



Pinsent Masons

LONDON ASHFORD AIRPORT LIMITED

DRAFT HEADS OF TERMS FOR SECTION 106 AGREEMENT RELATING TO PLANNING APPLICATIONS Y06/1647/SH & Y06/1648/SH

DISCUSSION DOCUMENT ONLY

1. INTRODUCTION

- 1.1 This paper is for summary purposes only. It outlines the planning obligations that are intended to be included in any future Section 106 Agreement that will be entered into by London Ashford Airport Limited ("**LAA**") should Shepway District Council resolve to grant planning permission for planning applications Y06/1647/SH and/or Y06/1648/SH.
- 1.2 The paper provides a brief overview of the proposed planning obligations. The detailed drafting of the planning obligations will occur during negotiations between LAA and Shepway District Council. It is anticipated that once the Heads of Terms are agreed, LAA will produce the first draft of the Section 106 Agreement.
- 1.3 It is envisaged that there will be one Section 106 Agreement that will cover planning applications Y06/1647/SH and Y06/1648/SH (should Shepway District Council resolve to grant planning permission to both applications). There will, therefore, be some obligations which apply only to the Runway Extension (application Y06/1648/SH), others which apply only to the Terminal Building (application Y06/1647/SH) and some which will apply equally to both. This will be clearly set out in the Section 106 Agreement once detailed drafting commences.

2. BRIEF DEFINITIONS¹

- 2.1 **"aeroplane"** means aircraft that has a fixed wing and is powered by propellers or jets;
- 2.2 **"Air Quality Management Strategy"** means the strategy to be submitted to and approved by Shepway District Council pursuant to condition [] of planning permission Y06/1648/SH and condition [] of planning permission Y06/1647/SH;
- 2.3 **"aircraft"** means any of airships, aeroplanes and rotorcraft (gyroplanes and helicopters);
- 2.4 **"Airport"** means London Ashford Airport of Lydd, Romney Marsh, Kent, TN29 9QL which is shown edged in red on [];
- 2.5 **"Air Show"** means any air show held at the Airport;
- 2.6 **"ATC"** means the air traffic control function at the Airport;
- 2.7 **"Car Park Management Scheme"** means a scheme to be approved by Shepway District Council for the management and regulation of the car parking spaces to be

¹ Definitions to be finalised.

constructed as part of the Runway Extension and Terminal Building developments to provide for the matters referred to in paragraph 6 and such other matters as Shepway District Council may in its reasonable discretion determine from time to time;

- 2.8 **"Commenced"** and **"Commencement"** means the carrying out of a material operation as defined in Section 56(4) of the Town and Country Planning Act 1990 (as amended) which is not a Preparatory Operation;
- 2.9 **"Completion"** means in relation to any works of construction forming part of the Runway Extension or the Terminal Building, the date of issue of a certificate of practical completion of those works by the Owner's architect or other designated project consultant;
- 2.10 **"Construction Traffic Route"** means the route to be followed by drivers of all LGVs to and from the Airport such route being [] as shown coloured [] on the Routing Plan;
- 2.11 **"Continuous Descent Approach"** means the aircraft approach method designed to reduce fuel burn and noise;
- 2.12 **"Emergency and Governmental Activities"** means:-
- 2.12.1 activities to assist in the relief of any danger to the life or health of any person or animal; and
 - 2.12.2 activities (for both operational and training purposes) of the military, police, coastguard, air and sea rescue or any other emergency service; and
 - 2.12.3 the diversion of aircraft from another airport to the Airport due to adverse weather conditions, technical problems, security alerts or onboard emergency or for any other emergency that the ATC may be informed of;
 - 2.12.4 activities carried out by or on behalf of Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland.
- 2.13 **"First Public Transport Aircraft Flight"** means the first flight of a Public Transport Aircraft that takes-off or lands at the Airport following the Completion of the Runway Extension;
- 2.14 **"Flight Movements"** means the taking-off or landing of any aircraft;
- 2.15 **"LGV"** means Large Goods Vehicles as defined in paragraph 1 of Schedule 5 to the Goods Vehicles (Licensing of Operators) Act 1995 and which are under the control of the Owner or under the control of the Owner's agents or contractors and whose reason for visiting the Airport is for the construction of the Runway Extension or Terminal Building;
- 2.16 **"Noise Budget"** means the position of and total land within both the []db(A) and []db(A) Leq contours identified on [] of the technical report from [];
- 2.17 **"Occupation"** means first occupation or use of the Terminal Building (excluding fit out) as a building to process passengers to enable them to board a Public Transport Aircraft;
- 2.18 **"Owner"** means the current operator and leasehold owner of the Airport, being London Ashford Airport Limited (Company Registration Number 04140620) together with successors in title;
- 2.19 **"Phase 1 Jobs and Business Strategy"** means a strategy which sets out initiatives to provide education and/or training opportunities and/or employment advice or

