

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

FAO: Transport Infrastructure Planning Unit

17 January 2025

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 3 January 2025**

We refer to the letter dated 3 January 2025 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. The representations received in response to the SoS' consultation letter of 9 December 2024;
2. Crown land; and
3. New Defra guidance on the amended duty under section 85 of the Countryside and Rights of Way Act 2000.

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

1. Comments on representations received in response to the SoS' consultation letter of 9 December 2024

The Applicant has reviewed the representations submitted by interested parties in response to the SoS' letter of 9 December 2024 and published on 24 December 2024 and has set out its comments on these representations in the table at **Appendix 1** to this letter. The Applicant has also addressed the late response received from CPRE Sussex published on 10 January 2025.

The submission from Crawley Borough Council, West Sussex County Council and Surrey County Council (for present purposes, the "JLAs") requests that the SoS replace the Applicant's form of Surface Access Commitments with those included in the JLAs' submission at [\[REP9-150\]](#) or amend the Applicant's document to address the JLAs' concerns stated therein.

The Applicant has previously justified its approach to the Surface Access Commitments in paragraphs 12.3.23 onwards of its **Closing Submissions** [\[REP9-112\]](#). However, given the JLAs' repeated request for the SoS to adopt their amendments to this document over the version submitted by the Applicant, the Applicant has provided responses to the JLAs' comments from [\[REP9-150\]](#) in the table at **Appendix 2** to this letter and has submitted alongside this letter a revised version of the **Surface Access Commitments** (Doc Ref. 5.3 v7) that adopts the comments made by the Joint Local Authorities where justified and practicable, together with the amendments proposed to Commitment 14C (in relation to the TFSG Terms of Reference) discussed in the Applicant's own submission from 23 December 2024.

As a result of the submission of this revised version of the Surface Access Commitments, the Applicant has also submitted alongside this letter a revised version of the **Consolidated Environmental Statement** (Doc Ref. 10.66 v3) to reflect the updated version numbering.

2. Crown land

The Applicant is pleased to confirm it has now substantively concluded a cooperation agreement with the Home Office in respect of its interests at the airport. That agreement has been finalised between the Applicant and the Home Office's respective solicitors and is now proceeding through the Home Office's internal final approval procedures before engrossments are issued, with completion anticipated to follow in the next 7-10 days, subject to any delay with those procedures. This agreement was prepared to provide the Home Office with sufficient comfort (in concert with the standard 'Crown Rights' article contained within the DCO (Article 44 in the most recent version of the draft DCO (Version 12) submitted at Deadline 10 [\[REP10-004\]](#))) that its interests at the airport will be safeguarded following commencement of the Project. This in turn allows the relevant Secretary of State to provide their consent pursuant to section 135 of the Planning Act 2008 in respect of the Home Office's interests within the Order limits. An agreed form of s135 consent is appended to the agreement and will be issued as part of completion, which (as above) is anticipated to follow in the next 7-10 days, meaning the letter of consent will be issued to the SoS by the end of this month. The Applicant is regretful that it has not been possible to complete matters by this point and wishes to assure the SoS that it has not been due to a lack of effort on either side.

In respect of the interests held by the Secretary of State for Housing, Communities and Local Government itself and HM Revenue and Customs, through discussions with the Home Office on the cooperation agreement and their appointed representatives and on-going diligent enquiry it has been identified that those interests have variously been assumed by the Home Office and/or are no longer held (in respect of occupation of premises at the airport). In consequence, the Applicant can confirm that MHCLG and HMRC no longer hold any relevant interests/rights within the Order limits for the purposes

of the relevant provisions of the Planning Act 2008, including section 135. The Applicant has submitted updated versions of the **Book of Reference** (Doc Ref. 3.3 v7) and the **Crown Land Plans** (Doc Ref. 4.3 v3) with this letter to reflect this updated position. To note, the previous description of the Home Department's interest as 'UK Visas and Immigration, Home Office' has been replaced with 'Home Office' for similar reasons, specifically to reflect the specific entity which benefits from the corresponding interest in the relevant land plot.

As a result of the above and pending formal completion of the cooperation agreement with the Home Office and subsequent release of the corresponding section 135 consent, the Applicant has now secured all necessary s135 consents from the relevant Crown bodies, specifically:

- **Office for National Statistics** – at [\[REP9-165\]](#);
- **Secretary of State for Transport** – originally at [\[REP10-025\]](#), though after the close of the examination the Applicant noted a referencing error on the original consent letter signed on behalf of the Secretary of State for Transport and has therefore procured a corrected version, which is submitted with this letter; and
- **Home Office** – to follow.

3. New guidance on the amended duty under section 85 of the Countryside and Rights of Way Act 2000 ("CRoW Act 2000")

The Applicant notes the SoS' request for the Applicant and the five public bodies identified in the request to set out an agreed position on the matter raised. On 7 January, the Applicant wrote to the public bodies identified in the request with a first draft of a suggested joint position statement, inviting comments and suggestions – and proposing a joint Teams call to discuss the draft.

On 8 January, Surrey Hills AONB Board responded. They thanked the Applicant for the initiative but indicated that they did not agree with the draft and did not think a Teams call would be productive.

On 8 January, Kent Downs AONB Partnership responded, advising that they were busy with a current public inquiry and did not intend to take up the invitation to respond.

On 8 January, Natural England responded, advising that they would consider their position internally and come back to the Applicant. They subsequently advised on 15 January that they would instead prefer to make their own submissions, primarily because they have their own 'lines to take' on both the duty and the guidance to ensure their comments and advice are clear and consistent across all development proposals.

