Gatwick Airport Northern Runway Project

The Applicant's Response to the Rule 17 Letter (d)

Book 10

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1 The Applicant's Response

1.1 Purpose of this Document

1.1.1 The Examining Authority issued a Rule 17 letter [PD-027] on 14 August 2024. The table below (**Table 1**) constitutes the Applicant's response.

Table 1 The Applicant's Response to Rule 17 Letter (d)

R17c	Question to:	Question:
R17d.3	CAA, NERL, The Applicant	**Airspace change** Please provide a latest update on Airspace change/modernisation through the FASI-S programme together with the London Airspace South (LAS) element of this scheme, including a likely timescale of approval and implementation. In this latter respect the contents of the Statement of Common Ground between GAL and NERL are noted [REP5-066] and any update would be appreciated.
		Future Airspace Strategy Implementation - South The process for London Gatwick's FASI-S airspace change is paused at Stage 3 (see London Airspace South update below) pending the outcome of the CAA-led, DfT commissioned, review on the concept of a single design entity (SDE) (link to Aviation Council minutes here). It is anticipated that the SDE will take on responsibility for all airspace changes (including the London Gatwick FASI-S project) under the airspace modernisation programme in the London airspace. A consultation on the SDE is expected in the autumn 2024 (link to CAA Board Meeting minutes here). **London Airspace South** Assuming Iteration 3 of the UK Airspace Change Masterplan sets out the appropriate process to enable work to continue on London Airspace South (link to the public engagement exercise here), and the CAA is able to assess the submission according to the agreed timeline, the Stage 3 Gateway decision can be expected in Q1 2025. Subject to a decision to proceed, the public consultation would commence around summer 2025. The target deployment window remains from Q1 2027 to Q4 2028.

R17d.5	The Applicant	**ES Chapter 5 Project Description [REP8-013]** Following on from your response [REP8-013] to our Rule 17 [PD-025] question R17c.1, should paragraphs 5.2.115 to 5.2.124 and the embedded tables make it clear that the levels of replacement decked parking on the North Terminal Long Stay car parking may vary if the onsite WTW is not constructed? This would provide consistency with the information about the onsite WTW set out in paragraph 5.2.194.
		An updated version of **ES Chapter 5: Project Description** (Doc Ref. 5.1 v7) has been submitted at Deadline 9 making clear the level of car parking proposed as part of the North Terminal Long Stay (decked parking) with or without the On-airport Wastewater Treatment Works.
R17d.6	The Applicant	**Peak Month Traffic Comparison (June v August)** In your [REP8-111] response to Action Point 5 from ISH9 it is stated in paragraph 6.1.2 that "The Applicant has reviewed a selection of count sites to understand whether 2023 June was still the highest month for combined traffic flows. Table 1 shows this comparison for the morning peak, interpeak and evening peak periods". Table 1 then shows the information from the count sites. Please confirm that Table 1 includes airport traffic and shows the combined flows.
		The Applicant can confirm that the comparison shown in Table 1 of **The Applicant's Response to Actions ISH9 – Mitigation** [REP8-111] includes airport-related traffic and is therefore comparing combined total traffic flows.

R17d.7	The Applicant	**Transport Forum Steering Group – Decision Making** This group has an important role in monitoring the Surface Access Commitments, but the ExA is unclear how decisions would be made. Explain the method by which decisions are made by the group and signpost where this decision making process is secured.
		The Transport Forum Steering Group ("TFSG") is an existing group (initially constituted in 1998) which agreed its latest terms of reference in February 2023. In light of the role set out for the TFSG in the Surface Access Commitments, it is anticipated the TFSG will review and update the existing terms of reference as necessary to formalise the TFSG's role as set out in the Surface Access Commitments. The Applicant has discussed the approach with the JLAs and has included a new commitment (Commitment 14C) in the Surface Access Commitments (Doc. Ref. 5.3) which requires GAL to carry out a review of the existing terms of reference and propose such revised terms for approval of the TFSG prior to the first Annual Monitoring Report being produced (which is required prior to commencement of the first of the Airfield Works as defined in the DCO). This is the first point at which the TFSG have a formal role under the SACs (so representing an appropriate milestone for the review and update exercise). In its current role the TFSG provides scrutiny of the Airport Surface Access Strategy and corresponding Action Plan for achieving the targets and measures proposed by the Applicant. The TFSG is also consulted on funding decisions from the Sustainable Transport Fund (STF). Initiatives that are part or wholly funded through the STF are discussed and agreed with the TFSG. In practice, this involves reviewing and commenting on the appropriateness of the funding request to support sustainable travel, with Gatwick taking these comments into account when approving or rejecting the

