

Heathrow Expansion DCO Consultation Response

Adequacy of consultation

September 2019

1. Overview

- 1.1 This paper sets out the response of the Mayor on adequacy of consultation to the statutory consultation by Heathrow Airport Limited (HAL) on its expansion proposals.
- 1.2 This statutory consultation is a critical point in the DCO process and an essential opportunity to engage as widely as possible to make sure all those affected understand the scope of the scheme and its predicted impacts. For many – including the majority of residents – this will be the last opportunity to review Heathrow’s proposals and provide feedback to shape the development of the project. Changes are much more difficult to achieve once the DCO application has been made (even if HAL wants to make them) so HAL should pay careful heed to the responses received. If too many issues remain unaddressed by the time the application is made, there is serious risk that it will not be considered to be of a satisfactory standard because the examination is likely to take longer than six months.
- 1.3 While the opportunity to respond to HAL’s proposals is welcomed this consultation appears to leave out information that is crucial to understanding the impacts of the project; is overly burdensome in terms of the effort needed to adequately review the vast amount of material produced, which is structured in an inaccessible and opaque manner; and is too short for an informed response to be provided.
- 1.4 For these reasons, the Mayor believes that this DCO consultation may not have been legitimate and lawful and would therefore strongly urge that it be re-run. It is clear that this consultation is premature, and HAL should rectify these issues to present a more honest picture of the impacts in a further consultation before it proceeds with submitting its DCO application.

2. Ineffective Consultation

- 2.1 This statutory consultation has been ineffective, presenting a confused and incomplete picture of the proposal and ultimately hindering the affected communities’ (and other stakeholders’) ability to fully understand the impacts on them.
- 2.2 Regulation 12 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 Regulations) requires preliminary environmental information to be information which ‘is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development)’. The preliminary environmental

information provided clearly does not do this and therefore contravenes the regulations. In addition, the government has published guidance on how DCO applications should be consulted upon (MHCLG guidance 2015) which HAL is required to have regard to under section 50(3) of the Planning Act 2008. The Mayor would also suggest that this consultation has not had proper regard to the Gunning Principles nor the MHCLG guidance, and thus on both these counts in addition to HAL's failures relating to the 2017 Regulations, HAL may have failed to consult legitimately and lawfully.

- 2.3 Both the Gunning Principles and the MHCLG guidance (see paragraph 20) establish that a consultation should contain sufficient information to allow for intelligent consideration and achieve this through providing accessible and easily interpretable information. HAL has failed to deliver on these principles, providing consultation material that is difficult to interpret and largely opaque. HAL's consultation documentation is structured in such a way that it is difficult to piece together the overall picture, with answers to important questions often spread across several documents (for example, the Scheme Development Report, Preliminary Environmental Report, Preferred Masterplan, various Property & Land Acquisition and Compensation policies etc.) or in some cases, completely omitted. This obscures an understanding of exactly what change is proposed, what the scale and magnitude of the predicted impacts are, what mitigation has been proposed, and the justification for it - which are all clearly vital issues.
- 2.4 The vast quantity of documentation produced has also hindered 'intelligent consideration' and amplified the difficulties with interpretation. The scale of material produced, combined with its over-complexity (as well as much unnecessary repetition), has presented difficulties even for the GLA, which has access to expertise that most individuals, local campaign groups and Local Authorities do not. While the consultation will necessarily involve a considerable amount of documentation given the scale of the expansion project, it should have been presented in a much clearer and more logical way.
- 2.5 The Planning Inspectorate has produced guidance on the preparation and submission of application documents for nationally significant infrastructure projects (Advice Note 6), which recommends applicants think carefully about document size, suggesting that summaries should be provided if documents exceed 1,500 words in length. Some of the summaries provided are still near 100-pages and some technical reports have been provided without a summary (for example the Updated Scheme Development Report, the Preliminary Transport Information Report, Construction Proposals amongst others) making it difficult to grasp key issues.
- 2.6 Furthermore, despite the lengthy documentation, much crucial information – that has significant implications for understanding the impacts on Londoners - has been omitted, making it impossible for consultees to form a fully informed response to HAL's proposals. Assumptions are often not stated explicitly, or not fully explained, leading to difficulties in understanding whether methodologies are adequately robust. In many areas of the technical reports, there is little interpretation of results, adding to the reader's difficulty in understanding already complex issues. Just two examples of this

are provided below, and many more are described throughout the technical appendices to the Mayor's letter.

