



British Airways plc
Waterside
PO Box 365
Harmondsworth UB7 0GA

Civil Aviation Authority
Westferry Circus
Canary Wharf
London EH14 4HD

economicregulation@caa.co.uk

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British Airways ("BA") Response to CAP3201

Economic regulation of Heathrow Airport ("Heathrow"): Proposals on the regulatory treatment of early costs for capacity expansion at Heathrow airport

Thank you for the opportunity to respond to your latest consultation on the economic regulation of Heathrow. In our enclosed response, we set out our views on the Civil Aviation Authority's ("CAA") proposals for the recovery of early costs associated with capacity expansion ("Proposals") and on their implications for the wider regulatory framework, consumer protection, and competition.

BA strongly objects to the CAA's proposal to allow Heathrow Airport Limited ("HAL") to recover early costs of capacity expansion ("early costs") of £320 million over 2025-2026 (in 2024 prices) from consumers through airport charges before a development consent order ("DCO") is granted. Likewise, we fundamentally object to the proposal to allow other promoters to recover their early costs through airport charges, even those that are deemed by the CAA to be credible and mature. This approach shifts speculative, pre-consent development risk onto today's passengers, compounds the risk of duplicative, unnecessary, and inefficient spending, and creates regulatory expectation that will be difficult to reverse as sunk costs accumulate. In fact, there are already indications from HAL that it will not keep within the proposed cap and that costs will escalate. After demanding recovery of early costs up to £320 million on 10 September 2025, HAL has already upped the ante in its letter of 9 December 2025, requesting an amount closer to £400 million, plus flexibility to allow for even more expenditure.

Importantly, the CAA has not investigated whether the £320 million sought for 2025-26 is duplicative to the £500 million of pre-COVID expansion costs already being paid for by the consumer through HAL's Regulatory Asset Base. Together with further early spend expected until DCO is granted, costs on the consumer are likely to be very significant. According to the CAA, HAL expects costs "*in excess of £4 billion*" for "*significant amounts of land [that] would need to be acquired prior to a DCO being granted in 2029*" (para. 2.50). Early recovery sets precedent, creates expectations, and restricts the CAA's future optionality exactly when decisions become larger, harder, and more consequential for consumers.

We have repeatedly stated that we are supportive of Heathrow expansion where it is in the interests of consumers and the UK, but those benefits could disappear if expansion is pursued at any cost. To ensure that expansion is economically viable and aligned with consumer interests, the CAA must ensure that rigorous and effective cost controls are put in place from the outset, and that competition and contestability are leveraged to drive efficiency. Neither of these objectives are achieved with the Proposals. On the contrary, the Proposals would harm cost discipline, harm competition, and materially weaken consumer protection.



Proceeding in this way would be wholly inconsistent with the CAA's duty to act in the interests of consumers, ensure efficient costs and promote competition. The CAA has prioritised speed at the expense of its duties, has relied on HAL's analysis on consumer benefits without an independent assessment, and there are serious deficiencies in the CAA's consultation process and reasoning. The Proposals risk hard-wiring HAL as the presumptive deliverer of expansion and undermining a level playing field precisely when design choices and option value are being set.

Similarly, the CAA has considered early cost recovery in isolation and has failed to consider the cumulative impact its Proposals will have along with other pressures on regulated charges, such as the significant increases proposed by HAL in its H8 Business Plan (at least 47% over 2027-2031 in 2024 prices) and further expansionary cost (estimated by HAL at £49 billion in 2025). Indeed, the CAA has acknowledged, as part of its separate consultation on regulatory models for capacity expansion, that increases to airport charges from expansion, when combined with proposed increases under H8 "*are likely to result in HAL's charges significantly exceeding current charges at other airports even after controlling for other relevant factors*" (CAP3195, para 2.68). The CAA cannot responsibly treat early cost recovery as a bounded, near-term affordability adjustment. It is a pivotal signal that shapes incentives and regulatory optionality at the start of a very large programme.

