

ANNEX 3
APPLICANT'S RESPONSE ON REQUIREMENT 20 (SURFACE ACCESS)

1. THE SOS' REQUEST

- 1.1 [SoS Consultation 1](#) sought comments on the ExA's revised form of requirement 20 (surface access).
- 1.2 In its [Dec Response](#), the Applicant submitted that the ExA's form of requirement was unjustified, unnecessary and unprecedented and proposed an alternative requirement that restricted passenger car parking as an alternative form of assurance that car travel to the airport would be constrained as necessary to ensure compliance with the Applicant's Surface Access Commitments ("**SACs**").
- 1.3 In the MTL, the SoS noted that the ExA's form of requirement "*would provide a realistic mechanism to ensure the effects assessed in the Applicant's ES are not exceeded at the start of dual runway operations*" (MTL 100) and confirmed that she was minded to accept that requirement instead of the Applicant's alternative. However, the SoS provided the Applicant, having sight of the ExAR, a "*final opportunity to provide views and/or propose alternative wording for requirement 20 that achieves the same level of assurance or provides evidence as to why this is not achievable*". The SoS welcomed the Applicant's "*views on any alternative considerations for securing the achievement of the mode share commitments*" (MTL 103).

2. SUMMARY OF THE APPLICANT'S POSITION

- 2.1 For reasons explained below, the Applicant does not consider requirement 20 in the form proposed by the ExA to meet the relevant tests of necessity or reasonableness.
- 2.2 As a preliminary point, the Applicant wishes to re-emphasise to the SoS that London Gatwick has consistently out-performed other major UK airports over the last 10-15 years, overseeing considerable growth in its sustainable transport mode share where other London airports have experienced lower or little improvement¹. This has been achieved alongside delivery of successive Airport Surface Access Strategy ("**ASAS**") objectives and targets scrutinised by an Airport Transport Forum ("**ATF**") (which London Gatwick has maintained for over 25 years), and by the Applicant's promotion and support of rail travel to and from the airport. This included a major upgrade to Gatwick Airport railway station that was completed in late 2023 in partnership with Network Rail, which significantly increased capacity and improved movement around the station for passengers. The Applicant continues to invest in sustainable travel through its existing Sustainable Transport Fund ("**STF**"), which has been running for over 15 years and had a value of over £2m in 2024.
- 2.3 The Applicant's objection to the ExA's recommended form of requirement 20 is not, therefore, borne out of any reluctance to embrace or prioritise sustainable transport methods or investment in these – the Applicant has a strong track record of setting, and achieving, ambitious targets in this regard, an approach that is consistent with both the NPPF and ANPS and which underlies the credibility of the Applicant's SACs.
- 2.4 The Applicant's objection derives from the fact that, having read the ExAR, it is clear that the ExA's recommendation with regard to requirement 20 is based on a number of misunderstandings of relevant issues. The Applicant's position on these issues is set out in

¹ As per the CAA's Departing Passenger Survey Reports (available at [REDACTED]), between 2014 - 2024 Gatwick has increased mode share by 3.7%, in comparison to Heathrow (0.4%), Stansted (decrease of 2.7%) and Luton (0.6%). Between 2009 – 2024, Gatwick has increased by 7.2%, in comparison to Heathrow (1.4%), Stansted (decrease of 0.4%) and Luton (decrease of 1.6%).

Section 3 of this Annex 3 under the following headings, outlining in each case the ExA's reasoning and the Applicant's response. In summary, the concerns are:

- 2.4.1 **Operation of the SACs:** Now with sight of the ExAR, the Applicant considers that the operation of its SACs (as amended at the end of the examination) has been misunderstood by the ExA (or they simply used a previous (old) version) and, therefore, also in the MTL. When properly considered, the SACs submitted at the end of the examination provide a robust and forward-looking method of monitoring and mitigating likely significant traffic effects of the Proposed Development and do not need to be supplemented with the ExA's proposed restrictions on growth.
- 2.4.2 **Unnecessary approach to mitigation:** The ExA's proposed requirement goes far beyond the Applicant's proportionate approach and seeks to impose an excessive restriction on the principal element of nationally significant infrastructure coming into use. This is an unnecessary approach to securing EIA mitigation with very significant financial consequences and it risks setting a harmful precedent, including for future aviation projects but also more widely, and thereby hinder the UK Government's pro-growth and pro-infrastructure agenda.
- 2.5 The Applicant provides additional commentary on the ExA's concerns regarding future baseline traffic levels in **Section 4** of this Annex 3.
- 2.6 Taking into account the above further submissions, the Applicant's proposed form of requirement set out in its submission dated 17 January 2025 (the "**Jan Response**") (repeated as **Appendix 1** to this Annex 3), through the mechanisms in the Applicant's SACs, already secures the achievement of the mode share commitments with sufficient certainty or, alternatively, a robust governance process to ensure appropriately tailored remedial action in circumstances where the annual monitoring indicates a trajectory towards potential non-achievement. There is no need to supplement the SACs with additional controls, the need for which is unfounded and which could have significant detrimental consequences for the deliverability of the northern runway. The Applicant invites the SoS to adopt this form of requirement 20 in reliance on the Applicant's further explanation set out in this Annex 3.
- 2.7 Should the SoS disagree and require additional constraints on the face of the DCO, the Applicant has prepared an alternative form of requirement 20 that mitigates the most concerning aspects of the ExA's drafting whilst adopting the intention and underlying rationale of that drafting (**Appendix 2** to this Annex 3). The Applicant has provided commentary on this drafting in **Section 5** of this Annex 3.

3. **CONCERNS WITH THE EXA'S JUSTIFICATION FOR ITS REQUIREMENT 20**

(A) Operation of the SACs

ExA's reasoning

- 3.1 The ExA's discussion of the SACs is at ExAR 5.3.52 – 5.3.68.
- 3.2 In relation to the overall effect of the SACs, the ExA recorded that "*[t]he Applicant's stance was that the proposed modal targets, reporting methods and necessary action plans secured by the SAC would ensure that Commitments 1 to 4 would be met*" but commented that "*[t]hese commitments would not directly control any additional traffic effects that may occur should the modal targets assessed in the transport modelling not be met.*" (ExAR 5.3.56). This was noted by the SoS at MTL 96.
- 3.3 On the timing for the monitoring and remedial measures in the SACs, the ExA cited a submission by the Applicant from Deadline 7 that the first Annual Monitoring Report ("**AMR**") would be produced "*no later than six months before the commencement of dual runway operations*" and then summarised the key stages of the monitoring process (ExAR 5.3.58).
- 3.4 The ExA then noted a concern of the JLAs that the timing of measures to "*address any failure to meet mode share targets at the third anniversary of the commencement of dual*

runway operations" would likely mean that *"the earliest that any action could be taken by the Secretary of State to limit ATMs would be 2036"* (ExAR 5.3.59). This was noted by the SoS at MTL 97.

