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Secretary of State for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

FAO: Transport Infrastructure Planning Unit

23 December 2024

Dear Sir / Madam

Application by Gatwick Airport Limited Seeking Development Consent for the Proposed Gatwick Airport Northern Runway Project (Ref: TR020005)

Response to the Secretary of State's letter dated 9 December 2024

We refer to the letter dated 9 December 2024 sent on behalf of the Secretary of State for Transport ("SoS") which sought comments from the Applicant and other parties on the following matters:

1. Schedule 2 (Requirements);
2. Water Environment;
3. Transport Forum Steering Group ("TFSG"); and
4. Crown Land.

The Applicant's responses on each of these matters are set out as follows.

Schedule 2 (Requirements)

The SoS has invited the Applicant to provide comments on the version of Schedule 2 (Requirements) of the draft DCO included at Annex A of the SoS' letter.

The Applicant has compared the version of Schedule 2 (Requirements) at Annex A to the version included in the Applicant's most recently submitted version of the draft DCO (version 12 – **[REP10-004]**) and has commented in the table at Appendix 1 to this letter solely on those requirements for which amendments have been proposed in Annex A of the SoS' letter.

The Applicant has purposefully minimised the number of changes proposed to the form of requirements in Annex A of the SoS' letter and in most instances has provided suggested amendments only to help provide clarity and aid precision.

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However, the Applicant is extremely concerned about the wording associated with proposed Requirements 15 (Noise Envelope), 18 (Receptor based noise mitigation) and part of Requirement 20 (Surface access). Concerns arise in respect of other draft requirements but is more acute with the drafting of these three requirements which would seriously jeopardise, and may indeed prevent the implementation of, the Project.

The Applicant had taken comfort form the fact that planning policy, both in the National Planning Policy Framework ("NPPF") and the Airports National Policy Statement ("ANPS") sets out that planning requirements must meet the tests of being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects (paragraph 57 of NPPF and paragraph 4.9 of the ANPS). However, these requirements as drafted could not meet those tests.

Requirement 15

The Applicant welcomes the simplified noise envelope process and accepts the majority of the proposed amendments to the noise envelope limits, with the notable exception of the initial noise envelope daytime limit.

The SoS will be aware that during the Examination, the Applicant proposed that the Noise Envelope which governs air noise limits should be based on the Updated Central Case assumptions as first set out in the update to the submitted Environmental Statement Appendix 14.9.7 in **[REP9-057]** (paragraph 6.1.8/9).

Whilst, in relation to the SoS' revised Requirement, the day-time contour area limit proposed to apply from the 6th year of dual runway operations and both night-time contour area limits are more broadly congruent with, or at least represent less significant divergences from, the Applicant's proposal in the revised Noise Envelope (acknowledging the earlier "step-down" in the SoS' construct), the initial day-time contour area limit proposed of 125km^2 is not consistent with the Applicant's proposal and the Applicant cannot identify any basis for its proposal within any of the information presented into the Examination. The Applicant has assumed that the proposed level cited is deliberate and not a typographical error (e.g. 135km^2 to accord with the Applicant's revised Noise Envelope, as the remaining limits in the SoS' proposal appear to more broadly follow) and has responded on that basis in this response. To confirm, if this initial level was imposed it would represent a severe operating restriction and would restrict both capacity and growth, would delay the benefits of the Project and would be detrimental to the Government's stated aim of securing growth for the UK.

Requirement 18

In terms of proposed Requirement 18 (Receptor based noise mitigation), the requirement as drafted is a gross departure from national noise policy and, if imposed, would severely

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bring into question whether the Project could be investible or financeable. By extension, if that drafting is to be taken as a new national noise policy, its imposition on other major road, rail or aviation projects would be likely to render them uneconomic and unimplementable and the government's growth agenda would be significantly undermined.

As written, it imposes an uncapped and unlimited liability on the Applicant for any noise impacts above 54 dB LAeq 16h, and is far in excess of current Government policy which requires *"financial assistance towards"* acoustic insulation at noise levels at 63 dB LAeq 16h or more.[1] The drafting, which would require GAL to offer to purchase properties (there being over 4,000 properties in the contours above 54 dB LAeq 16h) where the local authority does not agree the detail of specific noise insulation, bears no relationship to Government policy at all, let alone when it extends down to noise levels of 54 dB.

The Noise Insulation Scheme submitted with the application and refined through consultation and the examination achieves and exceeds all policy requirements and objectives. It remains fit for purpose and does not need to be reinvented.

In line with the request in the SoS' letter, however, we have proposed alternative wording which provides a more reasonable and proportionate level of protection than the suggested alternative when considered against the effects of the scheme but with further concessions from the Applicant's proposed wording at Deadline 10 to allow local authority approval of mitigation design for community buildings and an upper limit of £250,000 for funding mitigation to each community building (or group of buildings), and the potential inclusion of cumulative ground and air noise effects mitigation, should the SoS consider this is needed.

The Applicant considers the proposed package of measures put forward both now and at the Examination already goes further than policy and already offers more than appropriate protection / mitigation levels.

Requirement 20

In terms of proposed Requirement 20 (Surface Access), as currently worded this draft requirement would entirely prevent the use of (and therefore, in reality, investment in) this nationally important infrastructure if a forecast mode share target was not met, no matter how small or immaterial the level of non-achievement. A requirement not to operate nationally important infrastructure (after investing billons of pounds) potentially due to factors outside of the Applicant's control, and without any evidence that the effects would be harmful, is neither reasonable nor necessary when considered against Government policy and the available evidence.

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[1] Aviation Policy Framework 3.39

The Applicant has an extensive track record of investing in public transport initiatives, such as its recent contribution to the Gatwick Airport Rail Station upgrade and the ongoing use of the Sustainable Transport Fund, and substantial additional measures are provided for within the Surface Access Commitments ("SACs") document (most recently submitted in the examination at Deadline 9 **[REP9-043]**), secured in the Applicant's prior version of Requirement 20 and sub-paragraph (1) of the version of Requirement 20 in Annex A of the SoS' letter.

The Applicant would also expect the Government to continue to play its part in improving rail services, including facilitating resilient and reliable rail connections to Gatwick Airport to encourage sustainable travel, delivering the reintroduction of a four trains per hour Gatwick Express, maximising train lengths on Thameslink services as soon as commercially viable and maintaining a fares policy that supports growth in rail demand. There are necessary partnerships involved in delivering sustainable transport mode share growth, as reflected in the success Gatwick has had to date in delivering market leading sustainable mode shares through its existing Airport Surface Access Strategy and carried through into the proposed SACs secured as part of the Project.

However, without prejudice to our position that the additions to Requirement 20 in the SoS' letter are unnecessary, unreasonable and should not be imposed, if the SoS considers it necessary to go further, as requested, the Applicant has engaged with the drafting and proposed alternative wording that is tied to a mode share consistent with the Project's transport modelling and assessment, whilst limiting the number of additional car parking spaces made available until that mode share is achieved (alongside retaining other elements of infrastructure restriction proposed in the SoS' version of this Requirement), notwithstanding that this level of micro-management runs contrary to the requirements of the evidence or policy.

Other comments on Requirements

In terms of Requirement 19 (Airport operations), the Applicant notes the suggested imposition of a passenger throughput limit. By reference to the Applicant's submissions on this matter in the examination **[REP9-111]**, in response to the ExA's same proposed change to this Requirement, such a measure is not considered to be necessary or reasonable given the other measures already secured in the DCO to manage the effects of passenger numbers. The Applicant believes that a passenger cap limits and prevents efficiency and runs counter to government policy of making best use of existing facilities, whilst stifling growth of nationally important infrastructure. Without prejudice to this primary position, the Applicant has proposed clarificatory wording for this requirement in Appendix 1 to this letter should the SoS resolve to include such a measure in a granted DCO. However, we consider that if current Government policy tests were applied, then a passenger limit and the restriction it imposes would neither be necessary nor justified from the evidence available to the examination.

Water Environment

As at the date of this response, engagement continues between the Applicant and Thames Water on the necessary studies to facilitate Thames Water's confirmation regarding the use of its existing infrastructure for the airport's wastewater, but such confirmation has not yet been obtained.

Following the Phase 1 studies conducted by Thames Water, which were based on partial survey information and the Applicant's model forecasts, the parties have agreed the scope of further surveys to be undertaken on the airport estate to establish additional data for wastewater flows and loads. This data will then be used to verify the conclusions drawn in the Phase 1 studies.

The Applicant has agreed to fund the cost of these surveys but the transfer of funds is pending Thames Water supplying an invoice to allow the necessary payment processes to proceed. It is anticipated that the surveys will begin promptly in the new year.

The scope of the updated Phase 2 studies for both network and process facilities has been agreed and these will be funded once the further survey work is completed. The output of these studies will then be incorporated into Thames Water's long-term catchment plans to ensure that domestic wastewater flows arising from the airport can continue to be effectively managed by Thames Water in accordance with their statutory obligations under section 94 of the Water Industry Act 1991.

