

NPS Consultation Response: **Thematic Paper** Requirements

May 2017

Key Points:

- The requirements set out in the NPS are generally weak and should be strengthened if they are to be credible.
- The NPS should specify how HAL will be held accountable for meeting its obligations and the mechanism for imposing sanctions should it fail to meet these.
- There are serious doubts about the evidence presented to support taking forward Heathrow expansion and discarding the alternatives. Any claimed benefits should be set out in a sound, transparent manner.

1. Introduction

- 1.1 The key purpose of an NPS is to provide a comprehensive and robust framework of requirements that the promoter must meet in order to obtain a Development Consent Order (DCO) under the Planning Act 2008 (the 2008 Act). It should set out the benefits to be realised and the impacts and appropriate criteria for mitigation.
- 1.2 Importantly, Section 5(7)-(8) of the 2008 Act states that the NPS “must give reasons for the policy set out in the statement” and, it goes on to say that the “reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change”.
- 1.3 This draft NPS falls short on several fronts. It claims benefits that are not substantiated or guaranteed. Its requirements are weak, with many stated aspirations not translated into the decision-making criteria. The NPS suffers from a lack of tests for the promoter of a runway DCO to comply with in an application and for the Secretary of State to apply in decision-making. Such tests are necessary to provide certainty but also to ensure that adequate consideration is given to the Secretary of State’s duty to have regard to mitigating, and adapting to, climate change (as per section 10 of the 2008 Act). As it stands, paragraphs 4.37-4.48 deal with climate change adaptation, but not mitigation to any significant extent.
- 1.4 The NPS fails to provide a framework that would, given the legal, environmental and

socio-economic concerns, deliver the increased capacity required for the South East.

1.5 This is increasingly apparent when this NPS is compared to others that have been produced. The NPS on waste water and the NPS on the national networks were robust with a clear and detailed framework of tests that schemes had to meet to be designated. Moreover, the detail of these tests had been available during the consultation stage. By contrast, this NPS is weak in comparison with a vague framework of tests that the applicant is required to meet.

1.6 Unless it can be demonstrated in advance that an expanded Heathrow would realise the claimed benefits and claimed limits on impacts, HAL should not be encouraged through endorsement in the NPS to undertake the costly exercise of developing and applying for development consent for an additional runway. If the framework in the NPS is not robust enough, then an application which is in fact undeliverable may be made, which will result in very high wasted costs for many parties, as well as a significant delay in providing the airport capacity that the South East urgently needs.

2. Air Quality

2.1 There are fundamental concerns about the air quality impact of a third runway and the NPS does little to dispel them. The requirements for air quality must be demanding, absolutely watertight, convincingly demonstrated as a prerequisite, with robust remedies and sanctions should HAL fail to meet them. The scheme proposals need to be convincingly aligned with a position where there is projected to be no net overall deterioration in air quality.

2.2 The NPS should include a requirement for HAL to produce a clear, transparent and convincing air quality plan as a prerequisite for the scheme. This should include full, quantified and costed details of mitigation measures and give due regard to the levels of uncertainty inherent in long-term projections of air quality. This plan needs to be published and made available for independent scrutiny.

2.3 Paragraph 5.41 of the NPS states that air quality impacts should be considered over a wider area and this is welcome. This should explicitly consider air quality impacts over the entire area likely to be affected – which includes some parts of central London and major roads to/from the airport.

2.4 In addition, Paragraph 5.41 of the NPS should be amended to state that the Secretary of State would refuse an application if the third runway worsens air quality or delays compliance with limit values. To date, the Heathrow proposals do not explicitly state how many additional vehicle trips the project will generate on the road network, preferring to rely on aspirations of improved mode share. But if a significant number of new vehicle trips will be generated in an area that already breaches air quality limit values (even if mode share improves to the aspired-to figure), then the Government could not consent a Heathrow DCO without slowing compliance with limit values and

hence consenting the DCO would be unlawful.

- 2.5 There is precedent to make this an explicit requirement. The National Networks NPS explicitly required the Secretary of State to refuse planning application under the 2008 Act if the scheme put forward by the promoter slowed down achievement of air quality compliance. This precise and necessary wording is absent from the NPS. If HAL and the Government are convinced that these limit values will be achieved on time, despite the evidence, an explicit requirement that the Secretary of State refuse consent should be inserted into the NPS along with a requirement to demonstrate this robustly in the application documentation.
- 2.6 The NPS should specify the exact numerical 'limit values' that would be applicable to the expansion scheme and include any specific laws that will be applicable to determine compliance (e.g. Regulation 17(1) of the Air Quality Standards Regulations 2010 or any substitute for those regulations). This is of particular importance in the context of the United Kingdom leaving the EU.
- 2.7 Any air quality mitigations required should be robust and not be subject to uncertainty. In addition HAL should be required to monitor air quality and publish monitoring data on a quarterly basis over the wider area potentially affected by the proposal.
- 2.8 The NPS should specify how HAL will be held accountable for meeting its air quality obligations and the mechanism for securing remediation and imposing sanctions on HAL, including operational limits and financial penalties, should it fail to meet these obligations.