On 9 January, South Downs National Park Authority advised that they did not agree with the content of the draft position statement but agreed to meet to discuss their views. This further meeting happened on 13 January; however, it was not possible to reach agreement

due to the divergence in position between the parties, specifically regarding the need for any mitigatory/enhancement measures necessary in view of the Project.

On 14 January, the High Weald National Landscape Partnership responded, advising that they did not agree with the draft statement from the Applicant and would be responding separately.

Accordingly, the following response is provided purely on behalf of the Applicant, although it is similar in terms to that which was offered as a joint statement to the public bodies.

Applicant's response

The amended duty under section 85 of the CRow Act 2000 (and section 11(1A) of the National Parks and Access to the Countryside Act 1949 (the "1949 Act")) to *"seek to further"* the statutory purposes of protected landscapes (rather than to *"have regard to"* those purposes) was enacted in December 2023 and was known to the examination. It was the subject of a specific Rule 17 letter [\[PD-027, R17d.8\]](#) from the Examining Authority on 14 August 2024, addressed to the Applicant and the Surrey Hills AONB Board.

The Applicant submitted its response at Deadline 9 [\[REP9-121\]](#) and, whilst the AONB Board did not separately respond, the South Downs National Park Authority did so in [\[REP9-351\]](#). Those responses do not need to be repeated here and all parties to this letter had the opportunity to set out their views on the effect of the Project on Protected Landscapes and on the implications of the amended duty during the examination. For the avoidance of doubt, the Applicant's position on such matters remains as stated in its response to the above-mentioned Rule 17 letter submitted at Deadline 9.

In December 2024, Defra issued guidance to relevant authorities on how to address the amended duty requiring them to *"seek to further"* the statutory purposes of Protected Landscapes (the "Guidance"). The SoS' letter asks whether this Guidance *"has any implications for ensuring the Scheme complies with the amended duty"*, rather than asking for further submissions about the implications of the duty itself, on which the examination is already informed, as set out above.

The Applicant has approached the SoS' request on that basis, i.e. does the Guidance alter the way in which the Applicant understood the implications of the duty and how it should be applied in the context of the determination of the DCO application for the Project?

In so far as the public bodies' responses raise new points about the exercise of or implications of the duty (as opposed to the implications of the Guidance itself), then the Applicant would consider it necessary and reasonable for it be given the opportunity to respond.

Put simply, the Applicant considers the Guidance positively endorses the interpretation and approach set out in its previous submissions (as referenced above). In the Applicant's response to the Rule 17 letter [\[REP9-121\]](#), written before the Guidance was published, the Applicant explained its understanding of the implications of the duty, stating it:

“... is a duty to “seek to further” the statutory purposes. It is not a duty to further those purposes. The words “seek to” mean that a Minister must try to further those purposes when determining an application for a DCO that would affect land within a National Park or AONB. They have been used deliberately to qualify this duty. Compliance with the duty does not mean that the Secretary of State must achieve a furthering of those purposes in every case, or that any decision must avoid causing adverse effects to a National Park or AONB. The duty does not require that any decision should “best” further those purposes, or that it must adopt all measures which are theoretically available to further them.”

That interpretation of the amended duty is consistent with the now published Guidance.

Helpfully, the Guidance makes clear that, in exercising the duty, a reasonable and proportionate approach should be taken. Extracts from the Guidance are set out below, with emphasis added:

*“Consideration of what is **reasonable and proportionate** in the context of fulfilling the duty is decided by the relevant authority and **should take account of the context of the specific function being exercised.**”*

The Guidance explains how a relevant authority should go about addressing its duty, including taking “**appropriate, reasonable, and proportionate steps** to explore measures which further the statutory purposes of Protected Landscapes.”

The Applicant considers the repetition of these matters is a deliberate attempt through the Guidance to ensure that all parties are clear on what is, and importantly isn't, required as a result of the revised duty.

The Guidance explains that the duty applies to the relevant authority “*when undertaking any function in relation to, or so as to affect, land in a Protected Landscape*”. This clearly has a role in development management but is perhaps most likely to be appropriate and practical in plan making and the delivery of initiatives promoted by the authority within the Protected Landscapes. Examples of relevant measures are explained in the following context:

“a relevant authority should be able to demonstrate with proportionate, reasoned, and documented evidence the measures to which consideration has been given when seeking to further the statutory purposes of Protected Landscapes - for example, policies, strategies, operational procedures, estate management plans, investment plans, contracts, works instructions, assessments and reports which should be able to evidence the proper discharge of the duty by the relevant authority.”

Few of these would be directly relevant to a development management decision.

In that part of the Guidance which clearly does apply to development management decisions, the Guidance provides:

*“...for development plan making **and development management decisions** affecting a Protected Landscape, a relevant authority should seek to further the purposes of the Protected Landscape - in so doing, the relevant authority should consider whether such*

measures can be **embedded in the design of plans and proposals, where reasonably practical and operationally feasible.**"

Gatwick Airport is not within a Protected Landscape and the Project has no direct impact on a Protected Landscape, meaning the practical measures listed in the Guidance are of limited relevance to the Project proposals.