The output of these studies is not anticipated to be received until towards the end of 2025, which is a significant period of time after the due date for the Secretary of State's decision on this application. The Applicant maintains the position set out during the examination (e.g. in paragraph 19.3.10 onwards of **[REP9-112]** and in response to WE.2.2 in **[REP7-093]**) that it is not necessary for this matter to be resolved with Thames Water prior to the decision date for the Application and that a DCO can be granted without any requirement linked to this matter. Without prejudice to this position, the Applicant has engaged with the amended form of Requirement 31 (construction sequencing) insofar as the Secretary of State ultimately concludes that such a requirement is necessary.

Transport Forum Steering Group

During the Examination, the Applicant engaged in discussions with the Joint Local Authorities (JLAs), National Highways and Network Rail on the Surface Access Commitments (SACs) and the role of the TFSG and made amendments to the SACs to reflect the discussions and agreed requests of those organisations.

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The Applicant notes that the TFSG is an existing group which meets quarterly and is responsible for monitoring and challenging the Applicant's progress against its existing Airport Surface Access Strategy (ASAS) action plans and targets, and for supporting a collaborative approach with local authorities, transport agencies and service providers. There are existing terms of reference which the TFSG operates under and which the Applicant originally proposed to secure in the Section 106 Agreement. However, at the request of the JLAs, the Applicant agreed to remove the relevant provisions from the Section 106 Agreement and instead included new Commitment 14C in the SACs to provide a review mechanism for the existing terms of reference to ensure they continue to be fit for purpose in the future, as part of the Project.

Commitment 14C of the SACs requires the Applicant to carry out a review of the existing TFSG Terms of Reference (annexed to the surface access commitments) prior to the first Annual Monitoring Report being produced and propose such revised terms of reference as appropriate to reflect the role of the TFSG as set out in the SACs for approval of the TFSG.

At Deadline 9, the JLAs submitted comments on the Applicant's Deadline 8 updates to the SACs [**REP9-150**]. Those submissions included comments on the TFSG Terms of Reference and proposed amendments to Commitment 14C including the decision-making process in relation to an Action Plan or SAC Mitigation Action Plan, where the surface access mode share commitments have not been met. Having reviewed the JLAs' proposed amendments, the Applicant considers the principles proposed by the JLAs to inform the Terms of Reference review are consistent with what it anticipates such a review would entail and is happy to incorporate their terms within Commitment 14C for completeness. The Applicant has sought to confirm minor revisions to Commitment 14C (reflected in Appendix 2 to this letter) with the JLAs directly and, pending such agreement, would propose to then submit an updated version of the SAC to reflect that agreed position. The Applicant does not anticipate the revisions in Appendix 2 to be controversial; however, in circumstances where it is not possible to reach timely agreement with the JLAs, the Applicant will submit its version of the update so the SoS has the benefit of that prior to reaching their decision on the Project.

Requirement 20 of the draft DCO obliges GAL to carry out the authorised development/operate the airport in accordance with the SACs. As such, it is clear that this Requirement, together with Commitment 14C ensures the TFSG's decision-making function will be appropriately reviewed and updated within the prescribed parameters ahead of such body playing a role under the SACs.

Crown Land

The Applicant has continued engaging with the relevant Crown bodies to seek to agree the practical implications and protections for the Crown interests during the construction period

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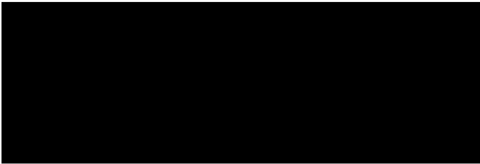
particularly. These are being documented and s135 consent will be issued following completion of the relevant legal documentation. It is anticipated that s135 consent will be issued in early January 2025 and will then be submitted to the Secretary of State for Transport.

If the Applicant can be of any further assistance or the Secretary of State considers any further clarification is required to the information submitted as part of this response, please do not hesitate to contact the Applicant.

Your sincerely



Tim Norwood
Chief Planning Officer
London Gatwick

APPENDIX 1

Requirement	Applicant's comment	Applicant's proposed amendments (comparison against Annex A)
Requirement 1 (interpretation)	This new definition should be added to paragraph 1 of Schedule 2 (requirements) in support of additions proposed below to requirements 20 (surface access) and 37 (car parking spaces).	"airport passengers" means passengers travelling to or from the airport in connection with aircraft movements;
Requirement 2 (phasing scheme)	If new sub-paragraphs (3) and (4) are to be included in requirement 2, the Applicant considers that the amendments shown in the right-hand column should be made to ensure clarity in their operation and to ensure that they do not inadvertently cause undue delay to the construction timetable. An updated phasing scheme is submitted under sub-paragraph (2)(b) to the host authorities and National Highways as a collective. The references to *"a host authority"* in sub-paragraph (3) should therefore be deleted. The reference to "the host authority in question" in the final line of sub-paragraph (3) should also be amended as it is unclear to which host authority this would refer. It should be specified that departures from the specified timings must be agreed by CBC in their role as coordinating host authority. In sub-paragraph (4) the Applicant proposes that it be specified that the 3-month lead time applies where details or documents are submitted to any of the host authorities <u>for approval</u>, clarifying that other notifications or details provided by way of information do not need to be notified so significantly in advance, which would be disproportionate. If the Secretary of State is minded to include paragraphs (3) and (4), the Applicant considers that the obligation should be to use <u>reasonable endeavours</u> to submit the updated phasing scheme, details or document (as relevant) 3 months before the relevant event rather than it being an absolute obligation. This ensures that the prescribed 3-	(3) In submitting ~~A submission of~~ an updated phasing scheme ~~made to a host authority~~ under sub-paragraph (2)(b), the undertaker must use reasonable endeavours to make the submission ~~be made to the host authority~~ at least 3 months before the significant change in question is implemented unless otherwise agreed in writing by CBC ~~the host authority in question~~. (4) Where any requirement in this Schedule requires the submission to any of the host authorities for approval of details or a document relating to the authorised development, the undertaker must use reasonable endeavours to provide in writing to the host authority in question indicative timings for the submission of the relevant details or document in question at least 3 months before their submission unless otherwise agreed in writing by the host authority in question.

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<tr><td></td><td>month period does not become an undue constraint where an urgent change is precipitated by an unforeseen change of circumstances and said change is necessary for the efficient progression of the project.</td><td></td></tr>
<tr><td>Requirement 3 (time limit and notifications)</td><td>The Applicant notes the inclusion of "42 days" in sub-paragraphs (2)(b) and (d) and has no further comment.</td><td>--</td></tr>
<tr><td>Requirement 4 (detailed design)</td><td>The Applicant notes the deletion of "those of the following that are reasonably considered necessary for the part of the listed work in question by CBC or MVDC (as relevant)" in sub-paragraph (5) and has no further comment.</td><td>--</td></tr>
<tr><td>Requirement 15 (air noise limits)</td><td>The Applicant welcomes the simplified noise envelope process proposed in the Secretary of State's letter and accepts the proposed amendments to the noise envelope limits, with the notable exception of the initial noise envelope daytime limit.

The Applicant proposed in the examination that the noise envelope which governs air noise limits should be based on the Updated Central Case assumptions as first set out in the update to the submitted Environmental Statement Appendix 14.9.7 in [REP9-057] (paragraph 6.1.8/9).

This set the proposed noise envelope limits as:
<table><tr><td></td><td>Opening year</td><td>9 years after opening or 380,000 ATMs</td></tr><tr><td>51dB LAeq day 16hr</td><td>135.5 km^2</td><td>119.4 km^2</td></tr><tr><td>45dB LAeq night 8hr</td><td>146.9 km^2</td><td>134.6 km^2</td></tr></table></td><td>Air noise limits

15.—(1) The undertaker shall not operate the airport for dual runway operations unless the standard mode air noise contour enclosed areas set out in Table 1 are complied with.