3. Surface Access

- 3.1 The stated aspiration for no increase in airport related highway traffic is essential to mitigate the air quality impacts of a third runway. However, this is not translated into a stated requirement. Instead, paragraph 5.16 lists the mode share requirements of the scheme as 50 per cent of passengers using public transport in 2030, increasing to 55 per cent in 2040 – and a 25 per cent reduction in staff car trips in 2030, with a 50 per cent reduction by 2040. These are not equivalent to no increase in highway traffic and would likely still mean an increase in car and taxi trips, rendering the project unlawful on air quality grounds.
- 3.2 The aspiration for no increase in highway traffic must be specified as a requirement of the scheme. If expressed as a percentage, this should be demonstrably the percentage that does not increase the total number of vehicles.
- 3.3 Paragraph 5.17 outlines the requirement for annual reporting for the mode share targets. It should be a requirement that this reporting should be published quarterly and should include data about how passengers, staff and freight access the airport on an hourly basis.

- 3.4 Freight, and its impact on the road network, is currently excluded from the NPS surface access assessment. The NPS should require HAL to assess the impact of freight and demonstrate how the impact of freight on the surface access network will be mitigated.
- 3.5 Again, the NPS should specify how HAL will be held accountable for meeting its surface access obligations and the mechanism for securing remediation and imposing sanctions on HAL, including operational limits and financial penalties, should it fail to meet these obligations. If inadequate enforcement and accountability measures are proposed in the application, the NPS should state that the Secretary of State refuse consent for any proposed development.
- 3.6 Moreover, any surface access commitments to mitigate transport impacts should be delivered before the impacts occur rather than merely be 'committed to'. If HAL is relying on other transport projects being realised for its mitigation, then any loss in the non-Heathrow benefits of those projects should be offset against the benefits to Heathrow.
- 3.7 Paragraph 5.9 states that HAL should consult with transport bodies when assessing and mitigating impacts on surface access. The NPS should be explicit in requiring HAL to consult with TfL, as we are the primary transport authority in the Heathrow area. The NPS should also require HAL to use TfL models to create a credible surface access plan to accommodate the trips generated by the third runway.
- 3.8 Paragraphs 5.20 and 5.21 explain that the Secretary of State will consider if HAL has taken steps to mitigate the impacts on surface access but that "consent should not be withheld on surface access grounds". This is unacceptable; surface access inadequacies must be a possible reason for refusal of the application. A third runway will have fundamental consequences for the wider surface access network because of the very significant increase in the number of people accessing the airport. It would be irresponsible to allow an application for expansion to proceed in the absence of a credible surface access plan able to accommodate all the trips generated by a third runway without impacting on non-airport demand and without negative consequences for air quality.

4. Noise

- 4.1 Heathrow expansion should not go ahead unless it can be demonstrated that the significant aircraft noise will be mitigated. As it stands, the NPS is very weak and vague on the specific noise requirements that HAL should meet.

Noise modelling

- 4.2 Paragraph 5.51 of the NPS states that noise assessments should be undertaken. The NPS should require HAL to undertake a realistic appraisal of the impacts of aviation noise, underpinned by conservative assumptions based on existing technology. If

HAL additionally chooses to model scenarios based on future technology assumptions, it must be clear about the assumptions made and their alignment with Government policy.

- 4.3 The current HAL modelling does not compare like with like; it compares a future two runway scenario based largely on current technology, with a future three runway scenario with technological improvements. The NPS should be clear that the measurement of impacts must make a comparison between the future expansion and non-expansion scenarios underpinned by a similar assumptions set.
- 4.4 The 2014 Study of Noise Attitudes (SONA) was published on the same day as the draft NPS and evidenced that the onset of annoyance from aviation noise has reduced from 57_{dB LAeq} to 54_{dB LAeq}. HAL should be required to base its noise assessment on the 54_{dB LAeq} metric (and the L_{den} equivalent).
- 4.5 Given the Government policy shift towards dispersal of flightpaths, the NPS should also move beyond the average noise metrics and require a broader suite of noise metrics would better reflect the aviation noise experienced by residents.
- 4.6 Paragraphs 5.53 to 5.65 set out the mitigations for noise impacts but they provide little, if any ,benefits to local residents. If the NPS is serious about protecting communities from the harms of aviation noise, it should be honest about the noise impacts of a third runway and seek to provide meaningful mitigation.
- 4.7 The NPS should require HAL to publish a monthly noise report which sets out the noise performance of the airport with a high level of granularity and which can be used to track progress towards noise reductions.

