



nature's voice

**THE RSPB'S COMMENTS ON LAA'S UPDATED DRAFT CONDITIONS AND S.106  
31 August 2011**

Without prejudice to our case, the RSPB continues to consider that the whole structure of the draft s.106 (CD17.3) and conditions (CD17.5) are so unspecific as to be largely meaningless and unenforceable.

The RSPB has considered Natural England's comments (circulated 30 August 2011) to the latest draft s.106 and conditions and agrees and supports all of its comments. In addition, we add the following.

**Maximum scaring/worst case scenario:** in CD17.7 (LAA's response document to Inquiry parties' comments on the previous draft s.106 and conditions), LAA responds to NE's request for more information regarding offsite measures by stating that:

- LAA has been clear on this issue and therefore nothing further is needed now; and
- LAA witnesses consider speculating on future imagined worst case scenarios and formulating possible worst case interventions would not be worthwhile as it would be pure speculation.

As such, the draft s.106 and conditions have not been sufficiently revised to deal with this issue, and therefore continues to fail to provide restrictions – that we believe are necessary to ensure no adverse effect on the designated sites – regarding the type, extent and scale of bird control.

The RSPB disagrees with LAA's position that no further information regarding bird control (both on- and off-site) is needed. We consider that details need to be provided now so that the Secretary of State can take his decision based on the full and necessary information. Without this, uncertainty remains as to extent of the potential for adverse effects on the designated sites, and it is therefore not possible for statutory obligations to be complied with.

As stated in our previous comments (dated March 2011 (RSPB101)) on the draft s.106 (CD17.1), no mitigation is proposed for potential impacts of bird control on functionally linked land. This remains the case.

**Further revisions of the BCMP:** The draft s.106 and conditions do not appear to include provision for any revised BCMPs to be further agreed by SDC (in consultation with NE). The RSPB is therefore concerned that this leaves scope for increased bird control, in future BCMPs, to be introduced without due consideration to the potential impacts to designated sites.

**Monitoring of the BCMP:** There remains a lack of detail as to monitoring the impacts of the BCMP on the designated sites. Only para 11.1.3 of schedule 1 of the s.106 refers to nature conservation, and this is only with regard to conservation organisations (*"whether any conflicts have arisen between the strategies and methods in the BCMP and local residents, landowners and occupiers or conservation organisations"* (our emphasis)).

**BCMP panel:** This is a welcome addition to the s.106 (schedule 1, para 12). However, there is no provision to ensure that LAA has to act upon the panel's recommendations. The current wording is

drafted in such a way that it is assumed that SDC will accept LAA's reasons for not following the panel's recommendations.

Furthermore, the creation of a panel and mention of potential remedial works does not reduce our concerns as to the lack of detail as to the extent, frequency and scale of bird control measures (particularly offsite) that may be necessary to protect public safety (and which the final BCMP will include) and the lack of proposed mitigation measures.

**Definition of emergency measures and activities:** Greater detail has been provided in the draft s.106 and conditions as to emergency measures and activities. However, the definitions are broad enough (s.106 definition: "*emergency activities to assist in the relief of any danger to the life or health of a person or animal*") to mean that our concerns remain as to the type and the level of bird control measures (in the worst case) that could be used in emergency situations. Such emergency situations could potentially arise on a daily basis (if for example, a significant bird strike risk is apparent when a scheduled passenger aircraft is arriving/departing). These potential measures should be considered in the worst case scenario so a full picture of the possible activities can be seen and considered in the appropriate assessment to be undertaken by the Secretary of State.

**Exclusions to aeroplane movement cap (condition 19):** The 1,200 annual helicopter movement cap now applies to all helicopter movements (including governmental and emergency activities). 1,200 helicopter movements is still however a large increase on current helicopter activity at LAA and therefore, in consideration of the potential disturbance impacts from helicopters to designated sites and protected birds, the RSPB considers the cap remains too high.

Emergency and governmental activities (which also includes government training activities if approved by SDC) continue to however be excluded (condition 19)) from the 40,000 aeroplane cap. Total aeroplane movements at LAA could therefore be significantly higher than 40,000 per annum. The RSPB therefore considers that the total aeroplane movement cap should cover all aeroplane movements, irrespective of their purpose.

**Noise management plan (draft s.106):** We note that in CD17.7, LAA state that ornithology (and a possible draft Statement of Common Ground is still being discussed and any amendments arising from this will be included in the next draft of the s.106. Our previous comments (RSPB101) on CD17.3 therefore still stand as it appears that no relevant changes have been made in the draft s.106 to date. Whilst we would of course engage in such discussions, LAA have to date made no attempt to discuss our previous comments on the noise management plan.

### **Specific comments**

#### **Draft s.106, schedule 1 (CD17.3):**

The RSPB supports Natural England's comments on paragraph 10 of schedule 1, and in addition, has the following comments:

- para 10.1: "*The BCMP shall include details of any Off-Site Bird Control Measures that may be utilised to supplement the on-site bird control measures*" (CD17.3). In other words, the *final* BCMP will include such details, but not the draft version (contained in appendix 2 of LAA/6/C) that is being considered by the Inquiry at present. We think that it is fundamentally flawed to put off identification of the maximum off-site bird control measures when it is this very issue that has to be grappled with at this stage.
- Para 10.1: LAA has also removed reference to the final BCMP being "*in accordance*" with the December 2010 draft BCMP (as was the case with the previous draft s.106, CD17.1, schedule 1, para 8.1), so the scope for changes to the final BCMP may be potentially greater than previously was the case.

- Para 10.3: states that LAA will not carry out the offsite measures (except emergency measures) contained in the final approved BCMP unless and until SDC (in consultation with NE and the RSPB) and LAA have agreed the details submitted pursuant to para 10.2 of schedule 1. This obligation gives absolutely no certainty that such measures will not affect the designated sites, especially given the lack of detail as to the location and extent/quantity of offsite measures that may be necessary to protect aircraft/public safety. The fact that LAA and SDC have to “agree” to the offsite measures also does not provide an adequate restraint to ensure that any offsite measures will not adversely affect the designated sites. If the applications are approved and the runway extension is operating, public safety will clearly be paramount and it will be hard for SDC to not agree to measures necessary to protect public safety.

**Draft conditions (CD17.5), runway extension, condition 18:**

- The change from “*in accordance*” (CD17.2, condition 19) to “*general compliance*” (CD17.5) (regarding the approval of the final BCMP from the December 2010 draft version) enables greater scope for the final BCMP to include significantly more bird control measures than may have been envisaged/alluded to in the draft BCMP.
- The details set out in a-g of condition 18 (details as to LAA’s bird control habitat management plan, dispersal of birds, scaring techniques employed on-site etc) are necessary now.