

Heathrow Expansion DCO Consultation Response

Environmentally managed growth

September 2019

1. Overview

- 1.1 This paper sets out the Mayor's response on Environmentally Managed Growth to the statutory consultation by Heathrow Airport Limited (HAL) on its expansion proposals.
- 1.2 Should expansion go ahead HAL would need to propose methods for managing, monitoring and, if necessary, mitigating its environmental harm. However Environmentally Managed Growth (EMG) can only achieve its ends as part of a wider package of environmental and operational controls aimed at delivering Good Growth. We do not accept that it is a suitable alternative to a cap on the numbers of flights and/or passengers, or a catch-all solution to resolving the environmental harm arising from the third runway.
- 1.3 Environmentally Managed Growth is a complex process and needs to be very carefully designed. Robust monitoring, proper independent oversight with the ability to impose meaningful sanctions, and a clear plan to prevent failure are all required to ensure that an Environmentally Managed Growth approach has any chance of success.
- 1.4 A badly constructed, unenforceable EMG framework can be worse than no framework at all if it provides no effective restriction on the airport's operations and impacts.
- 1.5 The detail presented by Heathrow, such as it is, is not only wholly inadequate to the task but has the potential to deliver worse environmental outcomes in the short, medium and long terms.

2. Environmentally Managed Growth is not an alternative to a cap

- 2.1 The concept of "Environmentally Managed Growth" (EMG) is not a robust alternative to an overall cap on the scale of development. Rather the two types of control are complementary, as shown by the example of Schiphol airport given in the consultation document.
- 2.2 The imposition of a cap would not frustrate the policy in the ANPS to deliver "at least 260,000 additional air traffic movements"; caps can be, and in practice are, raised by subsequent planning decisions.
- 2.3 Not only that but the ANPS is clear that the likely significant impacts of the airport at all stages of the project should be assessed in the environmental impact assessment, it is unclear how this could ever be possible for an uncapped development.

2.4 The value of a cap is fourfold:

- A cap is clear and easily measurable,
- A cap provides decision makers and stakeholders with an assurance that the maximum impacts of the third runway can be fully understood at the planning stage, including those impacts which are not included within the EMG framework.
- In the event that the EMG framework either does not work in practice or is found to have unintentionally missed a significant impact a cap provides a robust and transparent fallback to protect local residents and the environment.
- A cap provides a future point after which plans for any further expansion can be publicly examined and rigorously considered. For stakeholders the benefits of examining further growth at intervals are clear but it is also beneficial for the operator as it would not only allow them to demonstrate what has worked or not worked in previous rounds of expansion but also to make the case for any new measures they may need to take, such as the provision of new rail infrastructure or adaptations needed to take advantage of new aircraft technology.

2.5 HAL is right to observe that operational choices can have a substantial effect on the performance of an airport even if it is operating within a cap.

2.6 In our view the value of an approach that attempts to environmentally manage growth is to ensure that these operational choices are made with a view to producing the most environmental benefit throughout the lifetime of the airport, a process that is complementary to harder controls such as a cap or other limits set in the DCO.

2.7 In addition, it is not clear if an uncapped airport is consistent with section 23 of the Planning Act 2008. That section makes it clear that increases in the permitted use or capacity of at least 10mppa should be subject to development consent. It would subvert the Planning Act 2008 by allowing an infinite level of passenger growth without going through the development consent procedure again.

2.8 MHCLG guidance in relation to material changes to DCOs is clear that:

“A change should be treated as material if it would require an updated Environmental Statement (from that at the time the original Development Consent Order was made) to take account of new, or materially different, likely significant effects on the environment.

There may be cases where the change proposed to a Development Consent Order will result in likely significant effects on the environment that are entirely positive. In these cases, an updated Environmental Statement will still be required and the application will need to be treated as a material change in order to ensure that the regulatory requirements on Environmental Impact Assessment are met.”

2.9 These extracts make clear that providing an environmental envelope cannot be permitted if the effects are different from what is reported in the Environmental

Statement without promoting a material change or seeking some other appropriate consent. Through the EMG HAL, therefore, appears to be seeking to avoid the need for any future consents or scrutiny of future growth.

