussex JLA D4 ENV11 Comments on further information, [REP5-094] JLA D5 Comments submissions received by Deadline 4, [REP6-099], commenting on the Applicant's Deadline 5 submissions, [REP7-103] JLA D7 Response to the applicant's Deadline 6 Submissions.

⁹ See West Sussex joint LIR [REP1-068], Table 14.1: 14.1 F – L inc; CBC PADSS [REP2-040]; Surrey joint LIR [REP1-097] para 12.30; Surrey LIR: Appendix C [REP1-100].

- 3.65.1. That the thresholds for the inner zone should be set at 60dB LAeq 16hr for daytime and 48 LAeq 8hr for nighttime noise exposure.
- 3.65.2. The suggestion that alternative contours should be included in the criteria for eligibility: namely single mode contours, combined ground and air noise contours, and a one additional awakening contour.
- 3.65.3. Absence of review and assessment mechanisms within the scheme.
- 3.65.4. Consideration of overheating and ventilation issues.
- 3.65.5. The suggestion that there should be a voluntary acquisition scheme for residential properties inside the daytime air noise 69 dB LAeq 16h or night-time air noise 63 dB LAeq 8h contour.
- 3.66. The Applicant has made some concessions during the Examination, such as the inclusion of nurseries and pre-schools within the Schools Insulation Scheme [REP8-087]. However, most of the JLAs' concerns with the original NIS remain unresolved.
- 3.67. The ExA has proposed substantial changes in its draft DCO to Requirement 18 dealing with the NIS and paragraph 1 of schedule 2 on interpretation. The JLAs are supportive of these changes, in particular the reduction in the eligibility thresholds to 54dB LAeq 16hr and 48dB LAeq 8hr, the provision for local authority involvement in the design of the scheme, and the new home relocation scheme proposed at sub-paragraph 5 of Requirement 18 in the 14 August draft DCO.
- 3.68. The main additional point the JLAs wish to emphasise is that they still consider the NIS ought to be offered to residents living within the one additional awakening contour. As noted above this is consistent with the existing Heathrow noise insulation scheme. As regards the crucial importance of additional awakenings as a metric, Appendix 3 in [REP8-168] explains in detail why this proposed contour is considered by the JLAs to constitute a SOAEL and why it will not necessarily coincide with the 48dB LAeq 8hr contour proposed by the ExA in its amended Requirement 18.
- 3.69. Thus, whilst the JLAs are supportive of the thrust of the measures proposed in the ExA's recommended amendments, they continue to hold the view that more is required to ensure an effective and durable set of controls, and so maintain their position that the additional noise controls as set out in their EMG proposals are required to render the noise impacts of the NRP acceptable.

Surface Access

- 3.70. The ANPS is very clear (para 5.17) that *“Any application for development consent and accompanying airport surface access strategy must include details of how the applicant will increase the proportion of journeys made to the airport by public transport, cycling and walking to achieve a public transport mode share of... at least 55% by 2040 for passengers”*. Whilst that target is specific

to Heathrow's Northwest Runway, it is an important and relevant target for the purposes of assessing the surface access commitments for the NRP. Ostensibly, the Applicant is prepared to commit to a 55% mode share for passengers by public transport to be achieved by the third anniversary of the commencement of dual runway operations (Commitment 1 in the SAC [REP8-053]), and this is expected to occur before 2040. However, the Applicant has resisted the ExA's potential amendments to require (via new R20 in [PD-028]) that it should not be able to bring the NRP into use unless it has already achieved a mode share of 54% (see the Applicant's response in Appendix A of [REP8-107]) and has asserted that it would not implement a DCO which contained such a requirement. The JLAs have already explained why such an assertion should carry no weight but the significant point here is that the Applicant is not prepared to commit to actually achieving the outcomes in its SAC.