Gatwick's flight paths, which have been in place and designated by the CAA for many years, do extend across Protected Landscapes. The fact that they do so is consistent with Government guidance to the CAA on the design of airspace in the UK, which includes:

*"3.32 Given the finite amount of airspace available, **it will not always be possible to avoid overflying National Parks or AONB, and there are no legislative requirements to do so as this would be impractical.** The government's policy continues to focus on limiting and, where possible, reducing the number of people in the UK adversely affected by aircraft noise and the impacts on health and quality of life associated with it. As a consequence, this is likely to mean that one of the key principles involved in airspace design will require avoiding over-flight of more densely populated areas below 7,000 feet."*¹

It follows that there are no measures which can reasonably be embedded in the design of the Project to avoid overflying Protected Landscapes.

Consistent with the Applicant's submissions to the examination, the Guidance adds no new or additional requirements for the determination of development management proposals, beyond the conscious exercise of the duty. In particular, it does not require that the statutory purposes of the National Landscapes must be enhanced by individual development management proposals made within or outside the National Landscapes. Neither does it require that developments can have no adverse impacts on National Landscapes or that compensation must be provided for any adverse impacts, even when those impacts are found to be not significant.²

As explained in the Applicant's response to the Rule 17 letter [\[REP9-121\]](#):

"The Environmental Statement ("ES") included the South Downs National Park and the AONBs within the wider study area and considered that the landscapes within these designated areas are relevant to the assessment of landscape and visual effects and the effect on the perception of tranquillity as a result of overflying aircraft. The Project is located outside the National Park and the AONBs. As such, there is no direct impact on

¹ Department for Transport (2017). UK Air Navigation Guidance 2017.
<https://assets.publishing.service.gov.uk/media/5f624adae90e072bbae22c2c/air-navigation-guidance-2017.pdf>

² The lack of significant impacts on National Landscapes from the Project is assessed and explained in the LVIA [\[APP-033\]](#) with a detailed methodology set out in ES Appendix 8.4.1: Landscape, Townscape and Visual Impact Assessment Methodology [\[APP-109\]](#). When considering tranquillity, Table 2.2.7 of ES Appendix 8.4.1: Landscape, Townscape and Visual Impact Assessment Methodology [\[APP-109\]](#) provides the relevant assessment matrix.

the National Park or AONBs as a result of the Project. ES Chapter 8: Landscape, Townscape and Visual Resources [APP-033] considered potential impacts on the South Downs National Park and the AONBs by reference to a Tranquillity Assessment. Frequency of aircraft movements and general orientation of flights are illustrated using heat maps in ES Figures 8.6.3 to 8.6.7 [REP8-015, REP8-016, REP8-017] together with nationally designated landscapes. The assessment is based on the increase in overflying aircraft up to 7000 ft above local ground level as a result of the Project, compared to the future baseline scenario in 2032. This has resulted in a comprehensive 35 mile radius study area. Gatwick and non Gatwick overflights are mapped as a baseline, future baseline and increase as a result of the NRP. In addition, the change in the numbers of overflights expected at 10 well known and popular locations within nationally designated landscapes has been assessed individually in section 8.9 of ES Chapter 8. The change in the total number of daily overflights at these locations would range from a 6% increase up to a maximum of a 20% increase, compared to the future baseline scenario in 2032 (see Table 8.9.1). This would result in a negligible change and only minor adverse effects on the perception of tranquillity within nationally designated landscapes (see paragraphs 8.9.196 to 8.9.203)."

These matters are the subject of a **Statement of Common Ground with Natural England [REP9-090]**, which confirms Natural England's agreement with the methodology used and that:

*"..the increase in overflights in the Kent Downs AONB, Surrey Hills AONB and South Downs National Park is negligible in terms of magnitude, resulting in a minor adverse impact upon the designated landscapes, and **will not require mitigating.**"* (Emphasis added - row 2.14.3.1)

Natural England encouraged the Applicant to engage with the High Weald AONB Unit in relation to the tranquillity assessment and the SOCG confirms the Applicant's attempts to do so but that the AONB Unit did not wish to engage further on the subject (see row 2.14.2.1).

The Applicant submits that, had it been the intention of the legislation to require the amended duty to introduce a positive duty to enhance regardless of the nature of the scheme or its impacts on the relevant Protected Landscapes, the legislation (and the Guidance) would have been worded in that way. The fact that neither the enacting legislation nor its supporting Guidance have done so clearly supports the Applicant's interpretation that the intention was not to mandate such action, but to instead allow for a duty which is deliberately qualified by use of the words 'seek to' to allow for consideration of what is reasonable and proportionate in the context of the scheme in question. Such consideration necessarily allows for the possibility, as the Applicant advocates is the position in respect of the Project, that no further measures are necessary where the nature of the scheme and its impacts justify such a position.

The Guidance does not introduce any materially new information or change the legislative basis/interpretation on which the submissions have been made to date. Rather, it advises a proportionate and practical approach.

On this basis, it is considered that the SoS has all the information necessary to comply with their duties in section 85 of the CROW Act 2000 and section 11(1A) of the 1949 Act and to conclude that the grant of consent for the Project in its current form would be consistent with those duties.³

Revised documents

For the reasons set out above, the Applicant is submitting the following revised documents alongside this letter:

- **Book of Reference – Part 1** (Doc Ref. 3.3 v7) (clean and tracked changes versions);
- **Book of Reference – Part 2** (Doc Ref. 3.3 v7) (clean and tracked changes versions);
- **Crown Land Plans** (Doc Ref. 4.3 v3);
- **Surface Access Commitments** (Doc Ref. 5.3 v7) (clean and tracked changes versions);
- **Consolidated Environmental Statement** (Doc Ref. 10.66 v3) (clean and tracked changes versions); and
- Revised section 135 consent letter on behalf of the Secretary of State for Transport.