3. Conditions for a credible Environmentally Managed Growth approach.

- 3.1 Ongoing management of the environmental impacts of a large and complex piece of infrastructure such as an airport is itself necessarily complex and contingent on getting the detail right. The approach set out in the consultation is, by contrast, very light on detail and in places somewhat crude.
- 3.2 In order to be effective, the objective of the EMG needs to be clear. In our view the objectives should be:
 - to manage the growth of the airport, within the cap, to ensure the best possible environmental outcome,
 - to provide an effective mechanism to prevent foreseeable negative impacts, and
 - to remove unforeseen impacts on the environment as effectively and rapidly as possible.
- 3.3 As a starting point for any EMG approach there needs to be a clear link between the EMG and the effects of the airport predicted in the Environmental Impact Assessment: we would expect the effects predicted in the EIA to be the starting point for developing envelopes, limits or other controls in the EMG.
- 3.4 Any EMG also needs to consider in sufficient detail what elements are needed to ensure that the scheme has the greatest likelihood of successful implementation, as a minimum this should include:
 - Meaningful measures of the success or otherwise of the scheme, based on robust objective data collection and monitoring.
 - Clearly identified mechanisms to control and reduce or prevent impacts. They control mechanisms must not only be within the power of the operator to use but also likely to succeed.
 - Control mechanisms also need to be appropriate to the harm and the source of the harm.
 - Effective, genuinely independent oversight of the scheme potentially including the ability to impose effective sanctions on the operator in the event that envelopes are being, or are demonstrably likely to be, breached, rather than the current proposals that allow breaches to persist while the process is gone through stage by stage.
 - Enforceable requirements, both to underpin the independent oversight and to enable legal action to be taken if the oversight mechanism fails.

- Processes to continuously review and identify any new or materially different impacts which will need to be addressed by the operator.

3.5 A poorly designed or inadequately executed EMG runs a significant danger of becoming simply a talking shop, or worse acting as a barrier to effective scrutiny or control of the airport.

4. Impact envelopes.

4.1 The EMG approach can only have a chance of working if the limits or standards are appropriate to the task of controlling expansion within environmentally acceptable parameters. The concept of an envelope is used for all four of the areas covered, but it is not obviously apparent that this idea, borrowed from noise control, is appropriate to all areas.

4.2 Progressively tightening standards are suggested for noise, although the detail is not set out. Only a single step to tighten the envelope is suggested for surface access and no future changes for either air quality or carbon. It is not clear why different impacts should be treated differently in the EMG and for carbon in particular it would seem necessary to continually shrink the envelope if the national goal of a net zero carbon economy is to be achieved.

4.3 The detail of the envelope design determines whether the EMG will be able to secure improved environmental conditions, merely maintain impacts at a static level or enable the level of harm to increase over time. We have addressed the detailed proposals for each envelope in the topic specific papers, but the key concerns with each envelope are:

- Noise: The commitment to “share” the benefits of quieter planes is welcomed but needs to be clear and committed to up front – will 50% of the benefits go to residents? Or 10%? This commitment should be set out in the context of 100% of the benefits of quieter aircraft accruing to residents without the third runway. Surface noise should also be considered.
- The choice of a single measure for noise impacts, and the use of a quota count system which treats some aircraft as having no noise, means that significant impacts, and the real experienced noise, could fail to be captured by the envelope.
- Surface access: The proposed envelope is a percentage of journeys to and from the airport by sustainable modes. This approach means that growth in passenger numbers would be allowed to result in ever more road movements to and from the airport by road even if the percentage remains the same.
- By setting the monitoring boundary so tightly around the airport perimeter the EMG could actively encourage airport related traffic to avoid crossing the boundary at the expense of local communities adjacent to the airport and without reducing overall trip numbers.
- Air Quality: The envelope refers mainly to compliance with legal air quality limits.

In practice this would mean that Heathrow would allow themselves to continually erode improvements in air quality secured by others, such as the Mayor or ordinary Londoners.

- Carbon emissions: The proposal to have an envelope for carbon emissions is not developed at all. Instead HAL are proposing simply to commit to “a mechanism for ongoing review and reporting” against the minimum policies of the ANPS. Like all large businesses HAL is already required to undertake carbon reporting, so it is not clear if this is even a new commitment, let alone whether it could be effective at capping or progressively reducing emissions.