- 3.71. As a deflection, the Applicant has now offered an 'interim' SAC of a 54% mode share by the first anniversary of dual runway operations (Commitment 1A in [REP8-053]) but the structure of the SAC and their relationship to R20 is not proposed to be changed. Instead, those 'commitments' will operate as no more than desirable outcomes, and if they are not achieved (or not likely to be achieved) the Applicant proposes (in the SAC) a host of 'after the event' measures which might be undertaken to see whether the outcomes could be achieved in future. However, what the Applicant will not countenance is any check on its activities in the interim period, including the critical declarations of capacity for the purposes of slot allocations that will allow growth to occur, however long that interim period may prove to be.
- 3.72. This is patently unsatisfactory, especially in the context that the measures that are available to influence mode share once the growth has taken place are necessarily limited and will not include (as the Applicant has made quite clear) any measures that cut across slot allocations. The Applicant has argued that the SAC's Annual Monitoring Reports will include a 'forward look' to see whether it is on course to achieve its mode share commitments, so that the intervention process could commence before a target was breached. However, even if the Applicant identifies a prospective breach, the only available remedy of interventions does not assure that the outcome will be that the mode share commitments are met. It merely requires the interventions to be implemented (potentially after escalation to the SoS if there is a disagreement about the need for those measures). If any specified interventions are unsuccessful in achieving the mode share targets, the only available remedy is to require more interventions. None of those interventions can require the Applicant to 'claw back' capacity that has already been released and taken up by airlines through the slot allocation process as this is limited by historic rights.
- 3.73. Queries and concerns remain around aspects of the transport modelling (see the Surrey County Council PADSS [REP5-112]) and the element of uncertainty this creates also informs the JLAs' requests for greater controls. Thus, whilst the ExA's revisions to R20 and the Applicant's supplements to the SAC are a step forward, in themselves they are insufficient to provide assurance that the mode share commitments will be delivered. Consequently, it remains the JLAs' position that

in relation to surface access more is required. The JLAs consider that its proposals for EMG, which include clearer, and earlier, checks on whether mode share commitments will be achieved, provides a more robust set of controls to deliver the required outcomes. The detailed references to the JLAs' case on EMG are set out separately below. The JLAs have also set out the measures and changes that they would require in relation to surface access, to provide similar assurance that mode share commitments will be delivered and controls in the event of a breach, should the ExA (and Secretary of State) not be persuaded as to the justification for EMG. These are set out in [REP7-102] and, in light of the material that the Applicant submitted at Deadline 8, in a further submission to be made at Deadline 9 providing additional points on the SACs and the drafting of the DCO.

Air Quality

- 3.74. The ANPS is clear (para 5.33) that an air quality assessment should include forecasts of the levels of all relevant pollutants when the scheme is operating “at full capacity”. The Applicant assesses that the NRP will not reach full capacity until 2047, but the Applicant has not provided forecasts of “the levels” of relevant pollutants at that date. The Applicant has simply presented its estimates for the degree of change in pollutants compared to the Future Baseline as at 2047 (in Table 13.10.8 of [REP3-018]). Predicted levels (i.e. concentrations) cannot be reliably inferred from this information because it is not based on modelling but only on estimates for pollutants in 2047 (in contrast to the modelling that has informed the assessment as at 2038). The Applicant has undertaken some limited AQ modelling at 2047 for the purposes of considering the implications of the post-Covid traffic modelling (in [REP5-068] (section 3)) but this only considers emissions from road traffic. The Applicant has sought to explain the absence of modelling in Appendix D of [REP1-050] (section 3) and has argued that to undertake 2047 modelling would be disproportionate. The JLAs do not agree, and consider this omission is material, especially when it is acknowledged that the estimates for pollutants at 2047 are higher than the estimates for the Future Baseline (para 3.2.2 of Appendix D of [REP1-050]) (noting of course that the JLAs consider the Future Baseline has been overstated) and the Airport will be the dominant source of pollution within its immediate environs (including the Horley Gardens Estate) in 2047 (Point AQ12 at para 20.12 of [REP7-103], Table 11.5 in [REP1-097] for that position in 2038, and paras 11.93 to 11.95 of [REP1-097] for the likely same position in 2047).
- 3.75. The Applicant's commitment to funding the monitoring of air quality in the proposed s.106 Agreement now includes the potential for that monitoring to be extended to 2047, subject to the outcome of monitoring in preceding years. Notwithstanding that this is an improvement on the Applicant's previous position, it still provides no assurance that the levels of pollutants in 2047 or when the Airport is at full capacity (in particular at and around the Horley Gardens Estate) will not exceed applicable limits. It simply provides a mechanism that would provide information to show what the levels were at that time. The Applicant has not proposed any measures in the event that the monitoring showed exceedances of applicable limits. The JLAs therefore maintain their position that air quality needs to be included in the controls delivered by its EMG proposal, or by some similar measures requiring remedial action to be taken (with the detail of any such measures being for

approval by the local authority prior to commencement). Further detail of the JLAs' case on EMG and air quality is provided in [REP7-102] (section 4) and [REP7-103] (section 20).