Should the SoS grant development consent, the Applicant requests that the following minor updates are made to Schedule 14 (Documents to be certified) of the DCO to reflect the above revised documents:

- update the version number of the 'book of reference' to version 7;
- update the version number of the 'consolidated environmental statement' to version 3; and
- update the version number of the 'surface access commitments' to version 7.

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.

³ As set out earlier, if new evidence is submitted by interested parties to the contrary, it would be necessary and reasonable for the Applicant to have the opportunity to respond, particularly where any new submissions exceed the scope of the SoS' request.



Your sincerely



Tim Norwood
Chief Planning Officer
London Gatwick

APPENDIX 1

APPLICANT'S COMMENTS ON REPRESENTATIONS BY INTERESTED PARTIES IN RESPONSE TO THE SOS' LETTER OF 9 DECEMBER 2024

Interested party	Applicant's comments
Environment Agency	<p>The Applicant notes that the Environment Agency's submission restates the position it adopted during the examination, which was discussed by the Applicant in, <i>inter alia</i>, its Response to ExQ2 [REP7-093] (WE.2.4) and the Statement of Common Ground between Gatwick Airport Limited and the Environment Agency [REP10-015]. The Applicant has no additional comment to make at this point.</p>
Network Rail Infrastructure Limited	<p>The Applicant notes that the "<i>unless otherwise agreed</i>" wording in requirement 20 (surface access) to which Network Rail's concern in paragraph (a) of its submission relates has been included in the draft DCO throughout the examination without referencing Network Rail, and the Applicant had not understood this to be a point of concern for Network Rail. This notwithstanding, the Applicant does not oppose the proposal that Network Rail be specified as the body to approve departures from commitments 14A and 14B (these being the rail enhancement commitments). A tweak to facilitate this is reflected in the Applicant's proposed drafting below.</p> <p>The Applicant does not share Network Rail's concern regarding the effect of the wording in paragraph (b) of its submission. The matters provided for in the Surface Access Commitments are intrinsically linked to the Applicant's operation of the airport and thus are sufficiently secured by the current wording of requirement 20, which accords with the wording adopted for many of the other requirements in Schedule 2 of the draft DCO. Inevitably the Applicant must undertake measures outside the geographical boundary of the airport in carrying out its function of operating the airport and thus the current drafting is suitably clear and effective.</p> <p>Should the SoS nonetheless be inclined to amend the wording of requirement 20 in line with Network Rail's suggestion, the Applicant would propose the below minor revision to that wording as the Applicant considers that the reference to "<i>measures in</i>" the Surface Access Commitments in Network Rail's drafting is potentially unclear.</p> <p><u>Applicant's proposed drafting</u></p> <p>Requirement 20 (surface access commitments)</p> <p>From the date on which the authorised development begins the undertaker must comply with, and the operation of the airport must be carried out in accordance with, the surface access commitments unless otherwise agreed in writing with:</p> <p>(a) Network Rail Infrastructure Limited in respect of commitments 14A and 14B; or</p>

	<p>(b) CBC and National Highways (in consultation with Surrey County Council and West Sussex County Council) in respect of any other commitment or matter.</p>
National Highways	<p>In relation to National Highways' remarks on the SoS' amended version of requirement 2 (phasing scheme), the Applicant has already proposed in its letter dated 23 December 2024 that sub-paragraph (3) be amended to make clear that it applies to submissions of updated phasing schemes to the host authorities and National Highways as a collective, with any departure from that timing to be agreed by CBC (in its role as coordinating host authority). The Applicant considers that this addresses National Highways' concern regarding this sub-paragraph.</p> <p>The Applicant does not consider that sub-paragraph (4) need reference National Highways. National Highways benefits from detailed protective provisions (Part 3 of Schedule 9 to the draft DCO) and has entered into a Framework Agreement with the Applicant which together provide a comprehensive regime governing National Highways' involvement in the project, including the submission of information to, and approvals by, National Highways. It is unnecessary for requirement 2 to duplicate such process and additionally mandate that the Applicant must provide indicative timings for the submission of details or documents to National Highways at least 3 months in advance of their submission.</p> <p>If the SoS disagrees and decides to include such wording, the Applicant proposes on a without prejudice basis that sub-paragraph (4) be amended as immediately below (changes shown against the version of this sub-paragraph proposed in the Applicant's letter of 23 December 2024).</p> <p>The Applicant has no further comments on the matter of the indemnity cap proposed in the protective provisions for National Highways (Part 3 of Schedule 9 to the draft DCO) and reiterates its Closing Submissions [REP9-112] on this subject (page 540 onwards).</p> <p><u>Applicant's proposed drafting (without prejudice)</u></p> <p>Requirement 2 (phasing scheme)</p> <p>[...]</p> <p>(4) Where any requirement in this Schedule requires the submission to any of the host authorities or National Highways 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 or National Highways (as relevant) 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 or National Highways (as relevant).</p> <p>[...]</p>