5. Monitoring:

- 5.1 The monitoring described in the consultation document is neither sufficiently robust nor sufficiently detailed.
- 5.2 Appropriate, objective monitoring is key to the success of any approach to environmentally managed growth. Not only is it vital that the data gathered for monitoring is objective and meaningful it also needs to be of sufficient breadth and quality to ensure that the true impacts of the scheme can be identified and separated from other changes. For instance; improvements in local air quality gained by Mayoral or TfL interventions should not be able to be claimed by Heathrow as benefits they have delivered. Poorly designed monitoring, combined with a static envelope, could allow Heathrow to claim unrelated improvements as ever more headroom for future expansion.
- 5.3 Monitoring programmes also need to be directed at the correct elements of the scheme, reflecting both the range of impacts and their causes. At a bare minimum monitoring must be able to show what effect interventions have to reduce the impacts of the airport on the environment. It is not sufficient, for instance, to simply count the number of planes meeting a noise standard as a proxy for measuring real experienced aircraft noise.
- 5.4 To ensure that it is effective a monitoring scheme must initially be developed in tandem with the development of the EMG metrics and control mechanisms. The monitoring programme itself should also be subject to ongoing independent oversight to ensure that it remains fit for purpose in the long run.

6. Performance of the EMG and “mitigation” measures.

- 6.1 The mechanisms available to prevent and mitigate harm are critical to the success of the EMG approach. As described in the consultation document the links between potential effects and available controls or mitigations are not sufficient.
- 6.2 Additional growth (i.e. additional flight slots or passenger numbers) is the underlying cause of the vast majority of the environmental impacts of an expanded Heathrow. Preventing the release of additional slots unless and until limits or envelopes are

complied with would be likely to be an effective control mechanism to prevent foreseeable impacts. The consultation acknowledges this for air quality and carbon emissions, but the principle applies equally well to noise and surface access.

- 6.3 While restrictions on flight movements are the most straightforward option for limiting impacts, in practice this is likely to be fraught with difficulty. No mechanism is described or proposed to ensure that this would happen. Nor is it clear who would be empowered to make and enforce such a decision.
- 6.4 It would also undermine the commercial basis upon which HAL will have secured funding for expansion and it is not at all clear how the uncertainty could be accommodated within the structure governing the economic regulation of Heathrow, which sets charges in part based on forecasts of throughput.
- 6.5 Similarly, in the event that limits or envelopes are found to be being breached, the appropriate response could be to reduce the number of flight slots to remove the ongoing harm, indeed for some impacts reducing flight numbers may be the only effective measure. It is not clear that it would currently be within the gift of the airport operator to reduce the number of flights so it is critical that Heathrow explore how such a mechanism could be created, and independently assured, through the DCO.
- 6.6 It is not clear from the consultation what other measures may be available in principle, and within the gift of the airport operator in practice to prevent or remove environmental impacts, although additional mitigation is alluded to throughout.
- 6.7 It is simply not acceptable to rely on unknown mitigations to prevent what may be significant harms to health or the environment, especially without clarity on the ability of HAL to deliver the mitigations and also as Heathrow have elsewhere implied that in some areas they have, or intend to, reach the boundaries of the possible. For example, backfilling of taxis can only reduce the number of vehicle movements to a limited extent and rail and tube connections have a maximum capacity.

7. “Unforeseen Local Impacts Mitigation Strategy”.

- 7.1 In the event of “unforeseen local impacts” Heathrow propose to use the community fund to finance any mitigation measures. While it is clear that this might be desirable for Heathrow to limit their liability in this way it undermines the purposes of both the community fund and environmentally managed growth.
- 7.2 The community fund is intended as a tangible benefit for local areas impacted by the airport. If the money for the fund is diverted to or retained in case of unforeseen mitigation measures, then these benefits would be lost. This would also undermine the basis on which the Environmental Impact Assessment seeks to already mitigate some impacts by effectively double counting the fund.
- 7.3 At the same time if the community fund is not sufficient to cover the full cost of mitigation measures it appears open to Heathrow to use this as an argument to avoid implementing the measures.