- 3.5 The ExA concluded that, having *"considered all of the submissions made about the timing of the Applicant's mode share commitments in relation to first use of the elements of the Proposed Development... we share the concerns expressed by IPs that this could mean that any mitigation process could only start after first use of a particular element of the Proposed Development"* (ExAR 5.3.60). This led the ExA to propose its revised version of requirement 20, as noted by the SoS in MTL 98.

- 3.6 All of these conclusions of the ExA are wrong.

Applicant's response

- 3.7 The ExA's findings demonstrate their fundamental error in overlooking the updates made by the Applicant to the SACs at Deadline 8 and Deadline 9 of the examination to provide additional comfort as to the proactive and forward-looking nature of the SACs and the monitoring regime set out in Commitment 16 therein, in response to the JLAs' and other Interested Parties' concerns.
- 3.8 The SACs were updated at Deadline 8 (Version 5 - [\[REP8-053\]](#)) to include interim mode share commitments to be achieved by the first anniversary of CDRO of (i) a minimum of 54% of air passenger journeys to and from the airport to be made by public transport (Commitment 1A) and (ii) a minimum of 54% of airport staff journeys to and from the airport to be made by public transport, shared travel and active modes (Commitment 2A). This is acknowledged in ExAR 5.3.64 and was considered by the ExA not to address *"the underlying issues with control over the first use of elements of the Proposed Development"* (ExAR 5.3.65). However, the ExAR does not acknowledge that these changes were made after, and in part to address, the JLAs' concerns regarding the timing of remedial actions for failure to meet the mode share targets at the third anniversary of CDRO that the ExAR relies upon in ExAR 5.3.59 and the SoS endorses in MTL 97 as criticism of the SACs (per paragraph 3.4 above). Adding the interim mode share commitments supports earlier intervention, if needed, by the Transport Forum Steering Group ("**TFSG**") and (ultimately) SoS if the Applicant is not on track to meet its mode share commitments.
- 3.9 The SACs were further updated at Deadline 9 (Version 6 – [\[REP9-044\]](#)) to, inter alia, amend the trigger for the first AMR from *"no later than six months before the commencement of dual runway operations"* (as cited in ExAR 5.3.58) 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))"*, facilitating more than three years of monitoring before CDRO. This is not acknowledged in the ExAR and it is not apparent whether the ExA was cognisant of this amendment in reaching its conclusions on the SACs.
- 3.10 Taken together, these two amendments address the JLAs' and ExA's concerns in ExAR 5.3.56 – 5.3.60, noted above. For completeness, a further revision of the SACs was submitted with the Applicant's Jan Response that included further detail on the terms of reference for the TFSG.
- 3.11 With the revised trigger, the first AMR will be prepared before the commencement of taxiway reconfiguration works which are shown to be early on in the Indicative Construction Sequencing [\[REP8-051\]](#). There would then be at least 2 – 3 further AMRs (prepared annually) before the reconfiguration of the existing northern runway is complete and the airport is ready for CDRO. The SACs also sit in the context of the existing ASAS which provides for annual reporting of public transport mode share ("**PTMS**") to the ATF and quarterly reporting to the TFSG, which will also ensure that relevant stakeholders will be well-aware of the airport's PTMS trajectory substantially in advance of CDRO.
- 3.12 Per the terms of Commitment 16, in each AMR the Applicant will explain, inter alia, *"Any identified trends from the latest and previous data"* and *"The anticipated future trajectory of mode shares and progress towards achieving the committed mode shares"* (page 20,

SACs). These trajectories would be mapped against not only the mode share commitments for the third anniversary of CDRO (Commitments 1 and 2) but also the interim mode share commitments for the first anniversary of CDRO (Commitments 1A and 2A). Therefore, there will be at least three AMRs provided to the TFSG before CDRO in which the Applicant will report whether it is 'on track' to meet the interim 54% PTMS in Commitment 1A. The TFSG will be able to query and test this information with the Applicant and, as is currently the case with the ASAS Action Plan, challenge the Applicant on its progress with actions already committed. The TFSG would also be encouraged to recommend additional measures for the Applicant to adopt, including supporting their own interventions with funding through the STF.

- 3.13 Following each AMR, in consultation with the TFSG, an Action Plan will be agreed to support mitigation activities already committed under the SACs, thereby ensuring interventions to help achieve targets are implemented early and transparently with stakeholders (paragraph 6.2.6 of the SACs).
- 3.14 As per paragraph 6.2.7 of the SACs, if two successive AMRs suggest that, in the Applicant's or the TFSG's reasonable opinion, mode share commitments may not be met (having regard to any circumstances beyond the Applicant's control which may be responsible), the Applicant will prepare a SAC Mitigation Action Plan ("**SACMAP**") and provide this to the TFSG for approval. To emphasise, the TFSG will include as members the relevant highway authorities, National Highways, Network Rail and Crawley Borough Council (see Commitment 14C of [Version 7](#) of the SACs, submitted post-examination).
- 3.15 The TFSG will then consider, comment on and approve or reject the SACMAP, including proposing additional or alternative interventions to address the potential shortfall against the mode share commitments, in the context of any likely implications for the highway network (given that, as the Applicant has submitted before, a lower mode share does not necessarily result in additional adverse effects on the highway network – e.g. a lower total number of passengers with a lower mode share would not result in additional vehicular traffic and accordant effects).
- 3.16 To the extent that the Applicant and the TFSG cannot agree on interventions to be included in the SACMAP to address the potential non-compliance with the mode share commitments (measures that the Applicant would be obliged to subsequently implement), this must be referred to the SoS. Each stage of this process as set out in paragraphs 6.2.7 and 6.2.8 of the SACs has a strict time limit of 30 calendar days.
- 3.17 Per paragraph 6.2.9 of the SACs, the SoS may approve the SACMAP "*or direct GAL to include in a revised [SACMAP] the [measures proposed by the TFSG for inclusion] or such additional or alternative interventions it considers reasonably necessary to achieve the Mode share commitments... GAL must implement the measures in the [SACMAP] approved by the Secretary of State unless otherwise agreed with the TFSG.*"
- 3.18 Whilst the Applicant considers that it would require extremely strong justification and could only be necessary where trend data showed a significant divergence from a trajectory towards achieving the mode share commitments, it would be open to the SoS to consider imposing restrictions on CDRO whilst the Applicant took steps to address mode share.
- 3.19 It must be emphasised that all of the above process is triggered where AMRs suggest that the mode share commitments "*may not be met*" in future (paragraphs 6.2.6, 6.2.7 of the SACs), and thus the discussions and escalation of potential interventions occur prior to exceedances that may cause impacts. The regime is inherently forward-looking and proactive.
- 3.20 The ExA's principal concern, that mitigation for divergence from the mode shares may not be in place before CDRO, is therefore misplaced. If, for example, the first two AMRs showed that the Applicant was not 'on track' to achieve the 54% mode share in Commitment 1A, any reasonably necessary measures could be proposed by the TFSG (and, if required, imposed by the SoS) well ahead of CDRO and significantly ahead of the 2036 date (anticipated to be circa 5 years after CDRO) that the JLAs feared would be the earliest date for any SoS intervention as referenced in ExAR 5.3.59. Even if the first two