Table 1
<table><tr><td>Air noise contour</td><td>Enclosed area from the first to fifth year of dual runway operations</td><td>Enclosed area from the sixth year of dual runway operations</td></tr><tr><td>51 dB LAeq 16 h</td><td>~~125~~ 135 km^2</td><td>125 km^2</td></tr><tr><td>45 dB LAeq 8 h</td><td>146 km^2</td><td>135 km^2</td></tr></table>
(2) Air noise contour reports shall be published annually by the operator to demonstrate compliance with this requirement, as soon as is reasonably practicable following the first year and subsequent years of dual runway operations. The standard mode air noise contour enclosed areas set out in Table 1 shall be calculated using the Civil Aviation Authority's Environmental</td></tr>
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	The Applicant is prepared to accept the SoS' proposal that the first noise envelope period should be shortened to five years from the proposed potential of an up to nine-year period. Taking this into account, using the Applicant's Updated Central Case assumptions (as referenced above), the achievable daytime contour area in the sixth year would be approximately 128km^2 in comparison to that proposed in the SoS' letter at 125 km^2. Whilst the Applicant would submit that it would be more appropriate to increase the area to reflect that identified in the Updated Central Case assessment, the Applicant is prepared to accept this enhanced restriction for this limit. This is influenced by it falling a number of years into the operation of the airport after commencement of dual runway operations and reflective of the comparatively small divergence from the Applicant's assessment, both of which are significant differentiating factors from the initial daytime limit proposed by the SoS which the Applicant cannot accept for the reasons discussed below. The night time limits proposed in the SoS' letter appear congruent with the Applicant's proposal (146 km^2 moving to 135 km^2), albeit the second night noise envelope must be achieved in the sixth year and so again represents an additional tightening of the Applicant's proposals, but is one which can be accepted for the same reasons identified in respect of the second day time limit discussed above. However, the daytime limit of 125km^2 to be achieved in the first noise envelope period is not congruent with the Applicant's proposal of 135 km^2 and would inevitably impose a severe restriction on the airport's ability to grow for a number of years after the runway is opened and operational. This would have the effect of significantly delaying the assessed benefits arising from the project including those of employment growth and additional GVA contributed.	Research and Consultancy Department (ERCD) Aircraft Noise Contour model, version 2.4 or later. (3) The undertaker may submit a detailed written request to the Secretary of State to amend the standard mode air noise contour enclosed areas in Table 1 of this requirement in relation to any extraordinary review circumstances and, where approved by the Secretary of State, the standard mode air noise contour enclosed areas in Table 1 shall be read as amended in accordance with the decision of the Secretary of State. (4) In this requirement "extraordinary review circumstances" means circumstances outside the control of the undertaker which affect the noise environment at the airport e.g. implementation of an airspace change.

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Accordingly, whilst the Applicant accepts the majority of the noise envelope proposal in the SoS' letter, it believes that the proposed limits should be amended as follows:
<table>
<tr><th></th><th>Opening year</th><th>Sixth year</th></tr>
<tr><td>51dB LAeq day 16hr</td><td>135 km^2</td><td>125 km^2</td></tr>
<tr><td>45dB LAeq night 8hr</td><td>146 km^2</td><td>135 km^2</td></tr>
</table>
The Applicant has also reflected the ability for the noise contour areas to be amended in circumstances where for reasons beyond the control of the undertaker this becomes necessary, subject to the approval of the Secretary of State. This reflects the position previously provided for by, and explained in, the Noise Envelope Document ([REP10-011], sections 6.4 to 6.7).
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<td>Requirement 18 (receptor based noise mitigation)</td>
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The Applicant believes that its Noise Insulation Scheme (NIS) which was presented in the examination as [REP9-059] is a policy compliant and proportionate response to the noise impacts generated by the Project, and one which aligns well with best practice from recent airport planning precedents.
Issues arising from proposed requirement in SoS' letter
The requirement as drafted in the SoS' letter is fundamentally inappropriate. The reasons for this are set out briefly below. This does not cut across the SoS' letter's advice not to repeat the same arguments made during the examination. The principal characteristics of this draft requirement were not put before the examination early enough to be discussed in any of the hearings, in which:

no party suggested that noise insulation should be provided to an unlimited specification for all properties inside the 54 dB LAeq 16 h noise contour; or
that the specification for every noise insulation scheme for the approximately 4,400 or more properties within

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18. Receptor based noise mitigation
(1) Within not more than 3 months following the commencement of any of Work Nos. 1 (repositioning existing northern runway), 2 (runway access track) or 18 (replacement western noise mitigation bund) the undertaker shall submit for approval by the relevant local planning authority:
(a) a list of premises forecast to be potentially eligible premises at or after the commencement of dual runway operations; and
(b) details of how the noise insulation scheme is to be promoted.
(2) Within not more than 3 months following the approval of the list and details in sub-paragraph (1) the undertaker must take appropriate steps to notify the owners and occupiers of all eligible premises that the premises are eligible for the design and installation of a package of receptor-based mitigation measures that may include:
(a) within the inner zone: replacement acoustic glazing (with acoustic performance of at least Rw+Ctr >= 35 dB tested to BS EN ISO 10140-2:2021) or internal secondary glazing to
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	that contour should be agreed individually with the relevant planning authority; or • that, failing the local authority's approval of the noise insulation design for any property: "*the undertaker shall offer to buy the premises from the owner at its open market value*". The Applicant does not understand why these new, punitive suggestions are being proposed. In particular, the Secretary of State will be aware that the draft requirement is directly inconsistent with all policy, practice and precedent (in airport inquiry decisions or Noise Action Plans sanctioned by Government) that has been applied to other airports. It also has no precedent in other forms of infrastructure which may require noise insulation, such as rail or road projects. If the Government wishes to rewrite national noise policy for national infrastructure it should do so in the normal way, rather than through a DCO decision. Actual Government policy requires only that 'financial assistance towards' acoustic insulation is offered at 63 dB LAeq 16 h or more. This is set out in the Aviation Policy Framework at 3.39 which states "*As a minimum, the Government would expect airport operators to offer financial assistance towards acoustic insulation to residential properties which experience an increase in noise of 3dB or more which leaves them exposed to levels of noise of 63 dB LAeq,16h or more*". The Applicant has chosen to go significantly further than this and has promoted a detailed, best practice Noise Insulation Scheme which exceeds policy by committing to fund full noise insulation in an Inner Zone (above 63 dB LAeq 16h or 55dB LAeq 8 h), with tiered financial contributions towards noise insulation set out in three proportionate bands of the Outer Zone of impact, based on noise contour levels down to the 54 dB LAeq 16h. The levels proposed by the Applicant exceed policy and meet or exceed best practice and are better than or consistent with comparable schemes offered at other recent airport inquiries. The levels (of noise and financial	windows; acoustic ventilators and blinds to noise sensitive rooms; thermal upgrading of bedroom ceilings; and acoustic upgrading of bedroom ceilings and doors where practicable and where the existing ceiling or door is found to allow more noise intrusion than the closed acoustic glazing provides; and (b) within the outer zone: acoustic ventilators to noise sensitive rooms; for properties with older single glazed windows, double glazed windows to noise sensitive rooms; and thermal upgrading of roof spaces above bedroom ceilings where practicable to help reduce overheating. (3) The undertaker shall submit to the relevant local planning authority details of the general package of receptor-based mitigation measures identified in sub-paragraph (2) above for eligible residential premises, having regard to guidance including Sound Insulation and Noise Reduction for Buildings BS 8233 British Standards Institution (2014) and Planning and Noise: Professional Practice Guidance on Planning and Noise, New Residential Development, Association of Noise Consultants, Institute of Acoustics and Chartered Institute of Environmental Health (2017). (4) The undertaker shall submit for approval by the relevant local planning authority details of the specific receptor-based mitigation measures identified in sub paragraph (2) above for each eligible non-residential premises, having regard to guidance including Acoustic design of schools: performance standards BB93 Department for Education (2015) and Acoustics— Technical Design Manual 4032 Department for Health (2011). (5) The maximum sums of money to be provided by the undertaker towards the package of receptor-based mitigation measures for eligible residential premises are as follows (plus VAT): (a) inner zone – £26,000 or more in individual cases subject to review by an independent surveyor who identifies that the appropriate standard of works set out above would exceed this amount; (b) outer zone 1 – £10,500;

	contribution), for instance, are directly comparable with those proposed at Luton, which have not yet been questioned in any consultation by the Secretary of State following that examination. Here, without invitation, evidence, warning or precedent, the draft requirement 18 proposes to completely discard the detail of Gatwick's Noise Insulation Scheme document **[REP9-059]** ("**NIS**"), which was widely consulted upon, and had brought clarity to the detail of the offer (to the benefit of all parties), in favour of a regime in which the local authorities are to be given a veto over any noise insulation design they consider inadequate, without any recourse for the applicant to appeal or any dispute resolution. Notably the Legal Partnership Authorities' Closing Submissions to the examination **[REP9-151]** at paragraph 3.65 set out only minor wording criticisms of the NIS; they did not suggest it should be struck out in favour of a local authority veto. Gatwick's existing noise insulation scheme has a long track record of successful implementation. Local authority approval is not currently required at Gatwick and is not normal or necessary elsewhere. There was no evidence before the examination that the existing arrangements are unsatisfactory. Best practice is for a clear, detailed policy to be adopted which is then implemented by the operator – Government decisions elsewhere do not require otherwise. The regime suggested in the draft requirement 18 would not only have significant resource implications for local authorities and for GAL but would represent a completely uncapped liability for the airport. The Applicant does not understand the necessity to depart from the established, tried and tested approach. The requirement as drafted could not survive scrutiny against the tests for requirements set out in the NNNPS at paragraph 4.11 and the ANPS at paragraph 4.9. The requirement for GAL to offer to purchase properties where the local authority does not agree its noise insulation	(c) outer zone 2 – £6,500; and (d) outer zone 3 – £4,500. (6) The maximum sum of money to be provided by the undertaker towards the package of receptor-based mitigation measures for eligible non-residential premises is £250,000 (plus VAT) per applicant per building or group of buildings in the same occupation and location. *[(7) For eligible residential premises where ground noise in combination with air noise exceeds the relevant qualifying levels as stated in sub-paragraph (14)(j) and is higher than ambient noise, the package of receptor-based mitigation measures shall only be required for any facades to noise sensitive rooms.* *(8) For eligible non-residential premises where ground noise in combination with air noise exceeds the relevant qualifying levels as stated in sub-paragraph (14)(i) and is higher than ambient noise, the package of receptor-based mitigation measures shall only be required for any facades to noise sensitive rooms.]* (9) Within not more than: (a) 12 months (for eligible premises within the inner zone); or (b) 24 months (for eligible premises within the outer zone), of receipt of a valid application for receptor-based mitigation measures from an owner (or occupier with the owner's prior written consent) of eligible premises, the undertaker must, subject to access being granted to the premises, carry out a survey of those premises and submit for consideration by the owner a full quotation for the proposed receptor-based mitigation measures. (10) Where any eligible premises is a listed building the undertaker shall survey the premises and submit (at the cost of the undertaker) the necessary application for the required consents following any requirements of the local conservation officer and Historic England's guidance Energy Efficiency and Historic Buildings, Secondary Glazing for Windows, 2016. (11) Subject to:

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	proposals cannot surely be seriously proposed. It is so far removed from any precedent or policy requirement that GAL considers the proposed wording to be totally unreasonable and irrational. A requirement to offer to purchase properties could only be policy compliant if it related to much higher noise levels (UAEL) i.e. at least 71 dB LAeq 16h. However, the Project would not create new noise affected properties at or above that level. Even at this level the Secretaries of State did not impose such a requirement at Heathrow when determining the application in 2017 related to the ending of the Cranford Agreement. There the SoSs agreed with the Inspector that householders of properties affected at UAEL may not want to and may not be able to move and that they should, therefore, be eligible for noise insulation. Requiring GAL to purchase properties at these and far lower noise levels is not consistent with that decision, or necessary. (See SoS appeal decision APP/R5510/A/14/2225774 and, in particular the Inspector's report at paras. 1093-1095 and the SoS decision letter at para.16). Such a requirement would render most road, rail or aviation schemes uneconomic, and would severely set back the Government's growth agenda. **Why the Applicant's NIS proposal is appropriate** The Applicant considers that its NIS as submitted in the examination **[REP9-059]**, with its four defined zones, would produce acceptable internal noise levels in accordance with policy, and would thus meet the intent of the proposed requirement whilst remaining proportionate and appropriate. The SoS' letter asks the applicant to consider alternative wording where this achieves the same level of protection. The relevant protection presumably relates to ensuring acceptable living conditions for those impacted. It is important to be clear that the Applicant's application proposals achieve that, such that further obligations are not necessary. The rationale for this is set out in the following paragraphs:	(a) a relevant owner or occupier having made a valid application to the undertaker not less than two years from the date on which the undertaker first made contact with them in respect of their eligibility for receptor-based mitigation measures; and (b) agreement by the owner or occupier of the eligible premises to access being granted to those premises; and (c) if the eligible premises is a listed building, the grant of the necessary consents not less than 12 months prior to the relevant event, a package of receptor-based mitigation measures which accord with the details submitted to the relevant local planning authority pursuant to sub-paragraph (3) or (4) (as relevant) shall be installed and commissioned before the later of the commencement of dual runway operations or the year in which the premises is forecast to be an eligible premises. (12) Subsequent to the commencement of dual runway operations the undertaker and the relevant local planning authority shall review actual noise levels experienced by premises affected by the operation of the airport at least annually to identify additional potentially eligible premises. With regard to any such premises the undertaker shall offer, design, install and commission a package of receptor-based mitigation measures that accords with the other provisions of this requirement as soon as reasonably practicable. (13) The undertaker must notify each owner or occupier of an eligible residential premises which is within the Leq 16 hr 66 dB standard mode noise contour (as modelled based on actual operations of the previous summer following the commencement of dual runway operations) of their eligibility to receive a payment covering reasonable moving costs, estate agent fees up to 1% of the sale price and stamp duty (up to a maximum combined total of £40,000) where requested by the owner, subject always to such entitlement being strictly limited to one claim per eligible residential premises. (14) In this requirement– (a) "eligible premises" means premises approved in writing by the relevant local planning authority pursuant to sub-paragraph

There is no specific guidance on ‘acceptable’ levels of aircraft noise within homes. However, the following table draws on British Standards guidance for new homes and associated planning guidance to give descriptors that can be used to describe internal levels of aircraft noise.

Internal Noise Guidance and Descriptors

Internal Noise Guidance Reference	Daytime (Leq 16 hr 0700-2300 dB)	Night (Leq 8 hr 2300-0700 dB)	Internal Noise Descriptor
BS8233 Guidance on sound insulation and noise reduction for buildings 2014, Table 4, Internal recommended levels for new homes	35	30	**Good.** BS8233 notes: ‘It is applicable to the design of new buildings, or refurbished buildings undergoing a change of use, but does not provide guidance on assessing the effects of changes in the external noise levels to occupants of an existing building.’ Table 4 gives target noise levels that are considered ‘desirable’ for new homes. A desirable noise level for a new home is considered a ‘good’ standard for an existing home.
BS8233 Internal recommended level for new homes+5dB	40	35	**Reasonable** BS8233 Table 4, Note 7 ‘Where development is considered necessary or desirable, despite external

(1) after its consideration of potentially eligible premises provided by the undertaker (and "eligible residential premises" and "eligible non-residential premises" shall mean the same as regards "potentially eligible residential premises" and "potentially eligible non-residential premises" respectively);

(b) "inner zone" means the area which is predicted to be within the Leq 8 hr night 55dB contour (incorporating the Leq 16hr daytime 63dB contour) following the commencement of dual runway operations;

(c) "noise sensitive rooms" means bedrooms, sitting rooms, dining rooms and studies;

(d) "outer zone" means outer zone 1, outer zone 2 and outer zone 3;

(e) “outer zone 1” means the area which is predicted to be within the Leq 16hr daytime 60dB to 63dB contour following the commencement of dual runway operations;

(f) “outer zone 2” means the area which is predicted to be within the Leq 16hr daytime 57dB to 60dB contour following the commencement of dual runway operations;

(g) “outer zone 3” means the area which is predicted to be within the Leq 16hr daytime 54dB to 57dB contour following the commencement of dual runway operations;

(h) "potentially eligible premises" means potentially eligible non-residential premises and potentially eligible residential premises;

(i) “potentially eligible non-residential premises” means:

(i) a school or college where, following the commencement of dual runway operations, (a) air noise or (b) ground noise *[alone or in combination with air noise]* which is above ambient noise, is predicted to exceed 51 dB LAeq 16 h; or

(ii) a hospital, library, place of worship or noise sensitive community building where, following the commencement of dual runway operations, (a) air noise or (b) ground noise *[alone or in combination with air noise]* which is above ambient noise, is predicted to exceed 63 dB LAeq 16 h;

			noise levels above WHO guidelines, the internal target levels may be relaxed by up to 5 dB and reasonable internal conditions still achieved.'
BS8233 Internal recommended level for new homes+10dB	45	40	**Acceptable** Professional Practice Guidance on Planning and Noise; New Residential Development (ProPG) guidance, 2017 states that 'Once internal LAeq levels exceed the [BS8233] target levels by more than 10 dB, they are highly likely to be regarded as "unacceptable" by most people, particularly if such levels occur more than occasionally'

The following table considers each 3dB range of external aircraft noise levels predicted from the Project, and for each NIS zone subtracts the effect on noise levels of sound insulation for typical homes that is offered in the NIS, to estimate the approximate internal levels that would result for typical homes, which are then described using descriptors derived above.

Internal Noise Levels and Descriptors with NIS

Aircraft Noise Level	**External to Internal Noise Reduction dB**	**Internal Noise Level dB**	**Internal Noise**
LOAEL +3dB Zone No Insulation offered (1)			

(j) "potentially eligible residential premises" means a main residence where, following the commencement of dual runway operations, (a) air noise or (b) ground noise *[alone or in combination with air noise]* which is above ambient noise, is predicted to exceed 54 dB LAeq 16 h or 48 dB LAeq 8 h; and

(k) all monetary amounts shall be subject to indexation annually in accordance with the Consumer Price Index (or in the event this is no longer being updated, a suitable alternative index) from the date on which this Order is made.

[N.B. several elements of the drafting of the equivalent requirement in the SoS' Annex A have been retained and incorporated into the above proposal but, for ease of reading, detailed comparative mark-up has not been applied for this requirement.]