programmes for local residents to enable them to obtain knowledge, skill, experience, confidence and the opportunity to gain employment in the construction of the Terminal Building;

- 2.20 **"Phase 2 Jobs and Business Strategy"** means a strategy which sets out initiatives to provide education and/or training opportunities and/or employment advice or programmes for local residents to enable them to obtain knowledge, skill, experience, confidence and the opportunity to gain employment in jobs relating to the Airport expanding up to 500,000ppa;
- 2.21 **"ppa"** means passengers per annum;
- 2.22 **"Precision Approach Path Indicator"** means the light system positioned beside Runway 03 and Runway 21 that provides a visual indication of an aeroplane's position on approach for the associated runway;
- 2.23 **"Preparatory Operation"** means an operation or item of work of or directly connected with or ancillary to archaeological investigation, remediation works associated with decontamination, exploratory boreholes, demolition site clearance, excavation, preliminary landscaping diversion, the erection of fences and hoardings, surveying, the construction of temporary access and service roads, and/or site establishment preparatory to the commencement of construction;
- 2.24 **"Public Transport Aircraft"** means, for the purposes of this Agreement, an aircraft with a take-off or landing weight in excess of 45 tonnes flying or intending to fly for the purpose set out in article 157(3)(a) of the Air Navigation Order 2005 as amended (SI 2005/1970) being the carriage of passengers or cargo in the aircraft for valuable consideration and excluding aircraft flying or intending to fly for the Air Show, charity flights, parachuting, training and support activities;
- 2.25 **"Routing Plan"** means the plan attached to this Agreement at Schedule [];
- 2.26 **"Runway 03"** means the runway shown hatched [] on [];
- 2.27 **"Runway 21"** means the runway shown hatched [] on [];
- 2.28 **"Runway Extension"** means the extension of the existing runway at the Airport by 294m at the northern end to create a runway length of 1,799m with a further 150m acting as a starter extension together with a runway end safety area of approximately 240 meters from the threshold and twice the width of the runway (at 64 metres) and other ancillary infrastructure as more fully described in an application for full planning permission submitted to Shepway District Council on 15 December 2006 and given reference number Y06/1648/SH;
- 2.29 **"Runway Extension Jobs and Business Strategy"** means a strategy which sets out initiatives to provide training opportunities and/or employment advice or programmes for local residents to enable them to obtain knowledge, skill, experience, confidence and the opportunity to gain employment in jobs relating to the Airport expanding up to 300,000ppa;
- 2.30 **"Terminal Building"** means the erection of a three storey terminal building on an existing area of hardstanding adjacent to Bravo Apron together with 639 car parking spaces to the north of the proposed terminal and all other ancillary facilities as more fully described in an application for planning permission submitted to Shepway District Council on 15 December 2006 and given reference number Y06/1647/SH;
- 2.31 **"Travel Plan"** means the travel plan contained within Appendix 15 of Volume 8 to the supplementary information submitted to Shepway District Council in August 2008 in support of planning applications Y06/1647/SH and Y06/1648/SH;

- 2.32 **"Updated Travel Plan"** means a revised travel plan document based on and consistent with the Travel Plan; and
- 2.33 **"UK AIP"** means the United Kingdom Aeronautical Information Publication published from time to time by the Civil Aviation Authority]

SUMMARY OF PLANNING OBLIGATIONS

3. RESTRICTION ON OCCUPATION OF THE TERMINAL BUILDING

The Terminal Building may only be Occupied following the Completion of the Runway Extension.