3.76. The JLAs welcome the addition of Requirement 35 to the draft DCO in [REP8-006] to secure the delivery of the operational odour monitoring and management plan ("OMMP") but remain concerned at the quality of the Plan submitted, and the absence of a requirement to update the OMMP prior to commencement which would be approved by the local planning authority. The JLA commend the Odour monitoring and management plan requirement proposed by the ExA in its Draft Requirements – Schedule 2 of the Draft Development Control Document, issued on 22 July 2024 ([EV20-001]). This addresses the key weaknesses of the Applicant's proposed odour requirement and secures a two stage odour study as proposed by the JLAs in [REP7-108]. The JLAs also remain concerned about the laxity of the exclusions from statutory nuisance proceedings in Article 49 (as explained in [REP8-163] (Item 12 of Part B)) for the construction phase.

Climate Change/Greenhouse Gases

3.77. Whilst the JLAs welcome the inclusion in Requirement 21 of the draft DCO [REP8-006] of the requirement to consult with Crawley Borough Council before there can be any departures from implementation of the Carbon Action Plan ("CAP"), the measures in the CAP that are required to be implemented are too weak and will not allow for effective monitoring of the Greenhouse Gas ("GHG") impacts of operating the NRP. The JLAs have provided detailed representations to support these concerns in [REP4-057] (items 6.1 and 10.1), and in [REP7-102] (section 5).

3.78. The JLAs consider that the carbon/GHG impacts of the NRP as regards Surface Access and Airport Buildings and Ground Operations ("ABAGO") are matters that should be included within the EMG controls, as set out in [REP6-100], Appendix II, and [REP7-102], section 5. The JLAs recognise that there may be other approaches to ensure that the growth enabled by the NRP monitors and accounts for its GHG emissions and they note the alternative suggestion of a further requirement setting a carbon cap, in the form proposed by CAGNE in [REP8-143], and as now put forward by the ExA for comment at Deadline 9 in R17.d.10 of Annex A to the Rule 17 Request of 14 August 2024 [PD-027]. The JLAs' preference is for all control measures which seek to ensure that the growth enabled by the NRP is achieved in accordance with the assessed environmental parameters should be part of a comprehensive overall approach. For this reason, the JLAs continue to consider that GHG emissions are most appropriately dealt with as part of EMG.

3.79. In relation to aviation emissions, the JLAs have not included them within the scope of EMG (for the reasons explained at para 5.3 of [REP7-102]) but they have set out how those emissions should be accounted for, including in the light of the Finch decision, in their representations in [REP7-110], Appendix 1, and in [REP8-161], pp.4-6.

Environmentally Managed Growth

- 3.80. The JLAs have promoted EMG as a necessary control measure for the NRP from the early stages of the Examination. The key references are to be found in [REP4-050], [REP5-093], [REP6-100] (which sets out in Appendix II an Outline EMG Framework for the purposes of a proposed requirement), [REP7-102], and in Appendix 1 of [REP7-108] (which sets out detailed wording for a proposed EMG requirement to be incorporated in to the draft DCO, updating an earlier version in Appendix 1 of [REP6-100] which had some formatting issues). Those representations set out the full rationale for EMG, explain why it is needed in this case, and respond to the Applicant's criticisms of EMG as a control mechanism for the NRP.
- 3.81. At the heart of EMG is a simple idea: if the NRP is to proceed, it should do so in a way which ensures that it stays within the environmental parameters against which it has been assessed at the decision-making stage, so that local communities and the receiving local environment are not exposed to greater adverse impacts than have been assessed. The mechanism to achieve this is also simple: effectively a series of 'trip wires' or 'early warning' thresholds which will apply before environmental limits are reached, so that growth enabled by the NRP is managed to ensure that it will not exceed those limits. If the NRP does not trigger those thresholds, there is no curtailment to growth, but if the thresholds are reached, pre-emptive action is then taken to ensure that growth is then checked before the environmental limits are breached. In this way the actual impacts experienced by local communities will remain within the parameters of the assessed impacts, and the problems of retrospective action to provide remedial measures after limits have already been exceeded and adverse impacts have occurred should be avoided.
- 3.82. The Applicant argues that it is unreasonable and unnecessary for it to be held to account in this way but the JLAs cannot agree that this is a valid argument. The issue is simply one of risk: who should bear the risk, in a project of this scale, duration, and magnitude, with all its consequential inherent uncertainties, of the key technical assessments relied on to support the case for the NRP proving to be wrong in some material respects? The implicit answer of the Applicant is that it is local communities and the receiving environment that should bear that risk and that it is somehow unfair for the Applicant, as a commercial enterprise, to be expected to carry that risk. There is no logic to such a stance. It is the Applicant which wishes to benefit from the undertaking of the NRP and there is no good reason why it should be entitled to externalise one of the inevitable costs of so doing (that is to say the risks of its underpinning evidence base being wrong or overtaken by events) by passing those costs on to others.
- 3.83. If the Applicant's evidence base is robust it has nothing to fear from EMG, because the risk of its growth being curtailed by the controls proposed by EMG will not arise. It is only if (as the JLAs fear may prove to be the case) the Applicant's evidence base is not robust, that the controls in EMG will 'bite', so as to safeguard the interests of local communities and the receiving environment. This outcome is clearly in the interests of sound planning, especially having regard to the importance of