Leq 16 hr 51-54dB	15	36-39	Good-Reasonable
Leq 8 hr 45-48	15	30-33	Good-Reasonable
NIS Outer Zones Acoustic ventilators provided to allow windows to remain closed (2)			
Outer Zone 3			
Leq 16 hr 54-57dB	26	28-31	Good
Leq 8 hr 48-51dB	26	22-25	Good
Outer Zone 2			
Leq 16 hr 57-60dB	26	31-34	Good
Leq 8 hr 51-54dB		25-28	Good
Outer Zone 1	26		
Leq 16 hr 60-63	26	34-37	Good-Reasonable
Leq 8 hr 54-55dB	26	28-29	Good
NIS Inner Zone Acoustic glazing, acoustic ventilators and where necessary acoustic upgrading of bedroom ceilings (3)			
Leq 16 hr 63-66	35	28-31	Good
Leq 16 hr 66-69(3)	35	31-34	Good
Leq 8 hr 55-57dB	35	20-22	Good
Leq 8 hr 57-60dB	35	22-25	Good
Leq 8 hr 60-63dB	35	25-28	Good
Leq 8 hr 63-66dB(4)	35	28-31	Good-Reasonable

	(1) Partially open windows provide 15dB attenuation for a typical residential building. *(2) A 26 dB level difference represents a property with a masonry construction and either single glazed windows (closed) or thermal double-glazed windows (closed) with an open trickle vent. Internal levels would be lower with trickle vents closed.* *(3) A 35 dB level difference represents a property with a masonry construction with acoustic double-glazed windows (closed), with a suitable roof design, with acoustic ventilators.* *(4) There are no properties above Leq 16 hr 69dB and Leq 8 hr 66dB, see Environmental Statement Addendum – Updated Central Case Aircraft Fleet Report, Version 2, submitted at examination Deadline 8, August 2024* ***[REP8-011]****.* In the Outer Zone, for a typical large home with 7 noise sensitive rooms (e.g. 4 bedrooms and 3 reception rooms), using unit prices (acoustic glazed windows at £900, acoustic ventilators at £350 and blinds at £150) the Outer Zone 3 grant of £4,500 and the Outer Zone 2 grant of £6,500 would provide for acoustic ventilators and blinds, which would achieve good internal levels. The Outer Zone 1 grant of £10,500 would also allow for the small number of homes with single glazed windows to have them replaced with acoustic glazing to also achieve the good internal noise standard. In the Inner Zone, for a typical large home, all windows would be upgraded and, if necessary, the bedroom ceiling would be improved within a sum of £26,000, but the Applicant has provided within the NIS for this sum to be increased if necessary and, subject to survey, to provide the specified insulation measures. Hence, with the package of noise insulation, acoustic ventilators and blinds prescribed in the NIS and the sums allowed, the Applicant has proposed a NIS that will ensure	

	for typical houses 'good' or 'reasonable', and certainly 'acceptable', internal living conditions will be provided. There may be a small proportion of homes that are not typical, for example homes with acoustically poor walls or other building elements, for which higher internal noise levels may be unavoidable without major building works which the Applicant cannot reasonably be expected to fund. The Applicant notes this approach is consistent with the Noise Insulation Regulations for road and railways that similarly offer a package of noise insulation measures and do not guarantee an internal noise standard. This is consistent with Government policy, which notes in the NPSE for the Outer Zones below SOAEL '*all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development (paragraph 1.8). This does not mean that such adverse effects cannot occur*'. To ensure acceptable internal conditions, which the Applicant acknowledges includes thermal comfort, the NIS also provides three measures to address overheating, consistent with Government noise policy as noted above. Firstly, thermal upgrading of roof spaces above bedroom ceilings to help reduce overheating where practicable. Secondly, blinds to reduce solar gain. Thirdly, acoustic ventilators to provide the minimum air changes specified in the NIS **[REP9-059]** (paragraph 4.2.4). The Applicant discussed overheating with interested parties (including local planning authorities) at length but rejected further suggestions, including that cooling should be provided, as inappropriate and not necessary or required in the context of Government policy on sustainable development, as noted above. **Other eligible buildings** With regard to other eligible buildings (non-residential) the Applicant has included schools and nurseries in the NIS	

	because of the particularly demanding acoustic requirement for teaching spaces, using Leq 16 hr 51dB as the threshold for eligibility. The Applicant has noted that other non-residential buildings are less sensitive to noise than schools. They are usually affected by road traffic noise and, because in all cases the increase in noise from the Project will be small, the Applicant does not consider a noise insulation scheme necessary. The draft requirement proposes other community buildings are included with the same threshold as residential buildings, Leq 16 hr 54dB. The Applicant considers this is inappropriate and notes again that it has no foundation in policy. Where other airports have chosen to offer noise insulation for noise-sensitive community buildings this has been at much higher noise levels than proposed by the suggested requirement in the SoS' letter. For example, at Luton the Applicant has offered acoustic insulation to other noise-sensitive community buildings (i.e. including schools and colleges, together with health centres, hospitals, nursing homes, libraries, community centres (unless only used as social clubs), village halls, churches and other places of religious worship) lying above the air noise or ground noise 63dB LAeq,16h. This value aligns with the SOAEL for residential buildings reflecting some alignment with the typical daytime noise sensitive activities within. If the SoS considers noise insulation should be extended to non-residential buildings (in addition to schools) the Applicant considers that alignment with the Leq 16 hr 63dB level would be most appropriate. In addition, since buildings of this sort are often located on through roads for access and most experience higher road traffic noise levels than air noise, the requirement for insulation should be only where air noise exceeds road traffic noise. The Project's ES shows there would be 1 school, no hospitals, 3 places of worship and no community buildings experiencing air noise above Leq 16 hr 63dB (ES Appendix 14.9.2 Air Noise Modelling **[APP-172]**, Table 4.3.2).	

	Additionally, the Applicant is willing to concede that, where a non-residential building is judged to be eligible for noise insulation, the local authority should have the ability to approve the design, subject to the maximum funding cap proposed in the new requirement wording of £250,000 per building or group of buildings. This is reflected in the Applicant's revised drafting in the adjacent column. **Cumulative air and ground noise mitigation** With regard to considering and mitigating cumulative ground and air noise effects, the Applicant explained in *10.72 Response to the ExA's Proposed Schedule of Changes to the Draft DCO* why cumulative air and ground noise should not be used in the NIS but also concluded: *If the Secretary of State considers it necessary to have a ground noise insulation scheme for noise levels above Leq, 16 hr 54 dB, the Applicant would develop such a scheme which could be secured within any DCO. The features of such a scheme would include:* ▪ *A further refined ground noise model calibrated by long term noise surveys including in areas most likely to be affected if practicable, to predict 92 day average summer Leq 16 hr and 8 hr night noise levels.* ▪ *A methodology to account for ambient noise so as avoid offering noise insulation where ground noise is not significant compared to road traffic or other ambient noise.* ▪ *A methodology to account for air noise so as to avoid offering noise insulation where ground noise is not significant compared to air traffic.* ▪ *The addition of qualifying properties to the Outer Zone 3 Noise Insulation Scheme.* Accordingly, in case the Secretary of State considers it necessary to have a cumulative ground noise element included in the NIS, the Applicant would propose that noise insulation is only applicable where cumulative air and ground noise are above ambient noise (primarily road traffic noise which can be readily modelled) and to further refine and develop a ground noise model for this purpose, in	

	consultation with the local planning authority. Drafting has been proposed to this effect in the Applicant's revisions to this requirement in the adjacent column and discussed below. **Conclusion** The Noise Insulation Scheme submitted with the application and refined through consultation and the examination, achieves and exceeds all policy requirements and objectives. It remains fit for purpose and does not need to be reinvented. In line with the request in the SoS' letter, however, we have proposed alternative wording which provides a more reasonable and proportionate level of protection than the suggested alternative when considered against the effects of the scheme but with further concessions from the Applicant's proposed wording at Deadline 10 to allow local authority approval of mitigation design for community buildings, an upper limit of £250,000 for funding mitigation to each community building (or group of buildings), and the potential inclusion of cumulative ground and air noise effects mitigation, should the SoS consider this is needed. The Applicant considers the proposed package of measures put forward both now and at the examination already goes further than policy and already offers more than appropriate protection / mitigation levels. **Commentary on proposed revisions** Whilst the substance of the Applicant's revisions proposed in the adjacent column is to 'retrofit' the Applicant's previous drafting (and relevant elements of the NIS) within the construct of the SoS' proposed amended requirement and so is best read in the context of the Applicant's previous submissions on this point and those set out above, to elaborate on elements of the revisions/proposed drafting:	

