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**FURTHER SUBMISSIONS ON BEHALF OF UDC**  
**RELATING TO CARBON EMISSIONS**

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**Introduction**

- 1 These submissions are made by UDC at the invitation of the Panel (email dated 23 April 2021) in response to the Government's announcement (made on 20 April 2021 on the GOV.UK website) on carbon emissions within the UK's 6<sup>th</sup> Carbon Budget (6CB, 2033-2037).
- 2 These submissions must be read in conjunction with UDC's Closing Submissions dated 11 March 2021.

**Government announcement of 20 April 2021 and context**

- 3 On 20 April 2021, the Government announced two firm commitments in relation to the reduction of carbon emissions:
  - (1) The Government will target a reduction in carbon emissions of 78% by 2035 compared to 1990 levels.
  - (2) The 6CB will incorporate the UK's share of international aviation and shipping emissions (IAS).

The Government, in announcing the first of these commitments, acknowledged that it is one of the most ambitious in the world. The second commitment represents a fundamental shift from the prior position (which was not to include aviation and shipping emissions in the carbon budget).

- 4 The importance of these commitments to the reduction of carbon emissions – and to this appeal – cannot be over-stated:
  - The commitment to cut carbon emissions by 78% by 2035 compared to 1990 levels will be enshrined in law. A statutory instrument has already been tabled and is expected to pass into law by the end of June 2021. There is nothing to suggest that that timetable will not be met or that the statutory instrument will not come into law: no-one has suggested

opposition to the statutory instrument. Previous statutory instruments on carbon budgets and the amendments to the Climate Change Act in 2019 progressed in this way.

- As for the 6CB, this will be the first to be published since the adoption of the net zero target (incorporated into the Climate Change Act 2008 by amendment in June 2019). It will be published by June 2021 pursuant to the statutory duty on the SoS to produce a carbon budget (s.4 of the 2008 Act). It will set the framework for emissions cuts across the whole economy, including aviation, to show how the Government expects to achieve its target for the period 2033 to 2037. By this announcement, the Government has committed, (in advance of publishing detailed policy to deliver on this target) to achieve the target of a 78% reduction in carbon emissions compared to 1990 levels at the mid-point of the 6CB period (2035). It also stated that IAS will formally be included within that budget. The Explanatory Memorandum to the Statutory Instrument states that a separate instrument will include IAS within the scope of the Act<sup>1</sup>.

5 The commitments set in train the step change required in carbon emissions policy to deliver the commitment to net zero. The incorporation of IAS within the 6CB, pursuant to the Committee for Climate Change's recommendation (as envisaged by UDC and SSE in their evidence), means that there will be no dispensation for aviation. Aviation has to play its full part in achieving net zero according to a highly ambitious new target set for the period 2033-37 (the sixth carbon budget period). Aviation now has to grapple with carbon in the same way as the rest of the economy has done since 1990. There is no more of the exceptionalism which Mr Hill QC urged in his closing submissions. Indeed, the impact for aviation will be all the more acute, since it has catching up to do.

6 The context for the 78% reduction is amply set out within the Government's announcement:

- It is stated that the Government is already working towards its commitment to reduce emissions by 2030 by at least 68% compared to 1990 levels. The world beating announcement is stated to build on that goal to achieve a 78% reduction by 2035.
- The announcement refers to the Government's target of reducing emissions by 80% by 2050, which was in place prior to the amendment to the 2008 Act to reflect net zero. It is noted that the Government is aiming to achieve almost the same level, but 15 years earlier, i.e. in half the time.

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<sup>1</sup> [www.legislation.gov.uk/ukdsi/2021/9780348222616/pdfs/ukdsiem\\_9780348222616\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2021/9780348222616/pdfs/ukdsiem_9780348222616_en.pdf)

- The 'Notes to editors' section records that the CCC's advice on the 6CB recommended that the 6CB should be set at 965 MtCO<sub>2</sub>e, reducing emissions by 78% from 1990 to 2035, and that legislation will set the budget at the level recommended by the CCC:

'This is a highly ambitious target for the mid-2030s – close to the UK's previous 2050 target (an 80% reduction on 1990) just 2 years ago and consistent with the Paris Agreement temperature goal to limit global warming to well below 2°C and pursue efforts towards 1.5°C'

- 7 The change in direction indicated by inclusion of IAS within the 6CB can be understood by reference to the Government's Response to the CCC's 2020 Progress Report to Parliament, just last October, which was much debated at the inquiry [CD17.64]. In response to the CCC's recommendation that IAS be formally included within UK climate targets when setting the 6CB, the Government explained how they had been taken into account previously and why [p.106]:

'Domestic aviation and shipping emissions are included in the UK's carbon budgets, with international aviation and shipping emissions accounted for via "headroom" within our existing carbon budgets, meaning that the UK can remain on the right trajectory for net zero across the whole economy. International emissions are treated differently, largely because the inherently international nature of both sectors means that it is difficult to attribute these emissions to individual states. It is widely agreed among states that a sectoral approach (rather than state-by-state) is preferable, which is why the Kyoto Protocol gave the UN International Civil Aviation Organisation (ICAO) and the International Maritime Organisation (IMO) responsibility for pursuing measures to reduce these emissions.'