Mole Valley Cycling Forum	<p>In relation to complaints about consulting Mole Valley District Council ("MVDC") on transport matters, the Applicant makes no comment save to note that MVDC's approach during the examination was for such matters to be handled by Surrey County Council as highway authority for MVDC's area (see e.g. the MVDC PADSS [REP9-154] at rows MV35 and MV36).</p> <p>In relation to CBC's role under requirement 20 (surface access), the Applicant refers to and reiterates its submissions in the Applicant's letter of 23 December 2024 on the SoS' amended version of this requirement. The drafting of requirement 20 has afforded CBC the ability to agree departures from the Surface Access Commitments since the version of the draft DCO submitted at Deadline 1 [REP1-004], without objection by MVDC or the Legal Partnership Authorities. The latest submission version of the draft DCO [REP10-004] affords this ability to CBC and National Highways (in consultation with the two relevant highway authorities - Surrey County Council and West Sussex County Council). Given CBC's coordinating role as lead host authority and the involvement of all three relevant highway authorities, this drafting remains appropriate.</p>
Crawley Borough Council, Surrey County Council and West Sussex County Council	<p>The Applicant reiterates its position on the SoS' amended version of requirement 20 (surface access) as set out in its letter of 23 December 2024 to the SoS.</p> <p>In relation to the form of Surface Access Commitments themselves, Crawley Borough Council, West Sussex County Council and Surrey County Council request that the SoS replace the Applicant's form of Surface Access Commitments with those included in the JLAs' submission at [REP9-150] or amend the Applicant's document to address the JLAs' stated concerns.</p> <p>The Applicant has previously justified its approach to the Surface Access Commitments in paragraphs 12.3.23 onwards of its Closing Submissions [REP9-112]. However, given the JLAs' repeated request for the SoS to adopt their amendments to this document over the version submitted by the Applicant, the Applicant has provided detailed responses to the JLAs' comments from [REP9-150] in Appendix 2 to this response and has submitted a revised version of the Surface Access Commitments (v7) that adopts the comments made by the Joint Local Authorities where justified and practicable.</p>
Thames Water Utilities Limited ("TWUL")	<p>The agreement between the Applicant and Thames Water Utilities Limited ("TWUL") that is referenced in the first paragraph of TWUL's submission has now been signed by the Applicant and returned to TWUL and the surveys also referenced are anticipated to commence shortly.</p> <p>In relation to requirement 31 (construction sequencing), the Applicant reiterates the position set out in its letter of 23 December 2024. The following comments on the amendments to that requirement proposed by TWUL are without prejudice to the Applicant's primary position that no such provision is required to be included in the DCO.</p>

The Applicant considers that the amendments proposed to the SoS' drafting by both it and TWUL share many of the same intentions, but that some elements of TWUL's drafting introduce unhelpful uncertainty into the operation of the provisions and would be inconsistent with the NPPF/ANPS' direction that any requirements imposed should be 'precise' in their formulation (paragraph 4.9 of the ANPS), such that the Applicant's formulation (as supplemented below) should be preferred.

By way of specific comments on the drafting in TWUL's submission:

- Requiring the development phasing plan (which will be submitted prior to commencement of the authorised development) to cover the period from commencement of the authorised development to *"the point at which dual runway operations have reached full passenger capacity"* in sub-paragraph (3) is unnecessarily non-specific. It is clearly preferable to specify a particular time period in years and the Applicant considers that the time period from commencement of the authorised development until ten years after the commencement of dual runway operations ("CDRO") as proposed by the SoS is already a significant period and is sufficient. The Applicant notes that such a period spans at least three of TWUL's five-year planning cycles and thus provides it with sufficiently advance information of this future demand.
- The additional detail on the contents of the development phasing plan in sub-paragraph (3) is acceptable in principle, though must not be used as a vehicle for TWUL to hinder the commencement of the authorised development by refusing to validate modelling that has been carried out by the Applicant in collaboration with TWUL or by TWUL itself. Elements of TWUL's drafting in this regard can therefore be adopted, with modifications to mitigate against this concern.
- The removal of the two-year time period in sub-paragraph (4) within which TWUL must confirm whether its infrastructure can handle additional flows is unacceptable and could facilitate undue delay by TWUL in confirming whether the separate wastewater treatment works are required, which could in turn cause delay to the delivery of those works and therefore CDRO and the benefits the Project will bring. The Applicant strongly believes that a fixed time period should be retained. However, to alleviate TWUL's concern that the time between the Applicant providing the development phasing plan and TWUL having to confirm whether its infrastructure has capacity could be unfairly shortened by the Applicant delaying in providing the development phasing plan, the Applicant is content for the fixed time period to run from the Applicant's provision of that plan. Given that the plan will follow the completion of the relevant surveys and hydraulic modelling, which will have been undertaken in collaboration with TWUL, a fixed time period of 12 months is considered sufficient and appropriate for TWUL to provide the final confirmation as to its infrastructure's capacity following review of that plan.
- The remainder of the amendments proposed by TWUL generally accord with the Applicant's proposed amendments, in that it should be made clear that the wastewater treatment works (Work No. 44) are only required if TWUL confirms that its existing infrastructure cannot handle the additional wastewater flows from the authorised development and that otherwise the project can proceed to CDRO. The Applicant does not consider