4. ROUTING PLAN

4.1 During the periods of:-

4.1.1 Commencement of the Runway Extension and Completion of the Runway Extension; and

4.1.2 Commencement of the Terminal Building and Completion of the Terminal Building

the Owner will use reasonable endeavours to ensure that all drivers of LGV's associated with the Runway Extension or Terminal Building (as the case may be) arriving at or leaving from the Airport are issued with written instructions to observe the Construction Traffic Route PROVIDED THAT the Construction Traffic Route shall not apply where all or any part of the route coloured [] on the Routing Plan is closed or blocked for whatever reason and such closure or blockage prevents access to the Construction Traffic Route.

5. TRAVEL PLAN

5.1 The Owner will employ (or procure the employment of) a transport co-ordinator.

5.2 The transport coordinator will be responsible for preparing, implementing, co-ordinating and managing the Updated Travel Plan. The transport co-ordinator's role will include:-

5.2.1 leading initiatives to influence and manage travel demands in relation to the Airport;

5.2.2 liaising with bodies and agencies relevant to the implementation of the Updated Travel Plan including transport operators, the police and residents groups;

5.2.3 disseminate travel and transport information to those who work at, visit or otherwise use the Airport and will organise and promote periodic campaigns to raise awareness of key transport and travel issues associated with the Airport.

5.3 Within 12 months of the Airport reaching a throughput of [100,000]ppa, the Owner will submit the Updated Travel Plan to Shepway District Council for approval, the Updated Travel Plan to be split into two phases:-

5.3.1 Runway Extension phase which identifies the sustainable transport methods the Airport will promote in reaching a throughput of 300,000ppa; and

5.3.2 Terminal Building phase which identifies the sustainable transport methods the Airport will promote in reaching a throughput of 500,000ppa.

- 5.4 No more than [150,000]ppa shall be permitted to travel to and from the Airport unless the Updated Travel Plan has been approved by Shepway District Council and the Owner has implemented the Runway Extension phase of the Updated Travel Plan.
- 5.5 Prior to a throughput of [350,000]ppa at the Airport, the Owner will implement the Terminal Building phase of the Updated Travel Plan.
- 5.6 Within [six months] of the First Public Transport Aircraft Flight, the Owner will appoint an independent highway consultant to monitor the Travel Plan and, when applicable, the Updated Travel Plan, and produce a report (the "**Travel Plan Monitoring Report**") of the typical travel characteristics, total trips and modal split of users of the Airport.
- 5.7 The Owner will supply a copy of the Travel Plan Monitoring Report to Shepway District Council within [six months] following of the appointment of the highway consultant.
- 5.8 The Owner will repeat the steps outlined in paragraphs 5.6 and 5.7 on every third anniversary of the first Travel Plan Monitoring Report.
- 5.9 The obligation to monitor set out in paragraph 5.7 above will continue until either:
- 5.9.1 ten years from the date on which the Owner implemented the Updated Travel Plan in accordance with paragraph 5.4; or
 - 5.9.2 five years from Occupation of the Terminal Building;
- whichever is the earlier.

6. **CAR PARK MANAGEMENT SCHEME**

- 6.1 Prior to the First Public Transport Aircraft Flight, the Owner will submit the Car Park Management Scheme to Shepway District Council for approval.
- 6.2 The Car Park Management Scheme shall detail the following:-
- 6.2.1 the number and location of spaces (including disabled spaces) within the car parking areas;
 - 6.2.2 safety, security, cleaning and other operational arrangements including barriers for maximum head room heights;
 - 6.2.3 the amounts of any car parking charges;
 - 6.2.4 the location, provision, quantity, management and security of trolleys and trolley bays (in particular, provision to ensure that trolleys are not removed from the Airport by members of the public); and
 - 6.2.5 details of all signage, logos and similar branding to be located within the car parking areas.
- 6.3 No more than []ppa shall be permitted to travel to and from the Airport unless the Car Park Management Scheme has been approved by Shepway District Council and the Owner has implemented the Car Park Management Scheme.
- 6.4 Within [six months] of approval by Shepway District Council of the Car Park Management Scheme, the Owner will appoint an independent car park consultant to monitor the Car Park Management Scheme and produce a report (the "**Car Park Management Monitoring Report**") of the usage of the car parking areas.