AMRs showed the Applicant to be 'on track' for the mode share commitments but there was a subsequent slowdown that was reflected in the subsequent AMRs, there would still be time to refer any proposed remedial measures to the SoS before CDRO. The Applicant's approach is clearly sufficient to meet the requirements of paragraphs 5.2.1 – 5.2.2 of the ANPS.

- 3.21 Contrary to the mischaracterisation of the SACs by the ExA as "*potentially retrospective mitigations*" (ExAR 5.3.79), the SACs (as submitted towards the end of the examination) ensure ample opportunity for intervention if sufficient progress is not being made by the Applicant towards the mode share commitments in the years leading up to CDRO (and, for the avoidance of doubt, thereafter). Such intervention would follow engagement with the relevant stakeholders comprising the members of the TFSG and with the SoS as ultimate arbiter (if required). The intervention could take the form of potentially far-reaching actions (provided they were reasonably necessary), contrary to the ExA's conclusion that the SACs "*would not directly control any additional traffic effects that may occur*" (ExAR 5.3.56). This comprehensive regime that builds on the Applicant's existing ASAS and engagement with stakeholders through the current TFSG is clearly preferable to the ExA's oversimplified single threshold requirement that would nullify any benefit of the Applicant's investment in the Proposed Development if the PTMS metric is not met by as little as 0.1% prior to CDRO, unless Crawley Borough Council (a local authority that is not a local highway authority) were to approve the divergence.

Overview table

- 3.22 By way of summary of the steps involved in the SAC monitoring and remedial process in Commitment 16, in support of the above, the Applicant has prepared the following overview table:

No.	Duty / step	Timeframe(s)	SAC para.
1.	GAL to prepare AMR	First AMR produced at or before commencement of Airfield Works and annually thereafter. AMRs provided to TFSG prior to publication so it can respond.	6.2.1 & 6.2.2
2.	In addition to AMR, GAL to provide reports to TFSG	Quarterly	6.2.3
3.	GAL to prepare Action Plan in consultation with the TFSG, for TFSG's approval	If one AMR shows that a PTMS commitment has not been met or, in GAL or the TFSG's reasonable opinion, may not be met. Can be prepared following each annual AMR.	6.2.6
4.	GAL to prepare an additional SAC Mitigation Action Plan (" SACMAP ") for the TFSG's approval	If two AMRs show that a PTMS commitment has not been met or, in GAL or the TFSG's reasonable opinion, may not be met. Provided to TFSG within 30 calendar days.	6.2.7
5.	TFSG to propose additional or alternative interventions it considers necessary to achieve the PTMS commitment (" Proposed Measures ")	Following receipt of the SACMAP	6.2.7
6.	GAL to incorporate Proposed Measures into the SACMAP or give reasons why it objects	Following receipt of the Proposed Measures	6.2.7

7.	<i>If GAL objects:</i> TFSG to give reasons for disagreeing with GAL's objections to TFSG's Proposed Measures	Within 30 days of receipt of GAL's responses to the Proposed Measures.	6.2.8
8.	GAL to submit SACMAP to Secretary of State with TFSG reasons for disagreeing with objection.	Within 30 days of receipt of TFSG's reasons.	6.2.8
9.	Secretary of State to approve / revise the SACMAP, including inserting any additional or alternative measures it considers reasonably necessary.	Following receipt of the referral by GAL.	6.2.9
10.	GAL to implement the approved or revised SACMAP.	Following the Secretary of State's decision.	6.2.11

(B) Unnecessary approach to mitigation

- 3.23 The Applicant is mindful of the SoS' direction not to repeat arguments previously made but considers that, now having had sight of the ExAR, it must supplement and emphasise points that it has previously made regarding the ExA's proposed form of requirement being an unjustified and unnecessary departure from best planning practice and policy.

ExA's reasoning

- 3.24 The purpose behind the ExA's form of requirement 20 is to impose a hard restriction preventing the principal element of nationally significant infrastructure for the Proposed Development being brought into use unless and until it is first demonstrated that the mode shares modelled as part of the Applicant's TA have been borne out in practice (see e.g. ExAR 5.3.62).
- 3.25 The ExA summarised its approach as follows: "*The rDCO the ExA is recommending would apply control over first use of some of the land use elements of the development to ensure the Applicant's predicted and assessed modelled mode shares accords with its assessment in ES Chapter 12...*" (ExAR 5.3.80).
- 3.26 The ExA concluded that the Applicant's proposed SACs (at least in the manner the ExA understood them to operate – see **Section 3(A)** above) would not "*necessarily control the likely significant effects to the envelope assessed in the Applicant's submission*" (ExAR 5.3.79).
- 3.27 The SoS is minded to agree with the ExA's justification, on the basis that "*their proposed wording offers more assurance that the traffic and transport effects in the ES are not significantly exceeded and therefore that the Proposed Development is acceptable in accordance with paragraph 5.22 of the ANPS*" (MTL 103).

Applicant's response

- 3.28 As the SoS will appreciate, the standard approach to EIA is for an applicant to assess the likely significant effects of the Proposed Development on the basis of information available to it at the time of the assessment and adopting a reasonable worst-case scenario to ensure that any likely significant effects are identified on a conservative basis. To the extent that likely significant effects are identified, an applicant secures measures and actions that seek to mitigate those effects. Here, the Applicant assessed likely significant effects from the Proposed Development in its TA and ES and secured appropriate mitigation through the SACs and the accordant requirement in the DCO (and, separately, the highway improvements). These measures are sufficient to meet the requirements of paragraphs 5.21 and 5.22 of the ANPS.
- 3.29 The ExA's proposed requirement 20 goes well beyond this to secure that one of the modelling inputs comprised in the Applicant's TA must be borne out in practice or else the core component of the Proposed Development cannot be brought into use.