- 2.7 A significant omission is the way in which noise impacts have been assessed with noise impacts based on indicative flightpaths which could bear no relation to the actual flightpaths that will be designed through the Airspace Change Process (options for which are to be consulted on in 2021 and confirmed after the DCO decision has been made). Instead, HAL has based its noise impacts on indicative routings – but it is not at all clear that these reflect potential worst-case scenarios reflecting how HAL could use the new navigation technologies. It is therefore impossible for the local communities likely to be affected to fully understand the potential impacts the additional flights HAL proposes would have on them.
- 2.8 A similar omission of critical detail occurs in the Preliminary Transport Information Report (PTIR). There is some key detail around the surface access modelling that does not appear in the consultation material. For example, the PTIR implies a greater reliance on Railplan than is actually the case. It is only through engagement with HAL, and the provision of unpublished model documentation, that we know this. It is unacceptable that local communities and other stakeholders have not been privy to the same information to help inform their judgements.
- 2.9 Given the general opacity of the consultation material produced by HAL and its vast quantity, we would expect that affected communities be given a proportionate amount of time to consider all the material and form a response. This is the foundation of the third Gunning Principle and paragraph 72 of the MHCLG guidance, which recommends that the length of time given for a consultee to respond should vary depend on the subject and extent of impact of the consultation. Given that this will be one of the largest DCO applications since the start of this regime of consent, with some of the most significant and far-reaching impacts, it is only fair and appropriate that this consultation should have been run for a more significant length of time.
- 2.10 In addition to not having sufficient time for adequate consideration of HAL's proposals, consultees were also faced with the poor timing of the consultation. Much of the affected local communities' availability will be impacted by the summer holidays, effectively reducing the already short duration in which they have to respond.

3. Late submission of documentation

- 3.1 While reviewing HAL's consultation documentation, it was found that a number of key elements of the evidence base and assessments that had underpinned the scheme's development - which are cited in HAL's reports - had been omitted. It would have therefore been impossible for the Mayor to provide a meaningful, adequately informed response to some issues. Thus, on the 12th of July 2019, the Mayor requested these documents be made available. HAL responded to this request for further information on the 12th of August, providing some of the additional documentation. While the Mayor welcomes that that some gaps in the evidence base were filled, it is not acceptable for this additional information to be only provided with five weeks of the consultation

remaining. Consequently, GLA officers have not been able to fully review this material to inform this response.

- 3.2 Crucially, this material seems to have only been provided to the Mayor and does not appear to have been made generally available or its release notified to other consultees. Without full transparency for all stakeholders, it cannot be said that HAL has run a fair consultation and it is completely unacceptable that communities directly affected by HAL's proposals have not been given the chance to review this important additional evidence, which further underlines the need for additional consultation.

4. Engagement with the GLA and TfL

- 4.1 It is expected that conscientious consideration be given to the consultation responses before a decision is made and that decision-makers should be able to provide evidence that they took consultation responses into account (this is reflected in the Gunning Principles and paragraphs 20, 68 and 80 of the MHCLG guidance). Given that HAL's proposals are now in their second round of pre-consultation ahead of the DCO application, it is expected that previously raised concerns and recommendations should be considered in the proposals presented by HAL in this consultation.
- 4.2 However, despite a year of engagement by the Mayor (through TfL), HAL has largely not responded to the issues the Mayor has raised. For example, various flaws in its transport assessment have been raised – not least several underpinning assumptions – but HAL has not had regard to TfL's consultation responses, engagement or guidance provided. While the consultation material points to substantial engagement between HAL and TfL, the reality is that these sessions have generally been lacking substance and little progress has been made.
- 4.3 HAL has also noted that it has 'sought engagement with the GLA' on the effects on population growth as a result of economic change, which could affect demand for housing and public services. The GLA, on withdrawing its engagement with the HSPG, stressed that it would be happy to look at and potentially comment on any joint planning document that might be produced by the effected authorities. No such document, or supporting material was provided to the GLA, except that which was belatedly provided by request during this consultation.
- 4.4 The GLA's commitment to review and comment on any such planning documents produced by the HSPG remains and the Mayor would welcome further engagement and strongly encourages HAL to consult the GLA on its various policy positions and agree baseline positions and assumptions. Indeed, such engagement would be vital to address the many serious concerns the GLA has.
- 4.5 In advance of the DCO submission, the GLA is keen to work with HAL to understand what documentation will be submitted, its scope and how it can be provided in a way that will help local communities to clearly interpret HAL's proposals (for example, through the provision of a concise Planning Statement).