	<p>that the requirement should be framed by reference to the development phasing plan being "approved" by TWUL – that plan's purpose is to provide information to TWUL to allow it to confirm whether or not its infrastructure can handle the additional wastewater flows that are forecast in the plan (on the basis of modelling undertaken in close collaboration with TWUL). The appropriate trigger for either the wastewater treatment works needing to be constructed or the Applicant being able to proceed to CDRO is TWUL's positive or negative confirmation as to the capacity of its infrastructure. The remainder of the Applicant's drafting from its letter of 23 December 2024 is therefore clearer and more coherent in effect than the revised sub-paragraphs (5), (6) and (7) in Thames Water's submission and should be adopted if the SoS decides that these provisions should be included in the DCO.</p> <p>To make clear what form of drafting the Applicant is advancing (on a without prejudice basis), the below has been prepared showing changes from the drafting proposed by the Applicant in its letter of 23 December 2024.</p> <p><u>Applicant's proposed drafting (without prejudice)</u></p> <p>Requirement 30 (construction sequencing)</p> <p>[...]</p> <p>(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. The development phasing plan must include forecasts of the wastewater discharge rates and expected connection points for the authorised development throughout this period and be based on hydraulic modelling undertaken by Thames Water Utilities Limited or the undertaker in consultation with Thames Water Utilities Limited.</p> <p>(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.</p> <p>(5) Thames Water Utilities Limited must confirm in writing within twelve months of the provision of the development phasing plan pursuant to sub-paragraph (3), two years of the making of this Order, following review of the development phasing plan and acting reasonably, whether its infrastructure will be able to accommodate the additional foul water flows from the airport for the ten-year period after the commencement of dual runway operations.</p> <p>(6) The commencement of Work No. 44 (wastewater treatment works) must not take place until either—</p> <p>(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</p>
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	<p>(b) Thames Water Utilities Limited has not provided any confirmation pursuant to sub-paragraph (5) within the time period specified therein by the second anniversary of the making of this Order, unless otherwise agreed in writing by Thames Water Utilities Limited.</p> <p>(7) The commencement of dual runway operations must not take place until either—</p> <p>(a) Work No. 44 (wastewater treatment works) has been completed and an application has been submitted for an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 for its operation; or</p> <p>(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.</p>
CPRE Sussex	<p>The Applicant notes the broad nature of CPRE Sussex's comments, which restate comments it made during the examination. The Applicant references below the relevant parts of its Closing Submissions [REP9-112] that address the topics referenced by CPRE Sussex:</p> <ul style="list-style-type: none"> • in relation to greenhouse gases and carbon, section 8; • in relation to comments on the Carbon Action Plan, paragraphs 6.4.18 – 6.4.35; • in relation to compliance with policy, section 3; • in relation to climate change, section 9; • in relation to the wastewater treatment works, paragraphs 19.3.10 – 19.3.19 and 28.4.34; • in relation to airspace use, paragraphs 4.5.1 – 4.5.12; • in relation to noise impact on national parks or AONBs, paragraph 17.3.29 and subsection 17.4; • in relation to air quality, section 13 (and specifically paragraphs 13.1.16 and 13.3.15 – 13.3.18 on odour); and • in relation to housing, paragraphs 10.3.19 – 10.3.24; and • in relation to worker transport, paragraph 12.2.4. <p>In relation to the comments from individual signatories of the petition enclosed with CPRE Sussex's submission, the Applicant does not consider that the range and generality of these submissions introduce any new evidence to the determination of the application and considers that it has addressed such matters in its own submissions into the examination and would commend again to the SoS its Closing Submissions [REP9-112] for completeness.</p>

APPENDIX 2

APPLICANT'S RESPONSE TO THE JLAS' COMMENTS ON THE SURFACE ACCESS COMMITMENTS SUBMITTED AT DEADLINE 9

JLAs' Commentary on Surface Access Commitments: Response Table

The below table sets out the Applicant's response to the JLAs' comments on the Surface Access Commitments set out in the Appendix included in [REP9-150](#) submitted at Deadline 9.

Issue	Legal Partnership Authorities Comments at Deadline 9	GAL response
Transport Forum Steering Group ("TFSG") – Terms of Reference:	<ul style="list-style-type: none"> Whilst the TFSG is an established group, the DCO and proposals within the SACs involve changing the group from its advisory role to a decision-making one. The Terms of Reference and how decisions shall be made have not been agreed between the Highway Authorities and GAL. The Authorities consider that, as with other groups required for the DCO i.e. TMFDG, the Terms of Reference, or main principles, should be defined at Examination stage or through an approval process with the Authorities. See proposed Commitment 14C. The decision-making of the TFSG, and how this works, is a fundamental matter relating to control and it is not presently defined or provided for in the SACs. 	<p>Proposed Commitment 14C is accepted and included in the revised SACs with some further amendments to ensure the existing functions of the TFSG are retained and the appropriate members are included.</p> <p>The amendments proposed to Commitment 14C by the JLAs 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 and this has been reflected in the revised SACs.</p> <p>Commitment 14C – TFSG Terms of Reference</p> <p>(1) <u>No less than 3 months</u> 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</p>