- 3.30 The SACs have been designed to bring about the committed PTMS – e.g. by investment in bus and coach services (e.g. Commitment 7A), targeted use of passenger car parking charges (Commitment 9) and deployment of funds from the STF (Commitment 13). This comprehensive package of commitments underlies the overarching mode share commitments proposed by the Applicant and allows the Applicant to adopt measures in its control, hence why these measures have been used as modelling inputs and the resulting mode shares adopted in the SAC. However, it must be acknowledged that public transport usage and supply is not entirely within the Applicant's control, particularly in relation to rail services, timetables and fares. The Applicant has modelled transport networks and demand in accordance with WebTAG, which has informed the formulation of the SACs, but this does not provide absolute certainty as to future performance of third-party public transport services. Recognising that uncertainty, the SACs provide for monitoring and remedial actions where circumstances change (as described in **Section 3(A)** above) and the Applicant has set aside an additional Transport Mitigation Fund ("**TMF**") (of £10m value)² to support further interventions for unforeseen impacts. That is an appropriate and proportionate approach to ensuring achievement of the mode share commitments, rather than introducing a requirement that conditions, at least in part, the opening of the northern runway on the performance of third-party transport operators and could, indeed, create a ransom situation by consequence. No commercial developer could be confident investing significant amounts of capital constructing a consented project with a risk that it could be prevented from operating on this basis.
- 3.31 A constraint of the kind of the ExA's requirement is not supported or required by any national or local planning policy and the Applicant is not aware of any consented, nor operational, precedent for it in as strict and absolute terms as is proposed for this project³. Mitigating potential traffic impacts through clear performance requirements enforced through active monitoring and management (e.g. travel plans), in line with the Applicant's proposal for mode share commitments enforced through AMRs and Action Plans, is the common approach in infrastructure and development planning.
- 3.32 The Applicant commends again to the SoS its submissions commencing on page 25 of its Dec Response, where these matters were set out in further detail.
- 3.33 Endorsing the ExA's approach risks setting a detrimental precedent for future EIA development, both commercial and nationally significant infrastructure. The Applicant does not consider, and has not identified reasoning in the ExAR or MTL that suggests, that there are extraordinary reasons why the Proposed Development specifically should require an abnormal approach to traffic mitigation. Imposing the ExA's requirement would run contrary to the Government's pro-growth, pro-infrastructure agenda, and its focus on streamlining and speeding up the planning system and simplifying the delivery of consented schemes.
- 3.34 MTL 121 recognises that the TA has assessed junction capacities up to a level of traffic associated with 80.2mppa and the SoS *"is therefore minded to agree with the ExA that this provides sufficient comfort that there would not be severe residual impacts beyond those assessed in the ES and aligned with the controls proposed in the Order"*. The additional stress on the network is ascribed moderate negative weight by the ExA and SoS. This is the conclusion without the ExA's amended form of requirement 20. With the ExA's amendments, the SoS relays that *"additional control and greater certainty would be provided that impacts stay within those modelled in the Transport Assessment and so... traffic and transport matters reduce to a little negative weight"*.

² The TMF is secured as Commitment 14 in the SACs and in the **Section 106 Agreement** [\[REP10-019\]](#). The ExAR fails to note the existence or purpose of the TMF at all, or factor it into the assessment of weight to be ascribed to traffic impacts, despite its specific purpose being to support interventions in respect of unforeseen impacts of the Project.

³ It is noted that mode shares are a component of the Green Controlled Growth framework in the Luton DCO that was recently consented, but the Applicant notes that this framework still allows Luton Airport a degree of project growth with no increase in mode share compared to those already achieved at the time of application. Further, that DCO has not been implemented and the efficacy of that approach and its implications are as yet untested.

- 3.35 Imposing such an onerous restriction on the potential use of the northern runway merely to reduce the negative weight ascribed to residual traffic impacts where both the ExA and SoS acknowledge that the Applicant's form of control already avoids *"severe residual impacts beyond those assessed in the ES"* is clearly contrary to the criteria for requirements set out in paragraph 4.9 of the ANPS and cannot be justified.

Conclusion on ExA's justification for its requirement

- 3.36 Given the above, the SoS is respectfully invited to acknowledge the ExA's analysis but, with the benefit of the additional material provided above, instead conclude that the Applicant's SACs (as amended) are a sufficient and robust control to address the ExA's underlying concerns, and therefore adopt the form of requirement 20 included in the Applicant's Jan Response (set out in **Appendix 1** to this Annex 3).
- 3.37 Again, the Applicant stresses that this request is not borne out of any reluctance to embrace sustainable transport – as above the Applicant is an industry leader in that regard. The Applicant considers that its SACs are already a comprehensive and well-considered offering that addresses the criticisms levelled at them by the ExA in the ExAR upon detailed consideration of the SACs themselves and the submissions before the examination. In contrast, the ExA's overly simplistic form of requirement is not well-justified or drafted and risks preventing significant investment coming forward for the Proposed Development.

4. APPLICANT'S COMMENTS ON EXA'S POSITION ON FUTURE BASELINE

- 4.1 This Section sets out the Applicant's position regarding the remarks at MTL 91 to 94 in particular concerning the suggestion that the Applicant has potentially understated the impacts of the Proposed Development in the TA and/or underestimated the Proposed Development's effects in the ES. These remarks contributed to the ExA's conclusion that its form of requirement 20 was required.