		allocation of funds. This has been successfully applied in the case of active travel measures, support for rail service enhancements and support for local bus services. The Surface Access Commitments formalise the role of the TFSG in respect of its functions as a consultee on interventions to achieve the mode share commitments, receiving reports and statements from GAL in respect of the funds secured in the SACs and its role described in section 6 of the SACs with respect to Annual Monitoring Reports. Whilst the Applicant is keen 'not to reinvent the wheel' in respect of a group and function which has worked successfully to drive sustainable mode share improvements at Gatwick, it is acknowledged that some updates are required to address the more formalised process set out in the SACs. The Applicant's proposed revision to the SAC (Commitment 14C) secures that, and ensures such updates are made in collaborative fashion with the TFSG to retain the coherence and alignment on approach which has worked successfully to date.
R17d.8	The Applicant, Surrey Hills AONB Board	**The Countryside and Rights of Way Act 2000 and National Landscapes** The ExA notes the amendment to section 85 of the Countryside and Rights of Way Act which came into effect on 26 December 2023. In exercising or performing any functions in relation to, or so as to affect, land in a National Landscape, this amended section places a duty on the relevant authority to "further the purpose of conserving or enhancing the natural beauty" of the National Landscape, as opposed to 'having regard' to the purpose of a National Landscape, as was stated previously. To **the Applicant**: a) Can the Applicant provide comments on this matter and state why it considers the relevant authority could be satisfied the duty placed on it would be complied with if development consent were to be granted for the Proposed Development. Your response should cover the relevant

		National Landscapes (and their proposed extended areas) potentially affected by the Proposed Development. To **Surrey Hills AONB Board** b) Provide any comments on this matter, should you wish to do so.
		(a) The Applicant provided a response to this matter in relation the South Downs National Park Authority's written representation at Deadline 3 ([REP3-072] (section 107, Table 107.1, first entry)). Whilst that response was specific to the National Park, the same basis for the conclusions in that response apply equally to the other relevant National Landscapes considered in **ES Chapter 8: Landscape, Townscape and Visual Resources** [APP-033], specifically High Weald AONB, Surrey Hills AONB and Kent Downs AONB. In particular: • the assessment shows a thorough consideration of the characteristics and statutory purposes of the relevant National Landscapes (in para 8.6.13 onwards), and which have informed the subsequent assessment and its conclusions. • the assessment conclusions in section 8.9 (paras 8.9.196 onwards) of the ES conclude that the increase in overflights (with varying ranges, but no more than 20%) at those relevant National Landscapes would each result in no more than minor adverse effects on the perception of tranquillity, which are not significant. • the NRP application does not involve the opening up of any new flight paths over the South Downs National Park or AONBs and the existing flightpaths have been designated not by Gatwick, but by the CAA. Gatwick cannot change them but Gatwick does have policy support to make best use of its existing runways as part of Government policy to meet the unmet

		need for increased aviation. Gatwick is located in a relatively rural area compared with other principal airports. Relevant guidance is provided to the CAA in the DfT's Air Navigation Guidance 2017 'Guidance to the CAA on its environmental objectives when carrying out its air navigation functions, and to the CAA and wider industry on airspace and noise management'. That Guidance explains: "*3.31 National Parks and AONB are designated areas with specific statutory purposes to ensure their continued protection in relation to landscape and scenic beauty. The statutory purpose of National Parks is to conserve and enhance their natural beauty, wildlife, and cultural heritage and to promote opportunities for the understanding and enjoyment of their special qualities by the public. The statutory purpose of AONB is to conserve and enhance the natural beauty of their area.* ***In exercising or performing any air navigation functions in relation to, or so as to affect, land in National Parks and AONB, the CAA is required to have regard to these statutory purposes*** *when considering proposals for airspace changes*." (emphasis added) • The Guidance then recognises that flightpaths may need to cross National Parks and AONBs, as follows: "*3.32 Given the finite amount of airspace available,* ***it will not always be possible to avoid overflying National Parks or AONB, and there are no legislative requirements to do so as this would be impractical****. The government's policy continues to focus on limiting and, where possible, reducing the number of people in the UK adversely affected by aircraft noise and the impacts on health and quality of life associated with it. As a consequence, this is likely to mean that one of the key principles involved in airspace design will require avoiding over-flight of more densely populated areas below 7,000 feet. However, when airspace changes are being considered, it is important that local circumstances, including community views on specific areas that should be avoided, are taken into account where possible*."