	• The Applicant has limited the relevant trigger for the steps identified in sub-paragraph (1) to those works (being the runway re-positioning and the removal and replacement of the noise mitigation bund) which are most relevant to the actual noise impacts which the NIS is designed to mitigate. • Whilst implicit in the drafting of 'eligible premises' proposed by the SoS, the Applicant has made clear in sub-paragraph (1) that the list of such potential properties are to be submitted to the relevant LPA for approval (representing an enhancement to the position previously proposed by the Applicant). Approval is also required, as it was previously in the Applicant's previous drafting, for the details of how the undertaker is to promote the scheme. • Sub-paragraph (2) has been amended to make clear that the subsequent duty to notify the relevant persons within the approved list of eligible premises follows 3 months after the approval is received (this is to ensure the Applicant is not placed in a position where it is not able to comply with an absolute 'temporal' requirement (in the way the SoS' drafting was proposed) due to factors outside of its control (i.e. the LPA not providing approval within that timeframe). • Sub-paragraphs (3) and (4) have been added to make a necessary distinction between eligible residential premises and non-residential premises in terms of what information is submitted to the LPA regarding their mitigation package and for what purpose. Specific details of the measures put forward for non-residential buildings will be submitted to the LPA for approval, whereas details of the general package of mitigation for residential buildings will be submitted for information. It is considered appropriate to allow the LPA approval rights over the specific mitigation for non-residential premises considering the limited number and nature of those buildings (and their function for the community), but not necessary, proportionate or realistic for the LPA to exercise that same function for the significant volume	

	of properties falling within the residential premises scope. The approval is better placed between GAL and the owner in question. • Whilst the financial sums reflected for residential premises are unchanged from the NIS, as explained in the commentary above, the Applicant is willing to concede that, where a non-residential building is judged to be eligible for noise insulation, the local authority should have the ability to approve the design, subject to the maximum funding cap proposed in the new requirement wording of £250,000 per building or group of buildings. • Sub-paragraphs (7) and (8) (square bracketed, underlined and italicised opposite) provide for the conditional drafting in circumstances where the SoS considers it is necessary to address potential cumulative air and ground noise elements which are above ambient noise. • The remaining provisions carry across previous elements of the Applicant's Requirement/reflected from the NIS and the definitions inserted have been similarly added/amended for that purpose.	
Requirement 19 (airport operations)	The Applicant notes the suggested imposition of a passenger throughput limit. By reference to the Applicant's submissions on this matter in the examination **[REP9-111]**, (in response to the ExA's same change to this requirement), such a measure is not considered to be necessary or reasonable given the other measures already secured in the DCO to manage the effects of passenger numbers. The Applicant believes that a passenger cap limits and prevents efficiency and runs counter to Government policy of making best use of existing facilities, whilst stifling growth of nationally important infrastructure. Without prejudice to this primary position, the Applicant has proposed clarificatory wording should the SoS resolve to include such a measure in a granted DCO. However, we	(5) In this requirement: (a) "Code C aircraft" means aircraft with dimensions meeting the maximum specifications of code letter C in the Aerodrome Reference Code table in Annex 14, Volume I to the Convention on International Civil Aviation, as at the date of this Order.; and (b) "passenger throughput" means the number of passengers that use the airport as part of aircraft movements but excluding persons under the age of two years.

	consider that if current Government policy tests were applied, then a passenger limit and the restriction it imposes would neither be necessary nor justified from the evidence available to the examination. The Applicant's without prejudice proposed amendment is that sub-paragraph (5) be amended as per the right-hand column to clarify what constitutes *"passenger throughput"* and align this with the flights that are subject to the aircraft movement cap in requirement 19(1). The Applicant also requests that infants (as defined by the CAA, i.e. persons under the age of two years) are excluded from the passenger cap to reflect that such persons do not require their own separate ticket for a flight and are covered by the ticket of/journey with their parent/guardian. The Applicant notes the deletion of *"as agreed in writing between the undertaker and the Secretary of State (following consultation with the CAA and CBC)"* in sub-paragraph (4)(b) and has no further comment.	
Requirement 20 (surface access)	The Applicant notes the SoS' revisions to this requirement 20 reflect those put forward by the ExA as part of their schedule of changes to the DCO submitted at Deadline 8, to which the Applicant responded at Deadline 9 **[REP9-111]** and within paragraphs 6.4.36 to 6.4.60 of its Closing Submissions **[REP9-112]**. The Applicant further notes the SoS' advice not to repeat in this response the same arguments made during the examination as to why such amendments to the requirements are not acceptable and has generally sought to follow that advice in this response submission. For these purposes, the Applicant respectfully refers to and commends again to the SoS the submissions made at **[REP9-111]** and Appendix A to the Applicant's Written Summary of Oral Submissions – ISH 9: Mitigation **[REP8-107]**, together with the other submissions which they directly cross reference. Those submissions, however, sought to assist the examination by engaging with the principle of the wording put forward by the ExA on a without	(2) First use of the following airport facilities shall not be permitted until the mode shares set out below have been demonstrated to have been achieved in the ~~A~~annual ~~M~~monitoring ~~R~~report unless otherwise ~~permitted by CBC~~ agreed by the TFSG in accordance with sub-paragraphs (5) or (6) below: (a) A~~a~~t least 54% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the undertaker ~~Undertaker~~ shall not use ~~the following:~~ ~~(i) Simultaneous operational use of the northern runway; and~~ ~~(ii)~~ Work No. 6(a) (Pier 7) ~~and associated stands~~. (b) At least 55% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the undertaker ~~Undertaker~~ shall not use the following:

	prejudice basis. The submissions made clear that the Applicant reserved its right to add to the submissions should the ExA (or in this case the SoS) continue to advance similar wording. Again, the Applicant is extremely concerned that the SoS is consulting on a draft requirement that would entirely prevent the use of (and/or in reality investment in) nationally important infrastructure if a forecast mode share target is undershot by any margin, no matter how small or immaterial the consequent effect may be. No investor is likely to be comforted by the possibility that the local authority, who has maintained its objection to the development, might be willing to forgive a minor departure from the threshold, particularly when the wording gives them a veto and sets no test for them to apply and provides no recourse for the Applicant to appeal. Apart from recommending its previous submissions, therefore, the Applicant wishes to reinforce two fundamental points. **<u>First</u>**, in relation to the imposition of requirements under a DCO, Paragraph 4.9 of the ANPS repeats the six key tests outlined in the National Planning Policy Framework (NPPF) in respect of planning conditions, specifically that "*The Examining Authority should only recommend, and the Secretary of State will only impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.*" The amended wording proposed in requirement 20 of Annex A to the SoS' letter, fails those policy tests and should not be imposed in the DCO. The Applicant has seen no evidence that would justify the requirement. There was no evidence submitted to the examination which supports the imposition of such a draconian restriction. For such a requirement to be necessary, it would need to be demonstrated (*inter alia*) that it was needed to make the development acceptable in planning terms. Merely wanting	(i) Work No. 28(a) (~~The South Terminal H~~hotel ~~Phase 2~~ on the ~~former c~~Car ~~p~~Park H site); and (ii) Work No. 30(b) (~~The use of~~ multi storey car park Y). (c) Not more than 44.9% of staff travelling to the airport were car drivers in the monitored year. Should this car driver mode share be exceeded then the undertaker ~~Undertaker~~ shall not use Work No. 28(b) (office on the Car Park H site) ~~the South Terminal Office (on former car park H)~~. (3) Subject to requirement 37 (car parking spaces), and unless otherwise agreed by the TFSG in accordance with sub-paragraphs (5) or (6) below, no additional car parking shall be provided within the Order limits until it has been demonstrated in an annual monitoring report that at least 52.5% of passengers have travelled to the airport using public transport in a monitored year. (4) In sub-paragraph (3) "additional car parking" means – (a) the provision of more than 43,120 airport passengers' car parking spaces; or (b) allowing the parking of more than 43,120 airport passengers' cars at any given time. (5) This paragraph applies where the TFSG determines, acting reasonably and in accordance with the surface access commitments, that the relevant mode share set out in sub-paragraph (2) and/or (3) has not been achieved as a result of circumstances beyond the undertaker's control. (6) This paragraph applies where the TFSG determines, acting reasonably, that whilst the relevant mode share set out in sub-paragraph (2) and/or (3) has not been achieved, the undertaker has demonstrated to the TFSG's satisfaction that the failure to do so has not given rise to any materially new or materially different environmental effects to those assessed in the environmental statement. (7) Where the undertaker considers that the TFSG should make a determination under sub-paragraph (5) or (6) and the TFSG (i) refuses to do so or (ii) does not confirm whether it will do so within 8 weeks of a request by the undertaker, that refusal or omission may be appealed by the undertaker using

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	the requirement in order to guarantee the outcome assessed in the Transport Assessment (TA) and the Environmental Impact Assessment (EIA) is not sufficient. If it were, every planning and DCO consent would carry a requirement to conform precisely with assumptions made in such assessments; but they do not. Notably, EIA assesses “likely significant effects”, not precise known outcomes. The authorities at the examination when challenged could not point to a single consent of any scale where they had ever thought it necessary or reasonable to impose such a restriction. It follows that such a requirement would need to be exceptionally justified. Such a justification would have to relate to a clear risk of significant harm - but no such harm has ever been identified or its risk demonstrated in relation to the Project's Application; either by the LPAs or by the ExA. As far as the Applicant is aware, the SoS has no evidence that a failure to meet the precise mode share target would tip the Project beyond any threshold of assessed harm. Even if such evidence existed - and none was ever presented at the examination for the Applicant to scrutinise - the decision maker would then be obliged to consider whether the matrix of control and mitigation already advanced was sufficient to address that risk. Again, no analysis was presented to the examination to the effect that it would not be, whilst the Applicant’s submissions referenced above have demonstrated the robustness of the regime proposed in the Application. **Secondly**, the imposition of such wording, in the absence of any evidenced need or precedent for such an approach (in an aviation setting, or indeed any other form of local or national development), is a clear deterrent to the private investment required to implement the Project and would set, it is submitted, a worrying precedent for other infrastructure/development schemes coming forward. The other tests of the ANPS are also not met because it is not fair, reasonable or credible to expect the Applicant to invest the significant capex expenditure in relation to the	the process set out in paragraph 3 of Schedule 11 (Procedures for Approvals, Consents and Appeals) and, for the purpose of that process and the said paragraph 3, the TFSG shall be treated as the "discharging authority". (8) In this requirement— (a) "annual monitoring report" has the same meaning as defined in the surface access commitments; and (b) "TFSG" means the Transport Forum Steering Group as described in the surface access commitments.