The SoS' position

- 4.2 The SoS is minded to agree with the ExA's concerns regarding the transport modelling for the future baseline and Proposed Development scenarios and the implications for the submitted assessments.
- 4.3 She states at MTL 93 that: *"the Secretary of State recognises that the ES only considers the effects created by the difference in traffic levels between a future baseline, and a Proposed Development scenario, unlike the Transport Assessment which fully analyses network capacity and operation for both scenarios"*.
- 4.4 She is minded to agree with the ExA's concerns regarding future traffic levels actually being less than those used for the future baseline scenario and those used to inform the assessment in the ES. She states further at MTL 94 that:

"This assessment may underestimate effects associated with traffic resulting from the Proposed Development and because of a likely lower starting point for the future baseline creating a greater gap to the Proposed Development scenario than that assessed by the ES [ER 5.3.50]. This is because the ExA have concluded on the evidence provided that the likely outcome by 2047 would be in the region of 60 or 61 mppa in the future baseline scenario and 76 to 77 mppa for the Proposed Development scenario, which is a difference of 16 to 17 mppa as opposed to the Applicant's prediction of 13 mppa [ER 4.5.5 - 4.5.9]. The Secretary of State notes that the ExA were looking to understand the impact of all airport traffic growth against all non-airport traffic growth on the whole network and to better understand the levels of traffic growth associated with the passenger growth of 26.3mppa from the present day but were not provided with the necessary information to do this [ER 5.3.39]. The ExA therefore concluded that that there is still a lack of understanding as to how much of the traffic in the baseline scenario is related to airport activity and that this, together with no appropriate justification or assessment of the future baseline

growth, means the traffic effects in the ES may have also been underestimated [ER 5.3.51]. The Secretary of State is minded to agree with this."

Applicant's position

- 4.5 The Applicant does not disagree with the SoS' overall conclusions reached at MTL 121 that *"there would not be severe residual impacts beyond those assessed in the ES and aligned with the controls proposed in the Order"* but the Applicant wishes to correct the misunderstanding that the Applicant has potentially understated or underestimated the impacts assessed in the ES as a result of the difference between the future baseline and Proposed Development scenarios. In particular, the Applicant asks the SoS to note the following:
- 4.5.1 In respect of the ExA's conclusion that the likely difference by 2047 between the future baseline scenario and the Proposed Development scenario would be 16 to 17 mppa as opposed to the Applicant's prediction of 13 mppa, the Applicant notes that this is within the Applicant's range of alternative forecasts considered in the **Response to Rule 17 Letter – Future Baseline Sensitivity Analysis [REP7-073]** submitted into the examination at Deadline 7. In particular, the Applicant notes that the difference between the future baseline scenario and the Proposed Development scenario considered by the ExA is in fact less than the difference in the York Aviation forecasts⁴ (both the York Low case and the York High case where the difference is 18.0 mppa and 19.7 mppa, respectively) and which is assessed by the Applicant in the **Response to Rule 17 Letter – Future Baseline Sensitivity Analysis [REP7-073]**. The ExA, given the evidence before it, accepted some but not all of the York Aviation position, and the difference it considered fell within the extent of difference in passengers advanced by York Aviation and assessed by the Applicant.
- 4.5.2 As the Applicant explained in the **Response to Rule 17 Letter – Future Baseline Sensitivity Analysis [REP7-073]**, it identified a number of shortcomings in the basis upon which York Aviation advanced its sensitivities, however, the Applicant's Response went on to demonstrate that, even on the higher delta suggested by York Aviation (which was not accepted by the ExA), the conclusion was that the increased delta between the future baseline and Proposed Development forecasts (by comparison to the equivalent forecasts used in the ES) would not lead to new or additional significant environmental effects.
- 4.6 Section 5 of the **Response to Rule 17 Letter – Future Baseline Sensitivity Analysis [REP7-073]** addresses other relevant environmental topics including Air Quality, Ecology and HRA, Greenhouse Gas, Health and Wellbeing, Landscape, Townscape and Visual Resources, Noise and Vibration and Socio-Economics and concludes that no change or no material change would arise to the conclusions presented in the ES – i.e. even with that greater delta, there would be no additional significant effects.
- 4.7 Similarly, in terms of the potential for greater transport related effects in those scenarios, the sensitivity assessment reached the same conclusion. The ExA has expressed some concern (in particular at ExAR 5.3.11-5.3.13) that the Traffic and Transport assessment set out in section 5.10 of the Applicant's **Response to Rule 17 Letter – Future Baseline Sensitivity Analysis [REP7-073]** was qualitative and there was no quantitative assessment of the possible changes of effects. Whilst a qualitative review was indeed carried out, this was based on a robust quantitative background. In particular:
- 4.7.1 Table 5.10.1 shows the percentage changes in the June busy day future baseline and 'with Project' passenger demand for each of the sensitivity scenarios when compared to the core scenario upon which the conclusions of the ES are based;

⁴ Prepared on behalf of the Joint Local Authorities (JLAs) and submitted by the JLAs at Deadline 4 in their **Rule 17 Response [REP4-049]**

- 4.7.2 Although paragraph 5.10.15 notes that *“it has not been possible to undertake full strategic transport modelling analysis for the sensitivity scenarios”* it goes on to confirm that *“instead the assessment considers factored traffic and public transport flows for the June peak day, based on those from the core strategic modelling....”*;
- 4.7.3 Tables 5.10.2 and 5.10.6, in considering effects of the York Low and York High scenarios respectively on severance and driver delay, explicitly reference information in **Transport Assessment Annex B: Strategic Transport Modelling Report** [APP-260] and the percentage increase in passenger demand (Table 5.10.1 of [REP7-073]) to derive the likely number of additional vehicles implied by each of the York scenarios;
- 4.7.4 In relation to severance, Tables 5.10.2 and 5.10.6 consider the typical distribution of traffic and change caused by the York scenarios, to identify the likely number of additional vehicles on the local road network, which provides the basis for the conclusions related to severance;
- 4.7.5 In relation to driver delay, Tables 5.10.2 and 5.10.6 consider the likely number of additional vehicles on both the local road network and the strategic road network ("SRN"). They also refer to the outcomes of other precedent reports which were based on detailed quantitative analysis, to provide context for considering whether the number of additional vehicles would alter the scale of effects; and
- 4.7.6 Tables 5.10.3 -5.10.5 show the expected change in seated load factors on trains, and in station entries and exits, in the York Low scenario, based on the factors identified in Table 5.10.1. These changes are used to inform the conclusions reached in Tables 5.10.2 in respect of crowding on rail services and in Gatwick Airport station. The same is done for the York High scenario in Tables 5.10.7-5.10.9 with the conclusion in relation to effects reported in Table 5.10.6).
- 4.8 The Applicant notes that the conclusions reached in respect of all three scenarios based on both qualitative and quantitative assessments were that no new or different significant Traffic and Transport effects are expected by comparison to that reported in the core scenario in the Application.
- 4.9 Therefore, whilst the Applicant does not agree that a bigger delta between the future baseline and the Project forecasts is likely, it should be helpful to know that the potential for greater or different significant environmental effects from such a delta has been assessed in material before the examination and no greater or different likely significant effects were identified. Notably, the local authorities did not disagree with those conclusions.
- 4.10 Therefore, whilst the Applicant agrees with the ExA/SoS' conclusions that there would not be scope for residual impacts greater than those set out in the ES/TA, it is important to note that information has been produced and submitted into the examination to underpin that conclusion. It is not fair or accurate to suggest otherwise. The Applicant would ask that the SoS take account of this **Section 4** in her final decision letter.