securing acceptable controls on the NRP's impacts on noise, surface access, air quality, and GHG, which are intended to be addressed by EMG. It is not appropriate in the context of such a large-scale operation with wide ranging impacts to rely simply on the Applicant's past track record of operating Gatwick (under a regime with limited planning controls as outlined in the planning history) as an effective assurance that it will in future be able to deliver all of the proposed mitigation measures and stay within all of the proposed operational limits. EMG provides an effective mechanism to ensure that the Applicant will remain within those limits (or that there are effective sanctions in place in the event that the proposed mitigation measures prove to fall short of what is required).

- 3.84. Without prejudice to the above, the JLAs have also provided details of the measures they would need to see imposed in the event that the SoS was not persuaded of the JLAs' justification for EMG. These details are set out in [REP7-102], but it should be understood that they represent what is very much a secondary position for the JLAs and would be an inferior and less effective way of providing the necessary controls to ensure effective monitoring and clear interventions in the event that the NRP fails to stay within its environmental limits. Necessarily, those details are not as 'worked up' as the measures included in EMG via the Outline EMG Framework and the proposed DCO requirement to secure it, but they do provide the SoS with the basis from which applicable further controls could be formed.

Landscape and Visual Matters (including Design)

- 3.85. There are four key concerns for the JLAs (as well as several detailed matters). The key concerns are (i) the lack of detail on the visual impacts of large parts of the built development comprised within the NRP in the supporting documentation, (ii) the lack of effective controls to enable the JLAs to be confident that those shortcomings can be satisfactorily addressed post-consent through the discharge of requirements in particular given that the Applicant proposes a consultation process rather than a design approval process for many works based on compliance with its control documents, (iii) specific concerns about the impacts of particular elements, notably the visual impacts of construction compounds, the land-raising works at Pentagon Fields, and the visual impacts of the works at Car Park X (Work No. 31), Car Park Y (Work No. 30), North Terminal Long Stay Car Park (Work No. 32), Purple Parking (Work No. 33) and along the A23 corridor due to the loss of tree screening and wider impacts on the surrounding countryside, and (iv) the lack of control over landscaping, the level of tree loss, and confidence that suitable replacement tree planting can be provided. These concerns are set out in [REP1-068] (sections 8, 12, and 24), [REP1-097] (section 6), [REP6-111], [REP7-103] (sections 1, 3 to 6), [REP8-126] (sections 2, 4, 14, and 15), and [REP8-165].
- 3.86. The JLAs have set out in their representations the additional detailed information and/or additional controls that would be required to address these concerns. [REP8-163] sets out the JLAs'

suggestions for drafting amendments to the draft DCO that would provide a mechanism to secure the required information post-consent and would impose the further controls.