We therefore urge the CAA to withdraw the Proposals and reconsider its position on early cost recovery.

Strictly without prejudice to our primary position, if the CAA proceeds with its Proposals, it should only do so on the basis of significantly strengthened guardrails, as the regulatory arrangements currently proposed by the CAA to protect consumers are insufficient, ineffective, and inappropriate. There are practical and viable alternatives to the CAA's Proposals that provide stronger guardrails, and which ensure that it remains in promoters' interest to deploy the resources necessary to proceed with capacity expansion, such as the chosen promoter being provided with the opportunity to recover its efficient development investment, including its cost of capital, from future expected returns.

We have set out in Sections 6 and 7 of our response the guardrails which the CAA ought to put in place, if early cost recovery is allowed, to ensure adequate consumer protection. The CAA ought to equally set those guardrails to guarantee competitive delivery of expansion and that consumer-funded design does not create an information advantage for HAL that forecloses competition. If the CAA chooses not to adopt these guardrails, it must provide a clear, rigorous, and evidence-based justification of how its approach meets its statutory duties and protects consumers in practice.

We appreciate the CAA's consideration of our views on this important matter. We trust that the CAA will give paramount weight to the interests of consumers, competition and the integrity of the regulatory framework as it finalises its policy. We would be happy to discuss any aspect of our response or provide further data and analysis if helpful.

Thank you for your attention to our submission.

Yours sincerely,

Michael Petrides

Head of Economic Regulation

British Airways



BRITISH AIRWAYS RESPONSE TO CAP3201

1. INTRODUCTION

1.1 This response is structured as follows:

1.1.1 **Section 2: Executive Summary;**

1.1.2 **Section 3: BA's primary position** - Allowing early cost recovery before a development consent order ("DCO") is granted is wrong in principle and the Proposals ought to be withdrawn;

1.1.3 **Section 4: Issues with the CAA's overall approach** – The CAA's approach is fundamentally flawed: it prioritises speed over cost control and value for consumers while ignoring the impact on the level of charges; gives precedence to the Government's timetable rather than its statutory duties; accepts HAL's claimed consumer-benefit case without an independent assessment of charge impacts, consumer outcomes and cost efficiency; treats early cost recovery as a separable isolated issue, thereby undermining competition for delivery; risks distorting the outcome of the CAA's regulatory-model review; and is rendered unsound by serious deficiencies in the CAA's consultation process and reasoning;

1.1.4 **Section 5: Specific concerns with the Proposals** – We oppose the Proposals on the basis that they: depart from established regulatory practice and the CAA's own findings; are inconsistent with the CAA's statutory duties; and misapply the 'fair bet' by creating an imbalance of risk and reward in HAL's favour. Information asymmetry heightens the risk of double payment and inefficiency, as recognised by both the CAA and independent reports, while early recovery shifts risk at the most uncertain stage, creates hold-out risk and path-dependency, and raises particular concerns over land and property acquisition;

1.1.5 **Section 6: The CAA's proposed arrangements to protect consumers (the "guardrails") are fundamentally inadequate** – The proposed guardrails cannot protect consumers because the CAA relies on an ex post review that is illogical and ineffective; the "demonstrably inefficient or wasteful" ("DIWE") standard shifts the burden to the regulator to demonstrate inefficiency, sets an unreasonably high disallowance bar, and is not designed for early-stage costs; the framework fails to scrutinise timing or purpose of spend and cannot recreate the discipline of at-risk capital; and the omission of the true-up and ex post rules from the licence modification weakens protections further; and

1.1.6 **Section 7: Summary of BA's recommendations** – The Proposals ought to be withdrawn and the CAA should reconsider its position on early cost recovery based on a thorough and balanced cost/benefit assessment. Strictly without prejudice to our primary position, if the CAA proceeds with its Proposals, then the guardrails must be materially strengthened, and we have set out the mechanisms that would be necessary to implement to provide meaningful protection for consumers.