		<p>TFSG. <u>The revised Terms of Reference shall deal with the following matters and shall be in accordance with the principles as set out below:</u></p> <ol style="list-style-type: none"> a. <u>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;</u> b. <u>Define the scope of work of the TFSG;</u> c. <u>Set out the proposed membership of the TFSG which shall include the relevant highway authorities, National Highways, GAL, Network Rail and CBC;</u> d. <u>How often meetings will be held, and how they will be held (i.e. in person or virtually)</u> e. <u>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),</u> f. <u>Details of the dispute resolution process to be applied,</u> g. <u>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.</u>
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Alignment with Amendments to Requirement 20	<ul style="list-style-type: none"> • The SACs must accord with the ExA's proposed amendments to Requirement 20 (which the Authorities support as per Part A to the Authorities' "Consolidated Submission on the dDCO" submitted at Deadline 9). • The Authorities note that the targets in GAL's Deadline 8 SACs are set out as interim mode share commitments one year after the first anniversary of the commencement of dual runway operation rather than upon commencement. • Crucially, the updated SACs document does not include restrictions on the use of Airport facilities should these mode share targets not be met, as was included in the ExA's suggested requirement. The Authorities maintain that such restrictions should be included. • The final suggested mode split target suggested by the ExA in their proposed amendment to Requirement 20 was not more than 44.9% of staff travelling to the airport are car drivers in the monitored year. As the ExA will know, this proposed amendment to Requirement 20 provides for restrictions on the use of South Terminal Office in the event the car mode share is exceeded. • The Authorities support the intention of this proposed Requirement and consider that this wording could be set out within the body of the SACs. 	The amendments sought by the JLAs to the Interim Mode Share Commitments in the SACs are addressed in the amended drafting of Requirement 20 of the DCO as submitted by the Applicant on 23 December 2024. No change is considered necessary and has not been proposed on that basis.
Commitment 8A	If the ExA's proposed Requirement 37 were to be included in any made DCO, the Authorities consider it could be cross-referred to in Commitment 8A.	Requirement 37 sets an absolute level of restriction on the level of car parking at the airport, together with an obligation to report annually to CBC on the parking numbers. Whilst relevant to their purpose, this Requirement still applies independently from the SACs

		and it is not clear what relevance a cross-reference to this Requirement would have under the terms of Commitment 8A. No change is considered necessary and has not been proposed on that basis.
Commitment 11 – Staff Travel	<ul style="list-style-type: none"> • Whilst this commitment ensures that there will be no increase in staff parking provision as part of the Project, the Authorities would like to ensure that air passengers are excluded from using staff car parks. • The Authorities are concerned that – if staff are displaced from their car parks – they will seek to park on the local road network. • The Authorities wish to ensure that any such displacement to the local road network is discouraged. 	As the Applicant has previously noted in response to this issue raised by the JLAs on previous occasions, the Applicant does not consider that a control of this nature is necessary. The Applicant maintains this position particularly in light of the revisions to Requirement 37 of the DCO as submitted by the Applicant on 23 December 2024 to prescribe a maximum number of parking spaces for airport passengers and staff within the Order limits.
Commitment 12 - Staff Travel	<ul style="list-style-type: none"> • This commitment requires the Applicant to introduce measures to discourage single-occupancy private vehicle use by staff. At the Authorities' request, the Applicant has included typical measures that could be introduced. • The Authorities also requested that the measures would be developed in consultation with and approved by the local highway authorities and National Highways (through the TFSG). • As proposed in REP8-053, Commitment 12 only requires the Applicant to consult with the TFSG and there is therefore no independent approval body for these measures. This is considered to be akin to the Applicant discharging its own condition and is not supported by the Authorities 	<p>As the Applicant has previously noted in response to this issue raised by the JLAs on previous occasions, the measures and incentives GAL must deliver to comply with Commitment 12 and achieve the staff mode shares will be determined following consultation with employers and staff. It is anticipated that many of the measures and incentives will be arrangements made by businesses with their staff and the Applicant considers that it would be inappropriate for measures of this nature to be approved by highway authorities and NH. However, Commitment 12(2) requires GAL to consult with the TFSG on these measures and that is considered the appropriate level of engagement with respect to these measures.</p> <p>The Applicant also notes that the TFSG has adequate safeguards to require additional action</p>

		plans in the event mode share commitments (and interim mode share commitments) are not met as set out in section 6 of the SACs. The Applicant is required to achieve the mode share commitments set out in the SACs, however there is no requirement to adopt a particular measure to discourage single-occupancy car use by staff because the relevant measures will need to be defined in consultation with employers and staff and the Applicant therefore does not agree that it is discharging its own condition.
Commitment 13: Sustainable Transport Fund	<ul style="list-style-type: none"> • The Authorities have previously requested that the £10 per annum contribution towards the Sustainable Transport Fund for each Staff Car Park Pass Holder be index linked. • This is to ensure that the STF is an appropriate mechanism to fund the delivery of the SACs into the longer term and that inflation does not reduce the ability of the fund to deliver appropriate interventions. • This part of the fund has not been indexed linked and is not included in the latest version of the SACs. 	The £10 charge per annum is a nominal fee set to largely cover the administration expenses associated with the Staff Car Park Pass Holder scheme and does not increase each year in the way the levy on the supply of spaces in public car parks has historically under the section 106 agreements with Crawley Borough Council. The Applicant also notes that this charge is typically met by employers at the airport and is related to the number of passes held rather than the number of cars parked, therefore it does not directly influence staff mode shares. No change is considered appropriate and has not been proposed on that basis.
Commitment 16: Monitoring Commitments	<ul style="list-style-type: none"> • The Authorities' concern in relation to this Commitment is that the Applicant has not included wording stating that the baseline public transport services are considered to be those during 2024, and not the service levels as modelled within the DCO. • As this is not considered to be a matter that is beyond the control of the Applicant, which could impact on its ability to achieve the mode share commitments. 	The Applicant has previously responded to this issue in its Deadline 9 Submission - 10.87 JLA's Commentary on Surface Access - Response Table [REP9-128] . No change is considered necessary and has not been proposed on that basis.