Partial scheduled night flight ban

- 4.8 Paragraph 5.61 of the NPS outlines Government's requirements for a partial scheduled night flight ban, on scheduled flights only, to cover a period of six and a half hours. But because it does not cover the full night period (11pm-7am), even with the proposed ban, there could be an increase in night flights of up to 140 per cent.
- 4.9 As the absolute minimum, it is essential that the NPS requires an expanded Heathrow not to increase the number of scheduled night flights compared to today, both in the currently regulated and unregulated parts of the night period.
- 4.10 If the NPS is serious about mitigating the severe noise impacts of an expanded Heathrow, then it should implement a full scheduled night ban across the entire eight hour night period, as defined by Government, from 11pm to 7am. It should also place restrictions on unscheduled flights movements in this night period.

Respite

- 4.11 Paragraph 5.60 of the NPS requires a runway alternation scheme to be in place in order to provide respite for communities. The NPS uses respite as part of its case for

support expansion at Heathrow¹ however what is being offered is a reduction on what currently exists. The NPS should seek to protect the existing respite afforded to communities and not allow HAL to increase noise harm with a third runway.

Noise Insulation

- 4.12 Paragraphs 5.53 to 5.65 of the NPS list noise mitigations but fail to include noise insulation; noise insulation must be part of the required mitigation. The NPS should include details on the criteria which reflects the impact of noise on communities.
- 4.13 It should follow best practice, and as a minimum offer insulation at 57dB_{LAeq}, which was the criterion for noise insulation associated with the recent planning permission granted to London City Airport. Moreover, it should take on board the results of the 2014 SONA including the finding that the onset of annoyance was 54dB_{LAeq}.
- 4.14 The NPS should require that HAL provide the vast majority, if not the entirety of, the cost of insulation and ensure that there is more than one supplier to ensure competition and so keener pricing. The NPS should also specify that the insulation is offered in a timely manner – without protracted phasing – and allows for all eligible properties to be insulated before the third runway opens.

Noise monitoring

- 4.15 The NPS should specify how HAL will be held accountable for meeting its noise obligations and the mechanism for securing remediation and imposing sanctions on HAL, including operational limits and financial penalties, should it fail to meet these obligations.
- 4.16 If Government heeds the widespread calls for a genuinely independent noise regulator, this would be well placed to take on the role of holding HAL accountable for its noise impacts.
- 4.17 There should be an explicit requirement for the Secretary of State and HAL to monitor noise impacts regularly (including after any scheme is consented) and make appropriate mitigation measures in any consented scheme. The NPS should state that a failure to provide for such commitments to monitor and provide mitigation measures should lead to the refusal of consent.
- 4.18 The NPS should also be clear where any consented scheme seeks to rely on existing powers in the Civil Aviation Act (the 1982 Act). Section 78 of the 1982 Act provides for extensive powers to the Secretary of State to apply operation controls and restrictions for the purpose of regulating noise and vibration from aircraft in relation to 'designated airports' (of which Heathrow is one).
- 4.19 The reliance on this provision, rather than stating the acceptable noise levels (and

¹ Draft Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England Draft, section 3.55

appropriate sanctions) in the NPS, would lead to uncertainty and significant fluctuations in noise effects for the affected population. It would also lead to long term uncertainty as to the capacity of the airport for any airline or aviation companies using the runway and should, therefore, be avoided.

5. Climate Change

- 5.1 The NPS needs to be clear on the impact of a third runway on our carbon obligations. It is an explicit requirement under the 2008 Act that the Secretary of State has regard to the desirability of mitigating, and adapting to, climate change.
- 5.2 Paragraph 5.81 of the NPS states that a significant increase in carbon emissions would be grounds to refuse planning application of the scheme. In order to do this the Secretary of State needs to fully understand the carbon impact of Heathrow on the 2050 climate change obligation, on the rest of UK aviation and other UK industries. It should be an explicit requirement that HAL provides this information in its application.
- 5.3 Paragraph 5.75 and 5.76 list the requirements of the applicant's assessment. Currently this does not include any carbon impacts from staff or freight. The NPS should require the applicant to include this.