5. **APPLICANT'S ALTERNATIVE REQUIREMENT**

- 5.1 Given the reasoning set out in **Section 3** above, the Applicant considers that the SoS must carefully consider the reasonableness and necessity of imposing a requirement in the form of the ExA's drafting. Any such requirement must satisfy the criteria in paragraph 4.9 of the ANPS and the Applicant would respectfully ask the SoS to take into account the points raised by the Applicant above in reaching a conclusion on that. The Applicant's primary position is that the form of requirement 20 included in **Appendix 1** to this Annex 3 should be included in the DCO.
- 5.2 If the SoS considers that an additional constraint on the face of the DCO is reasonable and necessary, supported by evidence and mindful of the detrimental precedent that would be set, the Applicant requests that the precise form of requirement be as proposed by the Applicant in **Appendix 2** to this Annex 3 rather than the ExA's overly simplistic version.

- 5.3 In outline, the Applicant's proposed requirement functions as follows:
- 5.3.1 Sub-paragraph (1) requires the Applicant to comply with the surface access commitments from the date on which the authorised development begins, unless otherwise agreed with Network Rail (in relation to the rail enhancement in Commitments 14A and 14B) or Crawley Borough Council and National Highways in relation to the other surface access commitments. This is in line with the ExA's proposal, amended as requested by Network Rail in its [response](#) dated 19 December 2024 to SoS Consultation 1.
 - 5.3.2 Sub-paragraph (2) prevents CDRO and first use of Pier 7 unless and until a public transport mode share has been met. This is the same provision as was included in the ExA's form of requirement, with minor rewording for clarity of operation. The ability for CBC to approve a departure from this is retained from the ExA's drafting.
 - 5.3.3 To this the Applicant has added new sub-paragraphs (3) and (4). These are alternative routes to 'unlock' CDRO where the specific PTMS percentage is not achieved in the relevant timescale:
 - (A) Sub-paragraph (3) 'unlocks' CDRO and first use of Pier 7 where the AMR before anticipated CDRO shows that in the monitored year there were fewer than 24 million airport passenger vehicle trips to and from the airport. The justification for this as a secondary test is set out from paragraph 5.4 below.
 - (B) Sub-paragraph (4) 'unlocks' CDRO and first use of Pier 7 once the national highway works have been constructed and are open for use, these being the Proposed Development's primary mitigation against potential traffic impacts, and which are specifically designed to provide significant additional highway capacity to accommodate additional traffic from the use of the Proposed Development as well as non-airport traffic growth during the assessment period. The justification for this is set out from paragraph 5.10 below.

Sub-paragraph (3) - the numerical vehicle threshold

- 5.4 The impact that the ExA is seeking to control by including a PTMS commitment in its requirement 20 is vehicular traffic, i.e. cars on the road travelling to and from the airport – see e.g. ExAR 5.3.61 and 5.3.62.
- 5.5 However, the metric it has selected, PTMS, will not always directly correlate to that harm. If overall passenger numbers are lower than forecast, whilst PTMS may also be lower than anticipated there would still be fewer cars on the road travelling to and from the airport than were modelled in the TA and thus the number of cars would be lower than the absolute number that was concluded in the TA and ES to not cause significant adverse effects. It follows that this number represents a reliable 'ceiling' of vehicle numbers, any lesser number to which can be reliably determined to not have the potential to cause any new or different significant adverse effects. Therefore, it is appropriate that any 'hard' restriction on opening the northern runway allows for a situation where the PTMS has been missed but the number of cars on the road travelling to and from the airport, and therefore traffic impacts, do not exceed those that have been modelled and confirmed to be acceptable.
- 5.6 Sub-paragraph (3) of the Applicant's proposed requirement allows CDRO and first use of Pier 7 where the total number of cars on the road travelling to and from the airport does not exceed the modelled figure of cars on the road in the TA at the same point in time as the ExA has used in selecting the 54% PTMS in its form of requirement 20 (i.e. at CDRO). Doing so is fully aligned with the concern sitting behind the ExA's requirement and the SoS' intention stated in MTL 100 to *"ensure the effects assessed in the Applicant's ES are not exceeded at the start of dual runway operations"*.

- 5.7 The figure of 24 million annual air passenger vehicle trips ("**AAPVT**")⁵ calculated by the Applicant is derived from the Applicant's TA and ES. The modelled year, 2029, from which this figure is derived is consciously the same year from which the ExA derived its 54% PTMS for its form of requirement 20, to ensure consistency throughout the limbs of the revised requirement 20 and ensure that sub-paragraph (3) secures alignment with the same assessed level of traffic as the ExA's PTMS. 2029 is also one of the Applicant's modelled years for its TA, ensuring that the figure is based on full data rather than needing to extrapolate from a modelled year to an alternative point in time.
- 5.8 The road traffic count data included within the AMRs produced pursuant to the SACs will be used to provide the number of annual APVT travelling to and from the airport for a monitored year.
- 5.9 The Applicant has calculated the figure of 24 million AAPVT by the following process, working from **Transport Assessment Annex B – Strategic Transport Modelling Report [APP-260]**:
- 5.9.1 'Table 38: Market Mix. With Project' shows the number of annual passengers making landside trips (i.e. excluding transfer passengers) in 2029 to be 58.6 million (third row, fourth column), **(A)**.

Table 38: Market Mix. With Project

	Model 2016 Average weekday	Model 2016 Average 7-day	ICF 2019 Base	ICF 2029 With Project	ICF 2032 With Project	ICF 2038 With Project	ICF 2047 With Project
All pax	42.9	43.5	46.6	61.3	72.3	75.6	80.2
Transfer pax	1.7	1.7	1.8	2.7	2.7	2.7	2.9
Excl transfer pax	41.2	41.7	44.8	58.6	69.6	72.9	77.3
UKB	10%	9%	9%	9%	8%	8%	8%
UKL	65%	67%	67%	67%	67%	67%	67%
NUKB	6%	5%	5%	5%	5%	5%	5%
NUKL	19%	20%	20%	20%	20%	20%	20%
Total	100%	100%	100%	100%	100%	100%	100%
Business	16%	14%	14%	13%	13%	13%	13%
Non-UK	25%	25%	24%	25%	25%	25%	25%

- 5.9.2 Applying the annualised mode share information for 2029 in 'Table 135: With Project air passenger surface access mode shares, Annual average day'⁶ allows **(A)** to be split into annual person trips for each car-based mode (Park & Fly (17%), Kiss & Fly (12%), car rental (2%) and taxi (15%) = 46% total).
- 5.9.3 $46\% \times 58.6 \text{ mppa} = 27 \text{ mppa}$, **(B)**.