		(emphasis added) • The National Park and AONBs are important considerations and Gatwick recognises that it is also important to assess and understand impacts on them having regard to national and local polices and taking into account their statutory purpose and has done so within its assessment. However, policy and guidance do not give them overriding protection relative to other areas. As noted in the Applicant's response to SDNPA's written representation, section 245 of the Levelling-up and Regeneration Act 2023 ("LURA") has amended the National Parks and Access to the Countryside Act 1949 (the "1949 Act") and the Countryside and Rights of Way Act 2000 (the "2000 Act"). S.245(3) of the LURA inserted after section 11A(1) of the 1949 Act the following provision: "*In exercising or performing any functions in relation to, or so as to affect land in any National Park in England, a relevant authority… must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park. By section 5(1) those purposes are "conserving and enhancing the natural beauty, wildlife and cultural heritage" of National Parks and "promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public*". The Secretary of State as the decision maker for the Project is a relevant authority and subject to this duty. The 1949 Act has also been amended by s.245(3) of the LURA to include Section 11(2A) which provides as follows: "*The Secretary of State may by regulations make provision about how a relevant authority is to comply with the duty under subsection (1A) (including provision about things*

		that the authority may, must or must not do to comply with the duty)." However, no such regulations have been made and there is as yet no government guidance on how the section 245 duty should be applied. Similar provisions have been enacted in relation to AONBs: see section 245(6) of LURA amending section 85 of the Countryside and Rights of Way Act 2000 (the "2000 Act"). If the grant of a DCO would affect land (directly or indirectly) within a National Park or AONB, the duty in section 11(1A) of the 1949 Act or section 85 (A1) of the 2000 Act will be engaged in relation to the determination of the application for development consent. It should be noted however that it is duty to *"seek to further*" the statutory purposes. It is not a duty to further those purposes. The words "seek to" mean that a Minister must try to further those purposes when determining an application for a DCO that would affect land within a National Park or AONB. They have been used deliberately to qualify this duty. Compliance with the duty does not mean that the Secretary of State must achieve a furthering of those purposes in every case, or that any decision must avoid causing adverse effects to a National Park or AONB. The duty does not require that any decision should "best" further those purposes, or that it must adopt all measures which are theoretically available to further them. It should also be recognised that the duty is a general one and needs to be applied in the context of the relevant function being exercised. The Environmental Statement ("ES") included the South Downs National Park and the AONBs within the wider study area and considered that the landscapes within these designated areas are

		relevant to the assessment of landscape and visual effects and the effect on the perception of tranquillity as a result of overflying aircraft. The Project is located outside the National Park and the AONBs. As such, there is no direct impact on the National Park or AONBs as a result of the Project. **ES Chapter 8: Landscape, Townscape and Visual Resources** [APP-033] considered potential impacts on the South Downs National Park and the AONBs by reference to a Tranquillity Assessment. Frequency of aircraft movements and general orientation of flights are illustrated using heat maps in **ES Figures 8.6.3 to 8.6.7** [REP8-015, REP8-016, REP8-017] together with nationally designated landscapes. The assessment is based on the increase in overflying aircraft up to 7000 ft above local ground level as a result of the Project, compared to the future baseline scenario in 2032. This has resulted in a comprehensive 35 mile radius study area. Gatwick and non Gatwick overflights are mapped as a baseline, future baseline and increase as a result of the NRP. In addition, the change in the numbers of overflights expected at 10 well known and popular locations within nationally designated landscapes has been assessed individually in section 8.9 of ES Chapter 8. The change in the total number of daily overflights at these locations would range from a 6% increase up to a maximum of a 20% increase, compared to the future baseline scenario in 2032 (see Table 8.9.1). This would result in a negligible change and only minor adverse effects on the perception of tranquillity within nationally designated landscapes (see paragraphs 8.9.196 to 8.9.203). Natural England have agreed in the **Statement of Common Ground Between Gatwick Airport Limited and Natural England** [REP6-061], that the increase in overflights in the National Park and AONBs is negligible and will not require any mitigation measures (row 2.14.3.1). In this context, the Applicant considers that, having regard to the nature of the Project (and particularly its location outside the National Park and AONBs, meaning no direct impact, and that