- 8 The Government's response in October 2020 went on to state that:

- Internationally, the Government is committed to negotiating in ICAO for a long-term emissions reduction goal for international aviation that is consistent with the temperature goals of the Paris Agreement. The Government is committed to negotiating a long-term emissions goal, as well as ensuring that CORSIA is implemented and enforced effectively and strengthened over time.
- Whilst airport expansion is a core part of boosting our global connectivity and levelling up across the UK, the Government takes seriously its commitments on the environment and the expansion of any airport must always be within the UK's environmental obligations.
- A contingency measure is needed in case international progress does not go far enough or fast enough. That is why the Government is minded to include IAS in carbon budgets if there is insufficient progress at an international level.

- 9 The announcements in the 6CB are thus a profound change of direction since even October last year, that cannot be ignored. It is an example of the Government taking '*unilateral action*

*at a national level where it is appropriate and justified in terms of the balance between benefits and costs'* (APF [CD14.1], p.41, §2.5), and reveals that the Government is committed to robust action at a national level, regardless of its hope – so far not realised - that a long-term emissions reduction goal can be agreed through ICAO. At the same time, the announcements are in keeping with the Government's recognition that reaching net zero will involve *'fundamental changes across the UK economy. Under any feasible scenario, meeting net zero will require reductions in emissions across the economy on a scale not previously seen...'* [CD17.64, p.7].

- 10 As to how the Government expects to meet the 78% reduction by 2035, it is stated that:
- The Government will *'look to meet'* this reduction through investing and capitalising on new green technologies and innovation, whilst maintaining people's freedom of choice, including on their diet.
  - For that reason, the 6CB will be based on its own analysis, and *'does not follow each of the Climate Change Committee's specific policy recommendations.'*
  - The UK is bringing forward bold blueprints setting out its own vision for transitioning to a net zero economy and how the Government can support the transition to low carbon technologies, including publishing the Heating and Building Strategy and the Transport Decarbonisation Plan later this Spring.
- 11 As to each of the above points:
- (1) The over-optimism of the aviation industry on the potential for significant take up of Sustainable Aviation Fuels, including the massive scale of investment required when set against the relatively small sums currently committed, is covered in UDC's Closing Submissions (§105). Given the highly ambitious target to be set in the 6CB and to be achieved by 2035, CCC modelling showed 80% of savings up to the end of the sixth carbon budget were from demand management including capacity constraint, and that SAFs hydrogen or electrification could not provide a green technology and innovation "silver bullet" for aviation within the timescales now set<sup>2</sup>. There is nothing in the evidence that the Panel has heard to suggest that savings could be achieved by technology on this timescale.

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<sup>2</sup> Source: CD 17.81 "The-Sixth-Carbon-Budget-Charts-and-data-in-the-report", see tab "Aviation", line 132 onward.

- (2) The lack of progress through ICAO and the limitations of CORSIA are covered in UDC's Closing Submissions (§104). The end date for CORSIA of 2035 now coincides with the date by which the 78% reduction in emissions must be achieved. CORSIA is simply aimed at achieved growth with no additional emissions beyond the emissions in 2020 and as such is not compatible with Paris or with the UK target, and is clearly inadequate to deliver the 6CB and net zero 2050. The Government's inclusion of CORSIA within national budgets is the first salvo in reforming CORSIA to meet Paris.
- (3) Since the Government has adopted the CCC's recommendation as to the carbon reduction target for the 6CB, and having regard to (1) and (2), there is an ever greater likelihood that demand management of airport growth will have to be considered to enable the new target to be achieved, in line with the CCC's formal recommendation [CD17.77, p.162, Ch.8, Table 8.1]:

'There should be no net expansion of UK airport capacity unless the sector is on track to sufficiently outperform its net expansion trajectory and can accommodate the additional demand.'

The 6CB will be based on the Government's own analysis, but there is nothing to suggest that demand management of airport growth will be excluded from policy (and how savings are then to be achieved).