Table 135: With Project air passenger surface access mode shares, Annual average day

	Base 16	Base 18/19	Future baseline 29	Future baseline 32	Future baseline 38	Future baseline 47
Car (park & fly)	23%	21%	17%	16%	16%	15%
Car (kiss & fly)	15%	14%	12%	12%	12%	11%
Car rental	3%	2%	2%	2%	2%	2%
Taxi	16%	16%	15%	15%	15%	15%
Rail	37%	40%	46%	46%	47%	47%
Bus/coach	6%	6%	9%	9%	9%	9%
TOTAL	100%	100%	100%	100%	100%	100%

⁵ This meaning journeys made by air passengers using car-based modes (car, taxi and car rental). This includes passengers using drop off/pick up zones, on-airport car parks and off-airport car parks that are subject to annual counts to determine the number of trips.

⁶ Please note that the table contains "With Project" mode share figures in accordance with modelling (as described in Section 12 of **Transport Assessment Annex B – Strategic Transport Modelling Report [APP-260]**). The column headings were incorrectly labelled "Future Baseline" in the document.

5.9.4 This number of annual person trips for car-based modes, **(B)**, can then be converted to AAPVT as follows:

- (A) Applying an average occupancy value as shown in 'Table 32: Average car occupancies, weekday, 2016' (1.70 persons per vehicle) to provide the annual vehicle trips associated with annual person trips.
- (B) $27 \text{ mppa} / 1.70 = 15.9 \text{ m vehicle trips}$.

Table 32: Average car occupancies, weekday, 2016

Month	Occupancy
January	1.62
February	1.67
March	1.66
April	1.70
May	1.73
June	1.70
July	1.74
August	1.75
September	1.71
October	1.71
November	1.64
December	1.67
Average	1.70

- (C) Applying adjustments to account for empty leg journeys (vehicles empty on one leg of the journey) for Kiss & Fly and taxis.
 - (1) Kiss & Fly: these are all doubled to reflect all passengers generate an empty leg when the car is driven to and from the airport – $(12\% / 46\% \times 15.9 \text{ m} \times 2 \text{ trips} = 8.3 \text{ m trips})$.
 - (2) Taxis: these are also driven to and from the airport but are multiplied by 1.75 to reflect that 25% of taxis remain at Gatwick and collect another journey (see Table 52: 'Taxi assumptions') – $(15\% / 46\% \times 15.9 \text{ m} \times 1.75 \text{ trips} = 9.1 \text{ m trips})$.

Table 52: Taxi assumptions

Empty leg	All future year scenarios
Return empty to where it came from	50%
Empty to taxi holding area at the same terminal (to wait in rank/holding area)	20%
Empty to taxi holding area at the other terminal (to wait in rank/holding area)	5%
Empty to Horley (to depot/rank, another fare etc.)	10%
Empty to Crawley (to depot/rank, another fare etc.)	15%
TOTAL	100%

- (3) Park & Fly and Car Rental: these do not have an empty leg so remain unadjusted – $(17\% + 2\%) / 46\% \times 15.9 \text{ m trips} = 6.6 \text{ m trips}$
- (D) Summing the number of annual passenger vehicle trips for each sub-mode to give a total AAPVT for car-based modes $(8.3 \text{ m} + 9.1 \text{ m} + 6.6 \text{ m} = \underline{\underline{24 \text{ m}}})$.

Sub-paragraph (4) – highway opening

5.10 As above, it is understood that the ExA and SoS' stated aim with requirement 20 is to ensure that the Applicant is performing consistently with its assessment and not causing significant traffic impacts on the local highway network before growth through the

use of the northern runway. Performing a check against the airport's PTMS or equivalent absolute number of vehicles travelling to and from the airport before allowing CDRO is a way of achieving that aim. However, a large component of the Proposed Development is major highway works (themselves an NSIP in their own right) whose purpose is the mitigation of traffic impacts, and which will provide significant additional capacity on the network for both airport and non-airport related traffic. Therefore, the Applicant proposes in sub-paragraph (4), as an additional mode of 'unlocking' CDRO, the completion of the national highway works.

- 5.11 Both the Applicant's and ExA's draft DCO requires the delivery of the national highway works by the third anniversary of CDRO (see requirement 6(3) (national highway works)). This therefore envisages a period of c. three years of with-Project airport growth before the national highway works are completed and their additional capacity is delivered. This was accepted by National Highways and the ExA (with their revised requirement 20). In circumstances where the airport's operation is not yet aligned with its PTMS / numerical vehicle limits at the point of anticipated CDRO, the Applicant would propose to delay CDRO unless/until those national highway works have been delivered (in effect, delaying three years of growth until additional highway capacity has been provided). At the point of completion of the highway works, it is clear that sufficient additional highway capacity will have been provided so as to avoid congestion and any adverse impact on the highway network, such that the growth facilitated by use of the northern runway can be unlocked. It is also important to note that this delay will offer a further period for additional AMRs, Action Plans, SACMAPs and remedial measures to be implemented through the SACs (as detailed above). This addition will therefore ensure that the assessed traffic impacts are not exceeded at the start of dual runway operations.
- 5.12 The inclusion of this provision will also have the ancillary effect of incentivising the Applicant to bring forward the highway works where it is not otherwise able to commence dual runway operations.