6. Financeability

- 6.1 The NPS lists financeability as one of the factors that was taken into account when making the case for expansion at Heathrow. The NPS states that the third runway is a private sector scheme and can be delivered without Government support². The NPS should be explicit that a third runway must be delivered without government funding, including risk guarantees or the weakening of regulations.
- 6.2 The Secretary of State has made clear that passengers will not see a significant increase in costs. This should be another explicit requirement of the NPS. In the event that HAL cannot or does not propose a scheme which can do this, the Secretary of State should refuse consent. As above, there must be sanctions and fines for non-compliance in the event the scheme does lead to increased passenger costs.
- 6.3 HAL should demonstrate that they could finance a third runway without government support and without passing costs on to passengers. The NPS has an important role in protecting taxpayers and passengers from being liable for the cost of expanding Heathrow.

² Draft Airports National Policy Statement, section 3.43

7. The Heathrow expansion case

- 7.1 In order for the Secretary of State to make an informed decision about whether expansion at Heathrow should go ahead the NPS should be unambiguous about the decision making criteria being used and should treat all the shortlisted schemes equally.

The 'strategic considerations'

- 7.2 Paragraph 3.70 sets out four attributes to which the NPS has afforded particular weight. There is no explanation as to why these attributes were chosen or how they have been weighted. Decisions taken concerning the future of Heathrow airport must be transparent and the NPS needs to provide clarity for the criteria that will be used to grant DCO.
- 7.3 No real evidence is proffered to support the claim that Heathrow performs better than Gatwick in these strategic considerations. The second and the fourth attributes in particular, relating to longhaul connectivity and freight, appear to be based on extrapolating from the current situation. However, in both aspects, there is a strong possibility that a second runway at Gatwick would be transformative and score at least as well as Heathrow.
- 7.4 The third attribute, relating to surface access connectivity, takes no account of the serious capacity challenge on the road and rail corridors serving Heathrow, nor the dire air quality situation which makes it essential that an expanded Heathrow places no extra traffic on the road links in its vicinity.
- 7.5 The second attribute, relating to the speed of economic benefits, is certainly questionable given the complexity of the scheme compared to Gatwick expansion and the likelihood of both technical and legal obstacles. It also glosses over the fact that the benefit-cost ratio of the Heathrow scheme is notably weaker than the Gatwick scheme.

Treatment of alternative schemes

- 7.6 The NPS does not treat the three short listed schemes equally making it difficult to compare the benefits and disbenefits. This ultimately undermines any attempts to proceed with Heathrow expansion as the case has simply not been made that it is the best scheme to deliver new aviation capacity in the South East.
- 7.7 It has been established by the High Court that best practice under the Strategic Environmental Assessment Directive is that there must be "an equal examination of the alternatives which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option" (Heard v Broadland District Council [2012] EWHC 344 (Admin)). The NPS does not do this.

Role of Benefits

- 7.8 The NPS should make the case for expansion based on benefits that can be directly attributed to a third runway at Heathrow; it should present benefits in a transparent way and not use benefits that would occur as a result of external factors or those which are uncertain or not committed.
- 7.9 Some key examples of benefits misrepresented are set out below; further detail is provided in the relevant thematic papers.
- 7.10 The NPS makes much of the economic case for Heathrow however; it only presents benefits without disbenefits. The NPS states that the economic benefit of a third runway is £61 billion over 60 years³ - however this does not include any disbenefits (such as the cost to airlines) and it does not follow best practice of presenting the benefit cost ratio (BCR). It should be a requirement that the economic case be based on an honest representation of the benefits – minus the disbenefits – and the BCR.
- 7.11 The NPS states that a third runway will result in 77,000 jobs⁴ however again this is not the latest DfT figure. The supporting documents found that the jobs benefit should be presented as a range in line with DfT's latest work. It should also be made clear that these jobs should not be treated additional to the UK economy but as displaced from elsewhere – as is clearly set out in the supporting documentation of the NPS.
- 7.12 Domestic connectivity is a key argument for the third runway. However, it should not be included as a benefit of expansion at Heathrow because neither the Government nor HAL are legally able to make any commitments about the routes to be served after expansion. . Public Service Obligations (PSOs) can be established on routes to deprived areas, but these can only be determined at the time of introduction, based on the economic evidence – and it is unclear whether these could specify a single airport within the London airport system. The NPS should, therefore, be clear about the uncertainty of this purported benefit and state that it should not be accorded weight.

³ Draft Airports National Policy Statement, section 3.25

⁴ Draft Airports National Policy Statement, section 3.27