Indeed, given that the implementation of demand management as a policy approach has a net zero cost, and compares favourably with other policy approaches such as local carbon fuels, it is likely to be all the more attractive as a policy option ([CD 17.81] "The-Sixth-Carbon-Budget-Charts-and-data-in-the-report", see tab 'Advice Report Ch5&6', line 81 onward).

- (4) The Transport Decarbonisation Plan is expected to fulfil the Government's commitment to consult on 'Net Zero Aviation'. The Transport Decarbonisation Plan is expected to be published within weeks.

### **Implications for appeal proposal and carbon emissions**

12 The first question that must be asked in deciding this appeal is whether it should take *any* account of either or both of the announced commitments.

13 The answer to the first question is "yes" in relation to both commitments. These are unqualified commitments from the highest level of government, formally announced to the public and readily available through the official government website. These can truly be said to be statements of government policy: see, by analogy, *R (Spurrier) v Secretary of State for*

*Transport & ors* [2019] EWHC 1070 (Admin), [2020] PTSR 240 at [86]; *R (Grand Central Sound Studios Ltd) v Westminster CC* [2016] EWHC 2617 (Admin) at [22]; *R (Moore) v SSCLG* [2015] EWHC 44 (Admin), [2015] PTSR D14 at D15. But even if they fall short of formally constituting official “policy,” they so approximate it that any diminution in their significance for the purposes of this appeal is immaterial.

14 The second question is the amount of weight that should be given to the announced commitments.

15 The answer to the second question is “very considerable weight.” It is not permissible to trivialise the significance of the announced commitments by weighting them out of the importance that they command. The manner in which the announced commitments were (and continue to be) made, their rapid expression into draft statutory instruments, their concrete terms and the unanimity of support that they command manifest their importance.

16 The third question is the extent to which the announced commitments impinge upon the appeal decision and the value of the evidence/submissions that the inquiry has received.

17 The announced commitments go to the core of one of the four grounds of refusal and diminish the value of the evidence/submissions put forward by STAL on this ground. STAL submitted (§177 of Closing Submissions) that “the start and end point for the Panel’s consideration of the carbon impacts of this development is MBU, which remains in force and has not been withdrawn or superseded by later Government policy.” That hardline position is no longer tenable and, were it to be swallowed now, would cause the Panel to err. STAL’s submissions (see §§178-231) can no longer be sustained in light of the announced commitments. Statements such as those in §200 (“The correct analysis is that IAS are not caught by the amendment to net zero at all. They continue to be excluded from carbon budgets set under the Act, and the Government continues to prioritise the international process to address these emissions...”) cannot be maintained in their current form.

18 The reality is that STAL’s evidence on carbon emissions (from Mr Robinson and Mr Vergoulas) was predicated on a “frame of reference” that has ceased to exist: see, for example, STAL/8/2 §1.9ff. The Panel has no replacement or updated evidence. The Panel has rejected the invitation to take further evidence. Since the onus lies on STAL, it has not discharged that onus and the appeal falls to be dismissed. The fact that this may have been catalysed or contributed to by an announcement not earlier foreseeable (by STAL) is neither here nor

there. The short of it that the Panel has heard no evidence as to: (a) the extent to which the aviation sector can secure a 78% reduction in emissions by 2035; (b) the extent to which other sectors could absorb part of the aviation sector's contribution to a 78% reduction in emissions by 2035; (c) in respect of (a) and (b), to what extent the aviation sector can secure that reduction (or a reduced reduction because of other sector absorption) other than through demand management; (d) whether Stansted airport can properly take less than its fair portion of the reduction required of the aviation sector; and (e) the extent to which Stansted must carry its fair portion, whether or not it can secure it other than through demand reduction measures.

- 19 Quite apart from the above, there are a number of wider ramifications for STAL's case which flow from the Government's announcements.
- 20 First, STAL's attempts to cling to the carbon analysis within MBU as "preauthorising" airport growth in carbon terms, look ever more desperate, and weak. As referred to in UDC's Closing Submissions, MBU is not an aviation policy which is calibrated to net zero (§§90-91). The formal inclusion of IAS within the 6CB, combined with its highly ambitious new target of a 78% reduction in emissions by 2035, are the last nail in the coffin for MBU's carbon analysis. It is now both out of step and out of date on carbon and should not carry any material weight on carbon emissions. Indeed, there is now a significant policy gap between the new target and existing policy on aviation, which is due to be filled by policy statements in the coming weeks.
- 21 Secondly, and as a corollary to the first point, STAL's misinterpretation of MBU, to the effect that the carbon emissions associated with airports are not a matter for local planning decision making, is further weakened by the Government's announcements which constitute recent material considerations. It is all the more appropriate and reasonable to take account of carbon emissions in local decision making now that IAS emissions are to be formally included in a carbon budget which will be set - and will need to be achieved - over the 5 years after Stansted is forecast to reach 43mppa, including both domestic and international flights.
- 22 Thirdly, UDC's judgment as to the direction of travel and emerging policy on carbon emissions is all the more credible as a result of these announcements. The clear direction of travel on carbon emissions and aviation, which were drawn from a series of statements from the CCC during 2019, are coming to fruition (UDC's Closing Submissions, §95). STAL presented various