Ecology and Nature Conservation

- 3.87. Notwithstanding that the areas of disagreement have narrowed, especially as a consequence on the agreements reached in relation to measures to be included in the Section 106 Agreement, the JLAs have outstanding concerns as regards the Applicant's approach to assessing the impacts of the NRP on ecology and nature conservation interests, and as regards the mitigation that is proposed to address these impacts. The key remaining concerns are (i) failure to provide adequate mitigation/compensation for the loss of 3.12 ha of woodland, and (ii) failure to demonstrate a realistic worst-case approach to tree-loss has been applied.
- 3.88. The JLAs have, throughout the Examination, held several other key concerns which are (i) a failure to adopt a landscape-scale approach in the assessments, including looking at suitable land off-site where mitigation could be provided, (ii) failure to include sufficient compensatory measures to offset impacts on bats and (iii) non-compliance with current BNG methodology in the calculation of BNG. The JLAs have secured a s106 obligation for a landscape and ecology enhancement fund and associated dedicated officer as a means of addressing these concerns and now consider them addressed.
- 3.89. The JLAs' detailed representations on these matters are set out in [REP1-068], [REP1-097], [REP3-117], [REP5-115], [REP5-117], [REP5-055], [REP6-109], [REP7-103], and [REP8-126]. With the regard to the concerns on securing satisfactory arrangements for replacement tree planting so as to satisfy Crawley BC's Local Plan Policy CH6, the JLAs welcome the principle of the Applicant's addition of R39 to the draft DCO [REP8-006] to secure a tree balance statement as a means of showing compliance with Policy CH6, but question why this requirement should only be fulfilled after 9 years from the commencement of dual runway operations, and would suggest a phased approach would be appropriate, with interim auditing of the tree balance within successive parts of the development in line with the phasing secured by R2A, so that there is monitoring of progress towards the ultimate achievement of a policy-compliant tree balance. The JLAs will propose such wording at Deadline 9.
- 3.90. Whilst a s106 Agreement for a landscape and ecology enhancement fund will address some of the JLAs' concerns, the loss of 3.12 ha of broadleaved woodland remains a key concern. This is not a loss that is mitigated or compensated for by the NRP. Nor do the JLAs consider there is any practical measure that can now be taken within the scope of the Order limits to provide suitable recompense for this loss. It therefore remains as an unresolved residual adverse effect that needs to be brought into account in any drawing of the planning balance. That said, the JLAs recognise that if, in relation to all other matters of concern to the JLAs, their proposals to address those concerns by changes to the terms on which any DCO should be made (including in particular the controls to be secured

by EMG) were to be fully accepted by the SoS, the JLAs would (with reluctance) accept that the loss of 3.12 ha of woodland would, in that circumstance, be outweighed in the overall planning balance. The loss of woodland would, nevertheless, remain as a negative impact of the NRP and should be clearly recognised as such.

Section 106 Agreement

- 3.91. The JLAs have engaged with the Applicant on the terms of a proposed section 106 agreement (“the Legal Agreement”). The Legal Agreement is circulating for execution by the parties and, at the time of this submission, has been executed by GAL, RBBC and CBC. Arrangements have been made for WSCC and SCC to execute in the coming days and the parties intend for a completed version to be submitted prior to the close of the examination at Deadline 10. The Legal Agreement will secure a number of important matters which the JLAs consider are necessary to mitigate or otherwise compensate for the impacts of the NRP or to ensure that its stated benefits are realised. The JLAs have taken into account the package of measures that are to be secured by the Legal Agreement, but they do not consider that those measures obviate the need for additional controls and, in some circumstances, additional mitigation to be imposed, as advanced in this Closing Position Statement.
- 3.92. The ExA is invited to refer to the Legal Partnership Authorities Update on the Draft DCO Section 106 Agreement submitted at D9 which provides a summary of the Legal Agreement.

4. DETAILED CONCERNS

- 4.1. As well as the key issues of principle, as outlined above, the JLAs have raised many detailed concerns about the effects of the NRP on other aspects of the environment and on the adequacy of the controls proposed to regulate the NRP. The JLAs have also raised detailed drafting issues on the text of the draft DCO and on the contents of specific control documents that are to be secured by the DCO. It is not intended to rehearse that level of detail in this Closing Position Statement, but it should not be inferred that those concerns are no longer maintained (save where they are superseded by the measures to be secured in the Section 16 Agreement). At Deadline 8 the JLAs provided a further updated version of their Consolidated Submissions on the Draft Development Consent Order [REP8-163], with supporting schedules setting out the changes they are seeking to the draft DCO. Those changes are maintained, unless expressly superseded by the Deadline 9 submission referred to below.
- 4.2. In addition to those matters, in the light of the material that the Applicant submitted at Deadline 8, the JLAs are putting forward (in a separate Deadline 9 document from the Legal Partnership Authorities) additional points on the drafting of the DCO.
- 4.3. At Deadline 8 the JLAs also set out their detailed comments on a variety of individual control documents in [REP8-126]. Those points are maintained, unless expressly superseded by the separate Deadline 9 submission from the JLAs in response to the Applicant’s Deadline 8 material.