7.4 It is also interesting to note that the scope of ULIMS would be to include transport and local air quality impacts, suggesting HAL also has limited confidence in the main strands of the EMG framework to effectively and comprehensively deal with these issues.

8. “Independent Scrutiny Panel”

- 8.1 The key factor in deciding when mitigation or prevention is required, and in agreeing the right mitigation measures is the “Independent Scrutiny Panel” (ISP). As described in the consultation document the ISP is absolutely not fit for purpose.
- 8.2 The ISP described has no preventative role, able to act only after a breach has occurred. This is no protection for those whose health or wellbeing is affected by noise or pollution, nor will it remove greenhouse gasses from the atmosphere after they are released.
- 8.3 The ISP’s powers are limited to the point of ineffectiveness. Being able only to ask Heathrow to propose a mitigation strategy in the first instance or to supply its own proposals if Heathrow fails to do so it would be unable to prevent environmental harm. There is no power to require that such a strategy is implemented in practice or even that it is produced in a timely fashion. Nor is there any clear hierarchy or arbitration procedure if the ISP fails to agree amongst itself or to reach agreement with Heathrow.
- 8.4 The ISP described also has no power to sanction Heathrow for persistent breaches or to impose a solution.
- 8.5 Finally, membership of the ISP is critical to its success: it must be constituted to properly reflect the interests of affected communities and London as a whole. The selection of membership should be by a transparent process, independent of HAL.
- 8.6 Without properly addressing these issues the EMG as a means of control of the ongoing environmental impacts of Heathrow expansion is doomed to failure.

9. Relationship to Local and National Policy

- 9.1 The Airports National Policy Statement sets out the Governments key requirements and tests that Heathrow will be expected to meet, particularly with respect to the environment.
- 9.2 In respect of noise, air quality, carbon impacts and surface access these requirements and how they are to be assessed are set out in chapter 5 of the ANPS. In some ways the ANPS requirements are similar in content to the “envelopes” described in the EMG proposals: for instance; the percentage mode share for sustainable transport is numerically the same and the idea of not breaching legal air quality limits is common to both the ANPS and the EMG.
- 9.3 However, these surface similarities do not mean that the EMG proposals are sufficient to meet the ANPS requirements. Indeed, by only focussing on mitigation after the event the EMG avoids the need to demonstrate in advance how the ANPS requirements will be

met.

- 9.4 Not only that, but the proposal to oversee implementation of the EMG through the scrutiny panel has the potential effect of reducing the level of public protection. If a development fails to meet a limit on development set by a planning condition there is access, to redress through legal enforcement or, if necessary, the courts. By attempting remove these important legal protections for the public these proposals undermine the intent of the ANPS.
- 9.5 The ANPS is also clear that HAL must both meet the costs of mitigating its impacts and provide an “extensive and appropriate” compensation package. By seeking to use the community fund to pay for mitigation measures HAL could fail both these tests.
- 9.6 The draft London Plan sets out the Mayors current strategic approach to aviation expansion in London and south east in Policy T8, which confirms his support for additional aviation capacity and recognises the importance of aviation to London’s economy. The policy also clearly sets out that environmental and health impacts must be fully acknowledged, establishing the context in which additional aviation capacity would be supported, particularly with respect to noise, air quality, climate change and transport. Any proposal for expansion at Heathrow should therefore be assessed against this policy and must demonstrate that impacts have been fully assessed, harm avoided and mitigated and all options to arrive at solutions that would cause less harm have been explored.
- 9.7 A well-designed approach to environmentally managed growth should demonstrate how HAL intends to meet this policy. HAL’s current proposal falls far short of this by failing to show how harm would or could be prevented during the operational life of the airport, or providing any meaningful detail on how benefits from technology and regulatory improvements would be shared as required by national and strategic planning policy.
- 9.8 More broadly neither HAL’s environmentally managed growth proposals nor the wider suite of consultation documents shows how HAL would be able to meet the objectives of Policy T8, such as meeting the full external and environmental costs of additional aviation capacity, demonstrating that there are overriding public interests served by expansion or that less harmful alternatives have been considered.