		the NRP Application does not involve the opening up of any new flight paths over the National Park or AONBs and the existing flightpaths have been designated not by Gatwick, but by the CAA), and its implications for the National Park and AONBs (having regard to their special characteristics) as demonstrated through the assessment summarised above, there are no reasonable additional measures that could be sought in accordance with paragraphs 4.9 and 4.10 of the ANPS to further the statutory purposes. As a result, the Secretary of State can grant the application for the DCO on a basis which is consistent with the duties in section 11(1A) of the 1949 Act and section 85 of the 2000 Act.
R17d.9	All Interested Parties	**Carbon Budget Delivery Plan** In May 2024 the High Court found that the Carbon Budget Delivery Plan prepared by the Secretary of State for Energy Security and Net Zero failed to comply with the Secretary of State's duties under the Climate Change Act 2008. All Interested Parties are invited to comment on the relevance or otherwise of this decision to the Applicant's DCO application.
		The Applicant has previously provided comment on the lack of relevance of the High Court's decision in *R(Friends of the Earth) v SSESNZ [2024] EWHC 995* (Admin) (the "CBDP judgment") to this Application in response to CAGNE's submissions on the matter during ISH6 (**The Applicant's Response to CAGNE'S Deadline 4 Submission** [REP5-080], paragraphs 1.1.6 to 1.1.8). The Applicant noted that the judgment was fact specific to that case and does not affect the examination of, or decision on, this DCO application.

		Three of the grounds of challenge were dealt with together as there was a significant overlap between them. The arguments before the Court related to the way in which risk specific to the delivery of individual proposals/policies in the context of the achievement of the carbon budgets the 2050 net zero target was presented to and interpreted by the SoS, and the extent to which it was sufficient for him to take a lawful decision specifically under the section 13 duty under the Climate Change Act 2008 ("Duty to prepare proposals and policies for meeting carbon budgets") (CCA 2008). The SoS had acted on the understanding that not all of the policies and proposals listed would be delivered in full; however, this was not held to be a reasonable interpretation of the advice that was put forward to him. On the basis that he had made his decision on a mistaken assumption, the decision was unlawful as it was made based on a misunderstanding of the true position (paragraphs 119-127 of the CBDP judgment). The Court went on to find that in the context of the section 13 duty, further information was required as part of the submission to the SoS in order to allow him to judge whether proposals would miss their targets or by how much. In reaching these findings, the focus of the judgment was on the decision-making process pursuant to the duty on the SoS under section 13, not on the merits or efficacy of individual policy commitments themselves. In the context of aviation, nothing in the judgment can be taken to undermine the Jet Zero commitment for the sector to play its part in achieving net zero, or the acknowledgement within the strategy that government will carry out monitoring and review of its overall strategic approach to decarbonising aviation in line with the latest technological developments, evidence of progress against the emissions reduction

		trajectory, and performance indicators for each policy measure every five years (p 59 of the CBDP judgment). This was not the subject or focus of the litigation or judgment, and any suggestion that it was (as CAGNE inferred in ISH6) is incorrect. CAGNE also sought to rely on the judgment in relation to the finding on the interpretation of section 13(3) of the CCA 2008 - the requirement that proposals and policies in a CBDP must be such as to contribute to sustainable development. It was held that whereas this connotes a degree of certainty that an outcome will eventuate, a judgment that the CBDP was "likely" to achieve this objective was not sufficient. This finding again related to the specific discharge of the section 13 duty which does not arise in this case and the difference between a judgment of "likely" and "must" in that statutory context should not have any bearing on the decision in the present case. As the Applicant noted in its response to CAGNE's submissions at ISH6 and in anticipation of similar submissions being repeated by CAGNE and any other interested parties in response to this question at this stage in the examination, for the reasons set out above, the suggestion that little or no weight can be given to Jet Zero as a result of the judgment is misplaced. The SoS is entitled to rely upon his policies and strategies designed to assist with the decarbonisation of the aviation sector to help achieve its binding carbon reduction targets, including the carbon budgets. If anything, the CBDP judgment, rather than undermining government policy to achieve net zero, confirmed that it is for government to make the difficult evaluative and predictive judgments that arise in this field (see paragraph 141 of the CBDP judgment). It also reinforces how the SoS is under a continuing obligation to prepare proposals and policies which will enable the UK to meet its net zero duty under the CCA 2008, and the confidence that can be placed in the SoS being held to judicial scrutiny and enforcement in circumstances where he fails in his duties. This is confirmed