arguments to the inquiry, seeking to downplay the direction of travel of carbon emissions policy. Specifically, STAL sought to emphasise the point that the CCC has sought the formal inclusion of IAS emissions in carbon budgets for some years, but the Government has never agreed to its inclusion in carbon budgets. That point is now untenable. Further, STAL has argued that the Government's primary objective is to use ICAO to resolve international aviation emissions, and that uptake of up to 50% SAFs (which may deliver a 32% or so saving in carbon) will ensure that net zero will be achieved by 2050. Those arguments carry little weight in the light of these recent announcements and the pace of change in aviation policy which they will inevitably bring about.

- 23 Fourthly, the planning assumption of 37.5MtCO<sub>2</sub> for aviation is not compatible with the new target. Comparing the 37.5MtCO<sub>2</sub> planning assumption with projected UK carbon emissions under the CCC's 6CB Recommendations would mean that a fixed 37.5MtCO<sub>2</sub> budget would increase exponentially as a proportion of UK emissions, from 7.6% of UK emissions in 2022; 12% in 2030; 36% in 2040 and 100% in 2045. Obviously by 2050 and net zero, the 37.5 MtCO<sub>2</sub> planning assumption would be infinitely larger than the entire rest of the economy<sup>3</sup>.
- 24 Even if the planning assumption were to remain the same following publication of the 6CB by June 2021, the inclusion of IAS within that budget, and the fact that the rest of the economy is being asked to cut emissions in half the time (2035 rather than 2050 as was the case before the Climate Change Act was amended in 2019) means that there will be no credible headroom for emissions from aviation to be made up by other sectors, by 2035. And by 2050 there would have to be significant *negative emissions* (ie carbon dioxide removals, which is expensive and novel technology) for the whole economy to get to net zero.
- 25 Fifthly, given the likelihood that the planning assumption of 37.5MtCO<sub>2</sub> for aviation will be further constrained as a result of the new target, Dr. Hinnells' judgment, that the carbon emissions arising from the proposal would be significant, is given further support (UDC's Closing Submissions, §106-109).
- 26 In summary, the new reality is that there is no way of getting aviation to play its role in achieving the 2035 target apart from aviation demand management. Not to acknowledge this is to be in denial.

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<sup>3</sup> These percentages illustrate the 37.5MtCO<sub>2</sub> Planning assumption against the Balanced Pathway carbon budget from CCC, [CD 17.81 on tab "6CB Advice report Ch1&2" at line 46].

### **Adequacy of Environmental Information**

- 27 As the determining authority for the appeal proposal, the Panel needs to be satisfied that it has sufficient environmental information on the likely significant effects of the proposal on the environment.
- 28 Given their date of publication, there is no evidence in the ES [CD3.12], nor in the ES Addendum [CD7.12], which demonstrates that the proposed growth at Stansted would meet the new target of a 78% economy wide reduction in carbon emissions by 2035. Updated, enhanced environmental information and assessment is required to demonstrate this.
- 29 Updated, enhanced environmental information and assessment is also required to include IAS and the effects of these emissions on the ability of the UK to meet net zero in 2050 .

### **Condition 15**

- 30 Condition 15 is designed to accommodate changes in carbon emissions policy through the setting of new targets and budgets. It is precisely because of the pace of change on issues such as carbon emissions that a dynamic condition, which is able to adapt to such changes, is put forward by UDC.
- 31 To the extent that the formal inclusion of IAS within the next carbon budget, and the new target of a 78% reduction in carbon emissions by 2035, would require the submission of Further Environmental Information, that may necessitate a consequential amendment to the Schedule A figures and the benchmarks set in Schedule B. But the recent announcement evidences the wisdom of the condition and its ability to align with changing policy changes. UDC would be happy to revise (and to discuss with STAL) changes to Schedule A to make it fully align with the recent announcements.

### **Conclusion**

- 32 The commitments announced on 20 April 2021 make it imperative that the Panel wait until the end of June 2021 (ie just seven weeks) so that its decision can be informed by policy statements promised by the Government before the end of spring 2021, including specifically:
- (1) the Transport Decarbonisation Plan; and
  - (2) the Heating and Building Strategy.