6.5 The Owner will supply a copy of the Car Park Management Monitoring Report to Shepway District Council within [six months] following of the appointment of the car park consultant.

6.6 The Owner will repeat the steps outlined in paragraphs 6.4 and 6.5 on every third anniversary of the first Car Park Management Monitoring Report.

6.7 The obligation to monitor set out in paragraph 6.6 above will continue until either:

6.7.1 ten years from the date on which the Owner implemented the Car Park Management Scheme in accordance with paragraph 6.3; or

6.7.2 five years from the Completion of the Terminal Building:

whichever is the earlier.

7. **SHUTTLE BUS**

7.1 The Owner will seek to establish a shuttle bus service between the Airport and Ashford International Train Station such service to be commensurate with demand flowing from scheduled flights at the Airport and shall commence at least [two hours] prior to the departure of the first Public Transport Aircraft of the day and ending no earlier than [one hour] after the arrival of the last Public Transport Aircraft of the day.

7.2 The Owner will submit quarterly patronage figures to Shepway District Council showing the daily and monthly demand for the shuttle bus service.

7.3 In the event that the quarterly patronage figures show that the shuttle bus service is running at less than [50%] of capacity for two successive quarters the Owner will be entitled to reduce the level of service provided by the shuttle bus to an appropriate level to equate to the level of demand as identified in the quarterly patronage figures.

8. **HIGHWAYS WORKS TO THE ENTRANCE TO THE AIRPORT**

8.1 The Owner will, in conjunction with Kent County Council, carry out an access monitoring survey (the "**Access Monitoring Survey**") to assess the road traffic safety conditions at the junction of the B2075 and the Airport access, such Access Monitoring Survey to be carried out at the following annual passenger throughput levels:-

8.1.1 125,000 ppa;

8.1.2 250,000 ppa;

8.1.3 375,000 ppa; and

8.1.4 500,000 ppa.

8.2 Following the results of the Access Monitoring Survey, the Owner and Kent County Council will agree whether any safety improvement works are required to the junction of the B2075 and the Airport access. If it is agreed that safety improvement works are required, the Owner will devise in conjunction with Kent County Council a suitable safety strategy (the "**Safety Strategy**").

8.3 The Owner will not later than three months after Kent County Council's approval commission implementation of the Safety Strategy.

9. **SIGNAGE STRATEGY**

- 9.1 The Owner will devise in conjunction with Kent County Council a suitable signage strategy (the "**Signage Strategy**") in order to direct passengers travelling to and from the Airport to use the most appropriate route(s).
- 9.2 The Owner will not later than three months after Kent County Council's approval commission implementation of the Signage Strategy.
- 9.3 All travel information for passengers of the Airport will identify the route(s) set out as being the most appropriate under the process detailed in paragraph 9.1.

10. **AIR QUALITY**

- 10.1 Upon the First Public Transport Aircraft Flight, the Owner will, in association with the appropriate regulatory authorities, develop an [annual] air quality monitoring study (the "**Air Quality Monitoring Study**") for the monitoring of the Air Quality Management Strategy to be effective on the first anniversary of the approval of the Air Quality Management Strategy.
- 10.2 If the pollutants monitored in the Air Quality Management Strategy increase above the levels set out in the Air Quality Management Strategy then the Owner will:
- 10.2.1 submit a scheme of air quality response measures to Shepway District Council for approval; and
 - 10.2.2 implement the scheme approved by Shepway District Council pursuant to paragraph 10.2.1 within six months of their approval or as otherwise approved by Shepway District Council.
- 10.3 If the Owner and Shepway District Council are unable to agree a scheme under paragraph 10.2.1 then the matter may be referred to a specialist to determine the appropriate measures. In determining the scheme of air quality response measures required the specialist shall consider:
- 10.3.1 changes in type, design and technology of aircraft using the Airport; and
 - 10.3.2 advances in medical and scientific knowledge and understanding in relation to operations of aircraft and nitrogen deposition.
- 10.4 The Owner and Shepway District Council will accept the decision of the specialist and the Owner will implement the measures within the timescale set out by the specialist.