		by the outcome of the judgment which requires the SoS to submit a further report to Parliament within a year which addresses the specific issues that arose in that case.
R17d.10	All Interested Parties	**Carbon Cap Scheme** At Deadline 8 [REP8-143] CAGNE proposed a new requirement to address carbon emissions as follows: ***"Carbon cap scheme (X)*** *(1).—Dual runway operations shall not commence until a scheme setting out maximum annual carbon emissions from airport operations and flights, including scope 3 emissions, has been submitted and approved in writing by CBC (in consultation with RBBC, NVDC, TDC, HDC, SCC, WSCC and KCC) ("the carbon cap scheme"). This shall include a target to achieve net zero scope 1 and 2 emissions by 2030, as set out in the Carbon Action Plan.* *(2) The undertaker shall be required to submit an annual monitoring report of carbon emissions to CBC (in consultation with RBBC, NVDC, TDC, HDC, SCC, WSCC and KCC), setting out whether the annual emissions caps provided by way of sub-paragraph (1) have been met.* *(3) The undertaker shall not be permitted to declare any further capacity for commercial air transport movements from the airport where two consecutive annual reports identify that the carbon cap limit has been exceeded during the previous 24 months of the operation of the airport until an annual monitoring report has been approved by CBC (in consultation with RBBC, NVDC, TDC, HDC, SCC, WSCC and KCC) which confirms compliance with the carbon cap limit identified to have not been complied with during the previous 24 months of the operation of the airport or forecast to not be complied with (as is relevant in the circumstances)."*

		All Interested Parties are invited to comment on the need or otherwise for such a requirement and the effectiveness of the proposed draft in meeting this objective.
		CAGNE's proposed requirement shares similar principles to the EMG framework approach proposed by the JLAs insofar as it envisages a scheme to be approved/regulated by local authorities with (i) 'maximum annual carbon emissions', (ii) annual monitoring reports and (iii) growth restrictions in circumstances where monitoring indicates an exceedance of the specified limits, but is more onerous than that suggested by the JLAs in that it also contemplates scope 3 aviation emissions to fall within the scope. The JLAs have recognised that these are a matter for government. The Applicant has made extensive submissions rebutting the need for all of the above in its response to the JLAs' EMG framework submissions, in particular through: • its Deadline 5 Submission - **Appendix B: Response to the JLAs' Environmentally Managed Growth Framework Proposition** [REP5-074]; • its Deadline 6 submission - **Response to JLA's EMG Framework Paper** [REP6-093] (with specific commentary in respect of GHG emissions contained within section 4); and • its Deadline 8 submission – **Appendix C Response to the JLAs' EMG Framework Paper** [REP8-118]. Each of the submissions contain specific responses in respect of the proposed application of an EMG framework to control/oversee the Project/airport's GHG emissions; however, the responses have general relevance to explain why such a framework or equivalent level of control/oversight (particularly in respect of carbon/GHG, the suggestion that this should be at a local authority level, contrary to government policy/direction), as is proposed by CAGNE's requirement above, is wholly unjustified and unnecessary in the context of this Application. With the matter recognised by

		government to be its responsibility to meet the country's carbon reduction commitments, and with policies in place for that purpose, there can be no need or justification for an additional regime. The Applicant does not propose to repeat those submissions in response to this further question here, but maintains them for the reasons stated. For completeness, and insofar as there is a suggestion that scope 3 aviation emissions should be subject to the Applicant's Carbon Action Plan (or any hypothesised alternative), the Applicant has addressed this suggestion/inference in the above-referenced submissions (noting the control/regulation of such emissions is for the Government to manage and control on a macro-economic basis through policy (including its Jet Zero strategy: delivering net zero aviation by 2050) and legislation) and also in response to Action Point 8 from ISH6 [REP4-036]. The JLAs have supported this rationale and excluded such emissions from their EMG framework on the same basis (see para 9.1 of their Deadline 5 submission - **The Requirement for an Environmentally Managed Growth Framework** [REP5-093]).