	Project (circa £2.2bn overall) with the potential risk that they may not be subsequently able to open the runway due to an exceedance of the specified mode share requirements. It is very difficult to imagine any major project taking a positive final investment decision with such a level of residual risk, no matter how confident the developer may otherwise be in complying with such requirement. As the Applicant has stated in its submissions (referenced above), there are other, more proportionate and related mitigatory steps available, as committed to within the SAC monitoring and reporting process. For these reasons, the Applicant's firm and unequivocal response is that the amendments proposed to requirement 20 are **unnecessary, unreasonable, non-policy compliant and should not be imposed in any made DCO**. In the context of the SoS' letter, the other controls already put forward by GAL would achieve "*the same level of protection*" (principally within the SACs and the s106 Agreement, for the reasons advocated in the Applicant's submissions to date). However, without prejudice to that primary position, in circumstances where the SoS disagreed with the Applicant's position (put forward at the examination (and maintained above)) and considered it necessary to impose such a requirement in the DCO, on a without prejudice basis the Applicant has proposed amended drafting to paragraph (2) onwards of the requirement which it considers to still be consistent with the underlying purpose of the ExA/SoS' suggested drafting. To elaborate on the reasoning underpinning the Applicant's proposed revisions: • In lieu of the removal of the immediate potential restriction on the commencement of dual runway operations (DRO) (which is fundamentally inappropriate for the reasons outlined above), the Applicant is instead proposing to cap its level of passenger car parking provision to 43,120 unless/until it can be demonstrated	

	it has achieved a 52.5% level of public transport passenger mode share. The capped number of spaces reflects the total quantum of passenger spaces at the airport today (following the completion of MSCP7, which provided a net increase of 2,800 spaces on top of the previous baseline number of 40,320 (as set out in **[REP6-067]**). • The corresponding mode share of 52.5% is reflective of that assessed to have been achieved in the final year prior to commencement of DRO (model year 2028), as reflected in Table 1 of **[REP6-067]**. The 54% referenced in sub-paragraph 2(a) of the ExA's requirement (as repeated by the SoS) instead reflects the subsequent year's (model year 2029) assessed mode share, after commencement of DRO (again, identifiable within Table 1 of **[REP6-067]**). The Applicant's revision ensures alignment with the assessment, which it is understood informed the ExA's proposed revision and so is consistent with the underlying rationale in that way. • The Applicant has made numerous submissions into the examination as to why it is not necessary or appropriate to cap its overall level of car parking to ensure adherence to the mode share targets assumed in the SACs. However, as noted within the Applicant's response to requirement 37, it was prepared to accept an overall level of cap equivalent to the total quantum assumed in its assessment to provide further comfort to the Examining Authority on this point and the principle of the Applicant's further restriction here is similar in effect. Unless/until the Applicant achieves that target level of mode share, no further car parking can be delivered which will act as a practical constraint on passenger throughput and traffic generation at the airport to its significant overall commercial detriment. • This commercial detriment would clearly act as a further incentive to ensure adherence to that mode share is achieved as quickly as possible. The Applicant considers this effect and practice was already secured	

	through the SACs (to which the Applicant must comply with pursuant to this requirement 20), and particularly the interim mode share commitments described in para 4.3.1 and the monitoring and governance process (described in section 6, with the first Annual Monitoring Report required to be produced no later than first commencement of the airfield works), but this would act as a further supplement for that purpose. There can be no credible suggestion that the aggregate effect of these processes/restrictions would not be sufficient to ensure the Applicant is properly held to its mode share commitments. • In anticipation of potential challenges to the efficacy of this alternative restriction (e.g. suggestions any interim capping of car parking spaces would lead to more drop-off journeys at the airport, or parking outside the airport boundary) and GAL's ability to comply with it – GAL would influence its pricing strategy to deter any increase in drop-offs as a result of more limited car parking on campus, and has already committed to defined financial contributions through the section 106 agreement to assist the local authorities to take appropriate enforcement action against unauthorised off-airport parking (Schedule 3 Surface Access, paragraph 5 Off-Airport Parking Support Contribution with the particular contributions set out in para 5.1 **[REP10-019]**. Finally, the additional revisions proposed to this requirement are to provide necessary qualifications, specifically to: • Delete the reference to 'and associated stands' in the context of the restriction on the use of Pier 7 prior to achieving an annualised 54% passenger public transport mode share. This is because these stands are already in use today and will be used as remote stands for aircraft parked overnight before being towed to a Pier served stand. In addition, works around the airfield will preclude the use of some existing stands and	

	stands in this area will continue to be used on a continuous basis to replace this lost capacity. • Ensure the TFSG can certify (as provided for under the SACs) that any non-achievement of any mode share target was due to factors outside the Applicant's control (for example extreme weather events, industrial action disrupting travel services or a failure of the Government to invest in its rail service proposition in line with current public expectations (see paragraph 6.2.5 of the SACs)). In such circumstances, it is clearly not reasonable to enforce on-going operational restrictions on GAL. • Allow the TFSG to agree that the stated operational restrictions need not apply in circumstances where they are satisfied that any non-achievement of the mode share does not lead to adverse impacts on the transport network or effects in exceedance of those reported in the Applicant's environmental statement. The Applicant has made various submissions in the examination as to why a failure to achieve a stated mode share target does not automatically mean that there is a correlative adverse impact on the network (including in response to question TT2.10 in the Applicant's Response to ExQ2 – Traffic and Transport **[REP7-092]**). It would clearly be wrong for Gatwick to be faced with operational restrictions in circumstances where they have (to take an example) failed to achieve a mode share target by 0.1% and the transport network is otherwise performing without issue. The SACs already provide for more appropriate and proportionate steps in such circumstances and there is no justifiable reason to impose an additional punitive measure on GAL. • The TFSG, rather than CBC, are listed as the relevant body for such purposes considering their comparative range of experience and representation. • Drafting has been added in sub-paragraph (7) to ensure that a refusal or omission by the TFSG to make a determination as provided for in sub-paragraph (5) or (6) can be appealed using the same mechanism (in Schedule 11 of the DCO) as an appeal of a	

	decision/omission of a discharging authority under the other requirements.	
Requirement 31 (construction sequencing)	The Applicant maintains the position set out during the examination (e.g. in paragraph 19.3.10 onwards of **[REP9-112]** and in response to WE.2.2 in **[REP7-093]**) that a DCO can be granted without any requirement linked to the matter of Thames Water's wastewater capacity. Without prejudice to this position, the Applicant has engaged with the amended form of requirement 31 (construction sequencing) insofar as the Secretary of State ultimately concludes that such a requirement is necessary. The Applicant notes the minor tweak to the name of the proposed document to be provided to Thames Water to *"development phasing plan"* in sub-paragraph (3), as well as the change to the time period in the final line of that sub-paragraph to *"ten years after the commencement of dual runway operations"* and has no further comment on those changes. However, the Applicant is concerned that the current drafting in Annex A of the Secretary of State's letter has the inadvertent effect of preventing commencement of dual runway operations if Thames Water confirms that its infrastructure will be able to accommodate the additional foul water flows from the airport or in the event that Thames Water fails to provide any confirmation under sub-paragraph (5) within the stated time period. This is because sub-paragraph (6) of the drafting in Annex A prevents commencement of dual runway operations until Work No. 44 (wastewater treatment works) has been completed and an application has been submitted for an environmental permit for it, but sub-paragraph (5) prevents Work No. 44 being commenced unless Thames Water confirms that its infrastructure will not be able to accommodate the additional foul water flows from the airport. The Applicant therefore proposes the revisions in the right-hand column that preserve the intended effect of the	(3) Prior to the commencement of the authorised development, the undertaker must prepare and provide to Thames Water Utilities Limited a development phasing plan which will include forecast passenger growth numbers for the period up to the commencement of dual runway operations and ten years after the commencement of dual runway operations. (4) The details in the plan provided pursuant to sub-paragraph (3) must not materially exceed the forecast annual passenger numbers shown for the equivalent time periods for the airport with the authorised development in Table 9.2-1 of the forecast data book. (5) ~~The commencement of Work No 44 (wastewater treatment works) must not take place until and unless~~ Thames Water Utilities Limited must confirm in writing within two years of the making of this Order, ~~that~~ following review of the development phasing plan and acting reasonably, whether its infrastructure will ~~not~~ be able to accommodate the additional foul water flows from the airport for the ten-year period after the commencement of dual runway operations. (6) The commencement of Work No. 44 (wastewater treatment works) must not take place until either— (a) Thames Water Utilities Limited confirms pursuant to sub-paragraph 5 that its infrastructure will not be able to accommodate the additional foul water flows; or (b) Thames Water Utilities Limited has not provided any confirmation pursuant to sub-paragraph (5) by the second anniversary of the making of this Order, unless otherwise agreed in writing by Thames Water Utilities Limited. (7~~6~~) The commencement of dual runway operations must not take place until either— (a) Work No. 44 (wastewater treatment works) has been completed and ~~(b)~~ an application has been submitted for an environmental permit under regulation 12(1)(b) (requirement for