- 33 The Panel may wish to wait a little longer (eg until the end of July 2021) for the publication of the net zero aviation strategy (assuming that this is separate from the Transport Decarbonisation Plan), and UDC would support that.
- 34 The announcement already made requires further environmental information. It is to be expected that the two policy statements promised before the end of spring 2021 will also require further environmental information. The onus lies on STAL to discharge the burden of showing that the proposed development can be reconciled with the existing announcement and with the announcements promised in the next few weeks. Once STAL produces that evidence, UDC will wish to analyse it, to be allowed the opportunity to controvert it, and to be able to make submissions on it.
- 35 The importance to the Government that carbon emission issues in planning decisions are handled carefully and properly is plain from a series of recent infrastructure cases: see Appendix 1.
- 36 A decision made hastily or otherwise pre-empting the spring announcements would be fraught with danger.

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#### **Appendix 1 Recent infrastructure cases**

**The following cases show an increased level of importance of carbon emissions, and that they are alone sufficient reason for delay, review, or refusal, even before the Government's announcement accepting 6CB recommendations.**

1. **Manston Airport.** Consented, but subsequent judicial review proceedings were not contested by the Government and developer, and consequently the consent was withdrawn, pending a new decision.
2. **Leeds Bradford Airport:** the LPA resolved to approve the expansion (circa 3.5mppa, and therefore MBU was relevant at the time of decision, though the decision was before the announcement of 6CB) but the Government has issued an Article 31 Direction which prevents a decision being issued until the Government has decided whether to call in the

application for a public inquiry. *This case shows there are policy implications which are more than local, even for airports with a lower level of change than at Stansted.*

3. **Southampton Airport:** the extension of the runway by 164m has recently been consented which will allow larger aircraft to use the airport. However, arguably there were very particular local circumstances, given Flybe liquidation and dispersal of fleet that can use the shorter runway, as well as significant surface access traffic constraints. Consequently, the argument is that most of the impact from the development is therefore largely restoring the airport to previous operations, but there are still significant calls for it to be called in and campaigners are considering a judicial review. *Thus it would be wrong to infer that this decision acts as any kind of precedent to consent Stansted.*
4. **West Cumbria Coal:** the LPA resolved to grant planning permission subject to referral to the Secretary of State – the SoS initially confirmed that the application could be decided by the LPA (as he so far has on Stansted), however, before the s106 was finally signed by the Council, the SoS decided that there had been changes since his original decision, *particularly that the Climate Change Committee’s sixth carbon budget recommendations raised issues of ‘more than local importance’, and as a consequence he called in the application for a public inquiry* <sup>4</sup>.
5. **RIS2 (Roads Investment Strategy) and National Networks NPS.** Roads policy is subject to Judicial Review for inappropriate consideration of carbon. In this case DfT significantly underestimated emissions<sup>5</sup>. *There is a similar risk with Stansted and other airports, of underestimating the cumulative impact of airports and impacts on 6CB.*
6. **A38 Derby Junction Scheme** (October 2020) approved, subject to the Secretary of State making decisions on carbon emissions under the Paris Agreement. This case is the first of which we are aware, of Inspectors referring the issue of carbon emissions back to the Secretary of State. The Secretary of State decided to approve the proposal (8 Jan 2021), however, threatened with Judicial Review, the Government has decided to withdraw the consent and a new decision must now be made<sup>6</sup>.
7. **Drax Power.** The Court of Appeal upheld DCO consent of the proposed gas fired power station despite its carbon emissions impact, but the court was clear carbon must be weighed in the planning balance, along with the fact that the power sector has already significantly decarbonised and gas plays an important role in network stability. *However, following this decision, CCC argued in 6CB that gas should be phased out from the UK generation mix by 2035, and network stability could be provided by other means. Drax has decided that it would not construct the consented project, and focus instead on becoming carbon negative by 2030 (generating using biomass and using carbon capture and storage).*

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<sup>4</sup> [www.gov.uk/government/publications/decision-to-call-in-west-cumbria-coal-mine](http://www.gov.uk/government/publications/decision-to-call-in-west-cumbria-coal-mine)

<sup>5</sup> [www.highwaysmagazine.co.uk/Shapps-overrode-advice-to-review-RIS-2/8866](http://www.highwaysmagazine.co.uk/Shapps-overrode-advice-to-review-RIS-2/8866)

<sup>6</sup> <https://derbynews.org.uk/2021/04/11/a38-road-expansion-stopped-following-residents-legal-objection-on-climate-change-grounds>