- 4.4. One further outstanding matter is the Applicant's proposals for compulsory acquisition. There are two unsatisfactory aspects to these proposals in the view of the JLAs. The first concerns the treatment of land currently vested in the local highway authorities (West Sussex County Council and Surrey County Council) and which it is intended will remain part of the maintainable highway on completion of any construction works required for the purposes of the NRP but which may potentially be transferred to a different highway authority (including National Highways). The Applicant proposes permanent acquisition of such land, which the JLAs regard as unnecessary and unjustified. With regard to land currently vested in National Highways, the Applicant proposes protective provisions in Part 3 of Schedule 9 to the draft DCO [REP8-006], para 5(2)(j), such that it may not exercise the powers of compulsory acquisition in Articles 27 and 28 over land forming part of the strategic road network without the consent of National Highways. No equivalent or similar protective provisions are proposed with respect to the two local highway authorities and land vested in them as part of the local road network.
- 4.5. The Applicant argues [REP8-110], section 2, that this should not be a concern to the local highway authorities because they have the safeguard in Article 12(3) of the draft DCO that any street works (affecting the local road network) will require the consent of the street authority (which will be the respective local highway authority for that street). However, Article 12(3) does not apply to the exercise of any powers of compulsory acquisition, and the local highway authority could not use the consent mechanism in Article 12(3), which is limited by a standard 'consent not to be unreasonably withheld' provision, to preclude any prior exercise of compulsory acquisition powers it considered to be inappropriate. Similarly, the local highway authority could not use that consent mechanism to challenge the Applicant's proposals for post-construction vesting of any affected land in a different highway authority.
- 4.6. The JLAs' preferred solution to this issue (as explained in [REP8-164], section 3.2) is for all of the land plots which are currently vested in a local highway authority and which will, post-construction, be vested in a highway authority (but which may be a different highway authority), to be dealt with as 'Green' land, where only temporary possession is taken and compulsory acquisition is limited to rights only (which may be needed in relation to future access for statutory undertakers to maintain, repair, alter, or remove their apparatus as located within the extent of the highway. This would apply to all land plots the majority of which are on London Road A23/Airport Way and the Longbridge Roundabout. The JLAs' second preference would be the inclusion of protective provisions, similar to those in favour of National Highways, to be included in Schedule 9 to the draft DCO.
- 4.7. The second issue concerns the impact of the Proposed South Terminal Roundabout Works on the deliverability of the Horley Strategic Business Park, as allocated by Policy HOR9 of the Reigate and Banstead Development Management Plan. Separate representations on this issue have been made by Surrey County Council as Landowner ("SCCaL") but the JLAs also have a land use concern in

that, with a plan-led system, the delivery of an allocated employment site should not be frustrated or precluded by reason of the implementation of a subsequent incompatible development proposal. The JLAs had envisaged that negotiations between the Applicant and SCCaL would produce a satisfactory solution but that does not appear to be the case. The JLAs note that the ExA has issued a Rule 17 request on 20 August 2024 seeking further information on this issue and the JLAs intend to provide a response to that request at Deadline 10. That response will include the JLAs' proposals for either protective provisions or an additional phasing requirement to ensure that the South Terminal Roundabout Works, including the temporary construction access, the Construction Works Compound (T1) and the proposed drainage attenuation pond, do not frustrate or preclude the delivery of the allocated employment site.

5. CONCLUSION

- 5.1. The JLAs remain concerned that the NRP, as promoted by the Applicant, will impose unjustified adverse impacts on local communities, local businesses, and the receiving environment of their respective administrative areas. However, they have fully engaged with the Applicant, both before and throughout the Examination, to seek improvements to the proposal and to secure a better framework of controls to regulate its impacts. The JLAs are unable to support the NRP in the form put forward by the Applicant and, with respect, do not consider that the additional amendments to the Applicant's draft DCO put forward by the ExA go far enough to address all of their concerns. However, the JLAs have provided their own suggestions for additional controls that could meet those concerns and they are strongly recommended to the ExA and to the SoS. If any DCO that were to be made were to include all of the additional measures put forward by the JLAs, they would not then object to the making of a DCO on those terms.

21 August 2024