	drafting in Annex A to the Secretary of State's letter but ensure that: • commencement of dual runway operations can take place without Work No. 44 being constructed if Thames Water confirms that its infrastructure will be able to accommodate additional foul water flows; and • Work No. 44 can be carried out if Thames Water does not provide any confirmation within the time period specified in sub-paragraph (5) and thereafter commencement of dual runway operations can take place.	an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 for its ~~the~~ operation ~~of Work No. 44 (wastewater treatment works);~~, or (b) Thames Water Utilities Limited confirms pursuant to sub-paragraph 5 that its infrastructure will be able to accommodate the additional foul water flows, unless otherwise agreed in writing by Thames Water Utilities Limited.
Requirement 37 (car parking spaces)	If new sub-paragraphs (2) and (5) are to be included in requirement 37, the Applicant considers that the amendments shown in the right-hand column should be made to ensure clarity in their operation and to ensure they do not inadvertently cause uncertainty in the monitoring obligations. The 53,260 additional car parking spaces number is derived from both the number of airport passenger car parking spaces and the number of staff car parking spaces and the Applicant considers that it is appropriate for the requirement drafting to reflect this.	**Car parking spaces** 37.—(1) Notwithstanding the provisions of Class F of Part 8 (transport related development) of Schedule 2 to the 2015 Regulations~~,~~ (or any order revoking and re-enacting that Order with or without modification)~~,~~ no additional car parking shall be provided within the Order limits unless otherwise agreed by CBC. (2) In sub-paragraph (1) “additional car parking” means– (a) The provision of more than 53,260 car parking spaces; or (b) Allowing the parking of more than 53,260 airport passengers' and staff cars at any given time. (3) Upon commencement of the authorised development and by no later than each anniversary of that date, the undertaker must submit an annual report to CBC providing an update on the number of car parking spaces provided by the undertaker within the Order limits and airport passengers and staff cars parked within the Order limits. (4) In this requirement– (a) “car parking spaces” means space or spaces available for all car parking products provided by the undertaker including self-park, block-park, valet parking, staff parking and any other parking types used by airport passengers and staff within the Order limits; and

		(b) "staff" means those people who are employed directly by Gatwick Airport Limited or any other employer at the airport and who class the buildings and operational areas of the airport as their main place of work (in accordance with employer and employee travel surveys). (5) In sub-paragraph (2) the number “53,260” includes a maximum of 47,180 car parking spaces for airport passengers or a maximum of 47,180 airport passengers’ cars, as appropriate.
Requirement 39 (tree balance statement)	The Applicant notes the additional requirement to submit multiple tree balance statements to CBC at various intervals in the construction period. Whilst accepting this principle, the Applicant does not consider it appropriate for the calculation and payment to be required at each of these intervals. Policy CH6 itself is concerned with a project as a whole rather than with phases of a project. It would be impractical to carry out the calculation early as there are two significant areas of tree planting that the Applicant is relying upon to satisfy CBC's replacement tree requirement: Car Park B and the area by Longbridge Roundabout. Both of these areas will be used as construction compounds to facilitate the delivery of the surface access improvements and therefore cannot be planted until those works are complete and the construction compounds removed. DCO requirement 6(3) (national highway works) requires that the national highway works are completed by the third anniversary of the commencement of dual runway operations (DRO). Decommissioning the construction compounds and planting replacement trees may, therefore, take place after the third anniversary of the commencement of DRO. Recognising the desire for the tree balance calculation to be brought forward, however, the Applicant has proposed amendments to the draft DCO requirement which would require the calculation to be completed and any required payment to be made, on the sixth anniversary of commencement of DRO as opposed to the ninth as was previously proposed. This, in addition to the significant early	**Tree balance statement** 39.—(1) ~~On or before~~ The undertaker must submit a tree balance statement to CBC for approval: (a) within 3 months of the date of commencement of dual runway operations~~, and on~~; (b) within 3 months of the third~~, sixth~~ anniversary of commencement of dual runway operations; and ~~and ninth anniversaries~~(c) within 3 months of ~~that~~the sixth anniversary of commencement~~, a tree balance statement must be submitted to CBC for approval~~ of dual runway operations. (2) The tree balance ~~statement~~statements referred to in sub-paragraph (1) shall follow the methodology set out in Policy CH6 of the Crawley Borough Council Local Plan 2015-2030 and the accompanying Green Infrastructure SPD 2016, and must include the following totals up to and including the date of commencement of dual runway operations and the third and sixth anniversaries respectively— (a) the total number of trees that have been removed as part of the authorised development; (b) the total number of replacement trees that are required on the basis of the CBC tree replacement requirement; and (c) the total number of trees that have been provided as part of the authorised development. (3) In the event that the ~~relevant~~ tree balance statement submitted on the sixth anniversary of the commencement of dual runway operations pursuant to sub-paragraph (1)(c)

	planting which has been committed to through the outline Landscape and Ecology Management Plan Plan **[REP9-047, REP9-049, REP9-051]** (DCO requirement 8 (landscape and ecology management plan)), demonstrates the Applicant's commitment to prioritising early planting. The Applicant has made minor amendments to clarify the timeframe that each tree balance statement is required to report on and provided for 3 months to allow the data to be collated and processed. The Applicant notes the proposed drafting which would make the Applicant subject to any updates that CBC may make to the tree mitigation calculation and payment formula at any time and to any extent. The Applicant considers it inappropriate for it to be subject to an unknown liability following an unknown calculation. The decision on this Application will be made on the basis of policy as it exists at the time of the decision. The Applicant has therefore proposed drafting which references the existing policy only. A number of minor drafting amendments have also been proposed to refine and correct the references to the existing policy and align with the DCO definitions.	identifies that the total number of trees that has been provided as part of the authorised development is less than that required by the application of the CBC tree replacement requirement, the undertaker must pay the tree mitigation contribution to CBC within 60 days of the approval of the tree balance statement by CBC under sub-paragraph (1). (4) In this requirement— (a) “CBC tree replacement requirement” means the number of replacement trees required on the basis of the number as per paragraph (2)(a), calculated in accordance with the table in Policy CH6 (Tree Planting and Replacement Standards) of Crawley 2030: Crawley Borough Local Plan 2015-2030 (adopted on 16 December 2015); and (b) “tree mitigation contribution” means the sum sought pursuant to Policy CH6 ~~of the CBC development plan (or any replacement policy~~(Tree Planting and Replacement Standards) of Crawley 2030: Crawley Borough Local Plan 2015-2030 (adopted on 16 December 2015) and calculated in accordance with the tree mitigation formula to be paid to CBC and used towards the provision of tree planting and maintenance in the borough of Crawley or within the area of any of the host ~~authority~~authorities which is a district council. (c) “tree mitigation contribution formula” means the formula as set out in paragraphs 3.13 to 3.14 and Table 1 of the CBC Green Infrastructure Supplementary Planning ~~document or any other document replacing it containing a formula for the payment of contributions containing a formula for the payment of contributions towards providing replacement trees.~~Document (adopted on 5 October 2016).

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APPENDIX 2

Revisions to Commitment 14C of the SACs: TFSG Terms of Reference

The amendments proposed by the JLAs to Commitment 14C (explained in this Letter under the 'Transport Forum Steering Group' header) are set out (in underline) against the existing Commitment 14C below, together with some further amendments (in blue) proposed by the Applicant to ensure the existing functions of the TFSG are retained and the appropriate members are included:

Commitment 14C – TFSG Terms of Reference

(1) No less than 3 months prior to the first Annual Monitoring Report being produced in accordance with Commitment 16, GAL shall carry out a review of the existing TFSG Terms of Reference (annexed at Appendix A) and propose such revised terms of reference as appropriate to reflect the role of the TFSG as set out in these Surface Access Commitments for approval by the TFSG. The revised Terms of Reference shall deal with the following matters and shall be in accordance with the principles as set out below:

a. Update the roles, purpose and responsibilities of the TFSG, in light of the DCO, and it now being a decision-making body in respect of those matters as set out in the surface access commitments;
b. Define the scope of work of the TFSG;
c. Set out the proposed membership of the TFSG which shall include the relevant highway authorities, National Highways, GAL, Network Rail and CBC;
d. How often meetings will be held, and how they will be held (i.e. in person or virtually)
e. Define the decision-making process, which shall be on a majority decision basis where each TFSG member has a single vote. Where decisions are being made in relation to an Action Plan or SAC Mitigation Action Plan, where the SAC mode share commitments have not been met, such decisions would require unanimous agreement by the TFSG and GAL would not be entitled to vote on such decisions (though may take part in any discussion),
f. Details of the dispute resolution process to be applied,
g. Inclusion of a review mechanism to provide a means of reviewing the group and how it is working and how decisions are being made and to make changes as is necessary.

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