<p>Timescales for Compliance</p>	<ul style="list-style-type: none"> • The Authorities' earlier concerns about the time periods allowed where compliance with the SACs are not being met remain. • The Applicant has not provided justification for the period of time a breach of the mode share commitments could occur before monitoring of the modal share target results in the need to prepare an action plan. Currently, only when two successive Annual Monitoring Reports report show a breach does the Applicant need to produce the SAC Mitigation Action Plan. • In the latest draft of the SACs the Applicant commits to providing the SAC Mitigation Action Plan to the TFSG within 30 days. The CAA passenger mode share surveys are completed quarterly and so the Authorities are of the view that it will be evident in advance of the second AMR, and two full years of data, if the mode share commitments are met or not. It is therefore not evident why it would be acceptable to wait for two years to start producing the SAC Mitigation Action Plan. The Authorities consider that the plan should be produced in advance and be implemented when and if the second AMR shows that mode share commitments are not complied with. The Authorities' proposed tracked change version of the document will include a suggested timetable. • Should the SAC Mitigation Action Plan not be agreed between the Applicant and the TFSG, it is proposed that the Applicant must submit the SAC Mitigation Action Plan and proposed measures to the Secretary of State within 30 days of receiving the TFSG's written reasons for not agreeing to the SAC Mitigation Action Plan. It is noted that the Applicant has reduced this from the previously stated 90 days but, for the reasons set out above, concerns remain that the time periods allowed where the mode 	<p>The Applicant has previously responded to this issue in The Applicant's Written Summary Oral Submissions – ISH 8 Surface Access Commitments [REP6-083] and Deadline 9 Submission - 10.87 JLAs' Commentary on Surface Access - Response Table [REP9-128].</p> <p>At the request of the JLAs, the Applicant amended the Surface Access Commitments at Deadline 9 to change the timeframe for the first AMR to be produced from “no later than six months before the commencement of dual runway operations” to “at or before the commencement of the Airfield Works (being Works No 1-4 as set out in Schedule 1 of the Development Consent Order (whichever of those works commences first))”. This timeframe is considerably ahead of when the mode share commitments currently bite (and when the alternate restriction in Requirement 20 would apply) - this provides an adequate lead in.</p> <p>In respect of the request for a proposed reporting timetable and further amendments to the timings set out in section 6 of the SACs, the Applicant considers the monitoring and reporting process set out to be clear, effective and proportionate to the commitments in question.</p> <p>No change is considered necessary and has not been proposed on that basis.</p>
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	<p>share Surface Access Commitments are not being met, is too long.</p> <ul style="list-style-type: none"> • The Authorities also have concerns that, whilst in theory the SoS may be able to use whatever measures they consider as necessary to address non-compliance with the mode share SACs, in practice this would not include measures to control growth at the Airport. These specific concerns are set out in paragraph 8.2 of the Deadline 8 Joint Local Authorities Response [REP8-126]. The SAC should specifically reference <i>"It does not preclude the Secretary of State from directing other controls on factors affecting mode share at the airport including passenger numbers, aircraft movements and/or parking numbers where the Secretary of State considers those interventions are reasonably necessary to achieve the mode share commitments"</i> 	
Other amendments in the JLAs marked up SACs		
Staff travel survey carried out annually	JLAs assert this survey should be carried out annually because it is for a Mode Share Commitment.	The Applicant has previously responded to this issue in its Deadline 9 Submission - 10.87 JLAs' Commentary on Surface Access - Response Table [REP9-128]. No change is considered necessary and has not been proposed on that basis.

<p>Amendments to SoS directions to include specific example interventions</p>	<p>JLAs seeking following amendments in <u>underline</u>:</p> <p>The Secretary of State may approve the SAC Mitigation Action Plan or direct GAL to include in a revised SAC Mitigation Action Plan the Proposed Measures or such additional or alternative interventions it considers reasonably necessary to achieve the Mode share commitments having had regard to the materials submitted in accordance with paragraph 6.2.8 above including the representations submitted by the TFSG and any relevant evidence, data or information submitted by GAL. <u>It does not preclude the Secretary of State from directing other controls on factors affecting mode share at the Airport including passenger numbers, aircraft movements and/or parking numbers where the Secretary of State considers those interventions are reasonably necessary to achieve the mode share commitments.</u> GAL must implement the measures in the SAC Mitigation Action Plan approved by the Secretary of State unless otherwise agreed with the TFSG.</p>	<p>The Applicant has previously responded to this issue in its Deadline 9 Submission - 10.87 JLAs' Commentary on Surface Access - Response Table [REP9-128]. No change is considered necessary and has not been proposed on that basis.</p>
<p>Further Aspirations</p>	<p>JLAs seeking following amendments in <u>underline</u>:</p> <p>7.1.4 To achieve these aspirations, GAL expects to work in partnership with other organisations, particularly local authorities, public transport operators and other service providers. <u>GAL shall work with the TFSG to deliver an approach to meeting these targets.</u></p>	<p>The Applicant agrees with the principle of further engagement and support from third parties and has reflected this principle in amended drafting in the revised Surface Access Commitments.</p>

Amendments to LCWIP Route A Works so A-11 is included	JLAs seeking amendments to the definition.	<p>The Applicant has agreed to the investment of a minimum of £500,000 (five hundred thousand pounds) of the STF to contribute to the specific works detailed in this definition which directly relate to the Project.</p> <p>No change is considered necessary and has not been proposed on that basis.</p>
Amendments to Riverside Garden Park Shared Path	JLAs seeking amendments to the definition.	<p>As above. In addition, the Applicant considers the works should be designed in accordance with the DfT's Local Transport Note 1/20 (LTN 1/20) to ensure a consistent approach across the active travel works being delivered by the Applicant and those being delivered under this funding.</p>