11. **NOISE MANAGEMENT**

11.1 **Noise Management Plan**

- 11.1.1 On or before the First Public Transport Aircraft Flight, the Owner will submit to Shepway District Council for approval a noise management plan (the "**Noise Management Plan**") which complies with Directive EC/2002/30.
- 11.1.2 The Noise Management Plan will include:
- (a) the introduction of noise abatement operating procedures including a penalty system for those pilots of aircraft using excessive thrust when arriving at or departing the Airport. Any fines resulting from the system's operation to be donated to a community fund for the environmental improvement of and community and recreational projects within a 5 kilometre radius of the Airport;

- (b) a target noise performance standard for aircraft using the Airport, such target to be devised specifically in terms of ornithology;
- (c) the careful siting of ground operations to ensure sensitive receptors are not subject to unnecessary ground noise;
- (d) the establishing of clear lines of communication with local residents to facilitate the addressing of any concerns relating to noise emanating from the Airport; and
- (e) the providing of permanent noise monitoring stations at locations to be agreed with Shepway District Council. Monitoring positions will not be unduly influenced by other noise sources.

11.1.3 The results of the noise monitoring carried out pursuant to the Noise Management Plan will be audited on an annual basis by suitably qualified noise consultants employed at the expense of the Owner. The Owner will provide a copy of the audit to Shepway District Council.

11.1.4 The Noise Management Plan shall not apply to aircraft involved in Emergency and Governmental Activities.

11.2 **Noise Budget**

11.2.1 From the date of the First Public Transport Aircraft Flight, the Owner agrees to control all day time aircraft movements other than those resulting from the Air Show and/or Emergency and Governmental Activities so as not to exceed the Noise Budget.

11.2.2 Subject to Shepway District Council's prior approval and where a noise benefit can be demonstrated, the Owner may operate within a noise budget defined by noise contours of differing land area or position from the contours of the Noise Budget.

11.3 **Secondary Glazing**

11.3.1 Within [six months] of passenger numbers at the Airport exceeding 300,000ppa the Owner will install secondary glazing at Greatstone Primary School.

12. **EMPLOYMENT AND TRAINING**

12.1 The Owner will submit:

12.1.1 prior to the First Public Transport Aircraft Flight, the Runway Extension Jobs and Business Strategy to Shepway District Council for approval;

12.1.2 six months prior to the Commencement of the Terminal Building, the Phase 1 Jobs and Business Strategy to Shepway District Council for approval; and

12.1.3 on Occupation of the Terminal Building, the Phase 2 Jobs and Business Strategy to Shepway District Council for approval.

(together known as the "**Jobs and Business Strategies**")

12.2 As part of the Jobs and Business Strategies in order to assist local people to secure employment, the Owner and Shepway District Council will work together to develop strategies to improve training and employment opportunities and initiatives for Shepway District Council's administrative area in jobs related to the Airport, including:

12.2.1 [];

12.2.2 []

in each case in relation to the Runway Extension and the Terminal Building (as appropriate).

12.3 The Owner will use reasonable endeavours to ensure contractors, airline operators, airport support operators, retail outlets and consultants working at the Airport assist in the implementation of the Jobs and Business Strategies.

12.4 The Owner and Shepway District Council will review each of the Jobs and Business Strategies on an annual basis.

12.5 On approval of the Phase 2 Jobs and Business Strategy by Shepway District Council both the Runway Extension Jobs and Business Strategy and the Phase 1 Jobs and Business Strategy will cease to have any effect.

12.6 Within [20 Working Days] following the review of a Jobs and Business Strategy pursuant to paragraph 12.4, the Owner and Shepway District Council will agree a written report summarising the outcome of the review such report to form part of the reviewed Jobs and Business Strategy.