Additional traffic 'headroom' generated by the opening of the national highway works

- 5.13 The assessment of the performance of the highway network with the Proposed Development in **ES Chapter 12: Traffic and Transport** [REP3-016] and the **Transport Assessment** [REP3-058] considers a horizon of 2047, 15 years after the anticipated opening of the national highway works. This assessment demonstrates that the network would perform satisfactorily in that year, on the basis modelled, which includes all assessed Project traffic growth as well as additional non-airport traffic growth.
- 5.14 Therefore, even in a scenario where PTMS is lower than anticipated and the absolute vehicle number travelling to the airport is higher than modelled (which the Applicant stresses is a highly unlikely scenario), opening the national highway works unlocks significant additional capacity for vehicles on the road, including the highway capacity required for all growth envisaged by the Project and also background non-airport traffic, in accordance with the TA. Completing these works should therefore unlock CDRO under requirement 20.
- 5.15 This limb does not provide the Applicant with the ability to increase vehicle trips without constraint, because the SACs require the Applicant to achieve a PTMS of 54% and 55% by the first and third anniversaries of CDRO respectively, with the trajectory towards those commitments being tracked in AMRs that are produced from the commencement of the airfield works several years prior to CDRO (as discussed in **Section 3(A)** above). This means that, in a scenario where the Applicant relies upon sub-paragraph (4) for CDRO, it will already be taking steps to increase its PTMS and, to the extent there is more that can reasonably be done, the TFSG (and if necessary SoS) will be mandating this by exercising their powers in the SACs, including in response to the additional AMRs that will be prepared in the intervening years whilst CDRO is delayed. In a scenario where sub-paragraph (4) is required, CDRO will have been delayed by potentially circa three years from its original anticipated date (as the national highway works are currently anticipated to be completed by the third year post-CDRO), serving as a substantial incentive for the

Applicant to commit even greater resources and efforts to measures to achieve its PTMS commitments and offering further opportunities for intervention by the TFSG and SoS.

- 5.16 Completion of the national highway works would therefore provide capacity to accommodate growth in AAPVT related to the Project in the years immediately after CDRO, even if immediately prior to CDRO the target PTMS had not been achieved. Before and after CDRO, the requirements of the SACs would guide PTMS back towards its required trajectory and ensure that total traffic load on the highway network in the medium to long term would be in line with the Applicant's modelling.

Sub-paragraph (5) – controls on first use of other components of development

- 5.17 The Applicant does not understand the justification for the components of the Proposed Development that the ExA has selected for the other first use restrictions in sub-paragraphs (2)(b) and (c) of the ExA's proposed requirement 20, nor their connection to the commitments that the ExA has specified.
- 5.18 The ExA proposes that first use of Work No. 28(a) (hotel on Car Park H site) and Work No. 30(b) (Car Park Y) be prevented until a 55% PTMS is achieved. However, both works will have a negligible impact on the amount of overall vehicular traffic travelling to the airport and it is not apparent to the Applicant why their use must be tied to achieving a particular PTMS.
- 5.19 Likewise, the vast majority of airport staff will work on-airport and/or in existing offices, rather than in Work No. 28(b) (office on Car Park H site) so these works will have a negligible impact on the amount of employee vehicular traffic travelling to the airport and it is not apparent why first use of that development must only be permitted once car use by staff is reduced to 44.9%.
- 5.20 The ExAR does not provide any explanation for this and the Applicant considers that that inclusion of these limbs is contrary to the ANPS for being unnecessary, irrelevant to the development cited and unreasonable. However, in an effort to align its proposed requirement with the ExA's to the fullest reasonable extent, the Applicant proposes that first use of these three works be prevented until the national highway works are completed (sub-paragraph (5) of the Applicant's draft requirement). As above, these works will provide significant traffic headroom on the highway network and therefore, in tandem with measures being implemented and taking effect to ensure compliance with the relevant PTMS commitments pursuant to the SACs, should offer equivalent assurance to the SoS as the ExA's proposal.

Conclusion

- 5.21 In the event that the SoS cannot conclude that the SACs alone offer sufficient assurance, the Applicant's proposed form of requirement should be adopted over the ExA's. This constitutes an alternative but equivalent proposal as invited by the SoS in her MTL and has been carefully designed by the Applicant to *"ensure the effects assessed in the Applicant's ES are not exceeded at the start of dual runway operations"* (MTL 100). This proposal is compliant with (and indeed greatly exceeds) the requirements of policy and goes far beyond standard approaches to traffic mitigation in planning and DCO consents.
- 5.22 The Applicant and its shareholders will not be able to justify investment in the construction of the Proposed Development at a cost of over £2bn if the Applicant were not permitted to operate the northern runway even where it had delivered its highway mitigation works and/or vehicular traffic on the network was less than had been modelled as acceptable in the TA/ES. To reflect this commercial reality, the Applicant respectfully requests that the SoS adopt its proposed form of requirement.

APPENDIX 1 TO ANNEX 3
APPLICANT'S PRIMARY PROPOSED REQUIREMENT 20 (SURFACE ACCESS)

20. Surface access

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:

- (a) Network Rail Infrastructure Limited in respect of commitments 14A and 14B; or
- (b) CBC and National Highways (in consultation with Surrey County Council and West Sussex County Council) in respect of any other commitment or matter.

APPENDIX 2 TO ANNEX 3
APPLICANT'S ALTERNATIVE PROPOSED REQUIREMENT 20 (SURFACE ACCESS)

20. Surface access

(1) 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—

(a) Network Rail Infrastructure Limited in respect of commitments 14A and 14B; or

(b) CBC and National Highways (in consultation with Surrey County Council and West Sussex County Council) in respect of any other commitment or matter.

(2) Subject to sub-paragraphs (3) and (4), the commencement of dual runway operations and/or first use of Work No. 6(a) (Pier 7) must not take place unless and until the annual monitoring report for the year immediately prior demonstrates that at least 54% of airport passengers' journeys to and from the airport were by public transport, unless otherwise agreed by CBC.

(3) Commencement of dual runway operations and/or first use of Work No. 6(a) (Pier 7) may take place notwithstanding sub-paragraph (2) if the annual monitoring report for the year immediately prior shows that in the monitored year there were fewer than 24 million airport passenger vehicle trips travelling to and from the airport.

(4) Commencement of dual runway operations and/or first use of Work No. 6(a) (Pier 7) may take place notwithstanding sub-paragraph (2) once the undertaker has completed construction of the national highway works and made an application to National Highways for a provisional certificate pursuant to paragraph 10 of Part 3 of Schedule 9 in respect of those works.

(5) First use of Work Nos. 28(a) (hotel on Car Park H site), 28(b) (office on Car Park H site) and 30(b) (Car Park Y) must not take place until the undertaker has completed construction of the national highway works and made an application to National Highways for a provisional certificate pursuant to paragraph 10 of Part 3 of Schedule 9 in respect of those works.

(6) In this requirement—

(a) "annual monitoring report" has the same meaning as defined in the surface access commitments; and

(b) "vehicle trips" means journeys using car-based modes (car, taxi and car rental) and includes passengers using drop off/pick up zones, on-airport car parks and off-airport car parks that are subject to annual counts to determine the number of trips.