13. OPERATIONAL RESTRICTIONS

[NOTE: Section 106 Agreement to contain provisions confirming that if there is any incompatibility between the Agreement and the UK AIP and SI 1929/2007 (or any replacement) that the UK AIP and SI 1929/2007 take precedence]

13.1 Save where incompatible with safe flying operations the Owner will use reasonable endeavours to ensure that the operational procedures contained within the UK AIP for the Airport are followed by every operator of aircraft using the Airport in particular:-

13.1.1 every aircraft to be operated in such a manner as to cause the least disturbance practicable to local residents;

13.1.2 every aircraft to follow procedures promulgated by the Owner for noise abatement and minimising ground noise;

13.1.3 every aircraft making an approach to land at the Airport to follow a descent path which will not result in the aircraft being lower at any time than the descent path which would be followed by aircraft using the Airport's instrument landing system or that as indicated visually by the Precision Approach Path Indicator;

13.1.4 the use of reverse thrust (above idle power) after landing to be minimised consistent with the safe operation of the aircraft at all times;

13.1.5 protocols to be developed to facilitate and encourage the use of Continuous Descent Approaches;

13.1.6 all departing aircraft to climb as steeply as is compatible with safety;

13.1.7 all departing aeroplanes having a take off weight of 5700kg or over not to turn left upon departure from Runway 21;

13.1.8 all departing aeroplanes having a take off weight of 5700kg or over to use the starter extension upon departure from Runway 21;

13.1.9 in accordance with The Air Navigation (Restriction of Flying) (Nuclear Installations) Regulations 2007 (SI 2007/1929) all aircraft that take off or land at the Airport to remain on a flight path that is at least 1.5 nautical miles from the position specified in column 3 of Schedule 2 to the Regulations; and

13.1.10 all departing aircraft on departure to climb straight ahead to at least a height of 500 feet before commencing any turn;

13.2 Save where incompatible with safe flying operations and where destination or origin is within the UK, the Owner will use reasonable endeavours to ensure that helicopters departing from or landing at the Airport will use a north-westerly flight path in order to avoid the towns of Lydd and New Romney, (as shown in Schedule []).

13.3 Within six months of the First Public Transport Aircraft Flight the Owner will establish and thereafter publicise and maintain a noise complaints service which will investigate the cause of all formal noise complaints made to the Owner by the public. The Owner will provide a written response to each formal complaint as part of the noise complaint service indicating the outcome of the investigation and any action proposed to be taken to review or modify procedures as a result of the complaint.

13.4 This paragraph 13 shall not apply to the Air Show or aircraft involved in Emergency and Governmental Activities.

14. **OPERATIONAL ENHANCEMENTS**

14.1 Prior to Commencement of the [Runway Extension], the Owner will seek approval for the installation of a global navigation satellite system for approaches to Runway 03 and Runway 21.

14.2 The Owner, at its discretion, will install primary and secondary radar at the Airport, [such radar to be linked to a noise-monitoring and/or track-keeping scheme]. Such radar will enhance the monitoring of traffic in the vicinity of the MOD Firing Ranges and the nuclear power stations at Dungeness.

15. **DESIGN STANDARDS**

The Owner will use reasonable endeavours to ensure that the design of the Terminal Building meets the standards that are required to achieve a "very good" rating in respect of the Building Research Establishment Environmental Assessment Method.

16. **CARBON MANAGEMENT ACTION PLAN AND CARBON AUDIT**

16.1 Within 12 months of Commencement of the Runway Extension, to submit a carbon management action plan (the "**Carbon Management Action Plan**") for the ground operational vehicles (excluding aircraft) and energy use at the Airport to Shepway District Council for approval setting out measures to seek to achieve a carbon neutral status by 2015 to include:

16.1.1 reasonable measures (not entailing disproportionate or excessive cost) to reduce carbon emissions at the Airport;

16.1.2 reasonable measures (not entailing disproportionate or excessive cost) to increase the use of renewable energy at the Airport;

16.1.3 a carbon offset scheme;

16.1.4 reasonable measures (not entailing disproportionate or excessive cost) for the phased introduction of carbon neutral ground operational vehicles and energy use at the Airport by 2015;

16.1.5 a programme for the implementation of the measures included in the Carbon Management Action Plan; and

16.1.6 provision for an annual report on the measures taken.

17. LAND OWNERSHIP

In the event that the Owner acquires the freehold interest over land which is not at the date of this Agreement part of the Airport, it will enter into a supplementary Section 106 Agreement in respect of such land for the purpose of ensuring that the relevant covenants, commitments, obligations, restrictions or stipulations in this Agreement shall be binding on such land.

**Pinsent Masons LLP
London**

30 March 2009