1.2 This response is deliberately targeted and does not address every point raised in CAP3201. It should be read together with BA's previous consultation responses and ongoing engagement with the CAA. BA stands by its previous submissions on early cost recovery and expects the CAA to engage with



and act on these submissions, as required under its statutory obligations. BA's decision not to comment on any particular point raised in CAP3201 should not be misinterpreted as tacit acceptance or endorsement.

2. EXECUTIVE SUMMARY

- 2.1 **Our primary position – early cost recovery is wrong in principle:** We remain firmly opposed to allowing Heathrow or any promoter to recover early expansion costs from consumers before a DCO is obtained. This shifts speculative, pre-consent risk onto today's passengers, undermines investment discipline, and prejudices expansion before the consumer interest case has been independently established.
- 2.2 **The CAA is prioritising speed over consumer protection, cost efficiency and promoting competition:** The CAA's approach places excessive weight on maintaining the Government's preferred timetable, rather than on its statutory duties to protect consumers, ensure efficiency and promote competition. Speed is being treated as the primary consumer benefit, despite the absence of an independent assessment of the costs, benefits or affordability of expansion.
- 2.3 **Incomplete, unbalanced and non-independent assessment harming the consumer and cost efficiency:** The CAA relies heavily on HAL-sponsored analysis without completing its own consumer-interest assessment, even though it acknowledges significant uncertainty around expansion costs and benefits. This allows an unsupported premise to become self-reinforcing: expansion is assumed to be beneficial, early spend is therefore justified, early costs must therefore be recoverable, and once consumers begin paying, it becomes harder to reassess the underlying welfare case.
- 2.4 **Serious risk of duplication, inefficient spend and precedent ahead of further significant early spend:** The CAA has not demonstrated that the £320m sought for 2025–26 is additional to the £500m of pre-COVID expansion costs already in the RAB and being paid for by the consumer. HAL has already incurred 2025 expenditure that has not been transparently explained or validated. Under the proposed ex post approach, preventing double-recovery is particularly difficult due to HAL's information advantage. There are already indications from HAL that it will not keep within the proposed cap and that costs will escalate. After demanding recovery of early costs up to £320 million (in 2024 prices) for 2025–2026 on 10 September 2025, HAL has already upped the ante in its letter of 9 December 2025, requesting an amount closer to £400 million, plus flexibility to allow for even more expenditure. Together with further early spend expected until DCO is granted, costs on the consumer are likely to be very significant. According to the CAA, HAL expects costs "*in excess of £4 billion*" for "*significant amounts of land [that] would need to be acquired prior to a DCO being granted in 2029*" (CAP3201, para. 2.50). Early recovery sets a precedent, creates expectations, and restricts the CAA's future optionality exactly when decisions become larger, harder, and more consequential for consumers.
- 2.5 **Inconsistent with the findings of the CAA and assessors:** The Proposals disregard serious deficiencies in HAL's management of expansion, identified by the CAA and independent assessors. In particular, "*a number of issues related to HAL's management of expansion programme*" and lack of information, as well as the difficulty in quantifying inefficiencies, have been previously identified by the CAA (CAP2665E, paras F59 – 60) and other assessments. [...]



- 2.6 **Failure to take into account cumulative impact:** The CAA treats early expansion costs as a separable isolated issue despite acknowledging, as part of a separate consultation on regulatory models for capacity expansion, that increases to airport charges from expansion, when combined with HAL's proposed increases under H8 "are likely to result in HAL's charges significantly exceeding current charges at other airports even after controlling for other relevant factors" (CAP3195, para 2.68).
- 2.7 **Deficiencies in the CAA's process and reasoning:** The CAA notes disagreement from stakeholders but does not address their reasoning or alternatives. The speed of the process reinforces concerns that consultation feedback was not properly considered. Key stakeholder concerns affecting long-term viability of operations at Heathrow were effectively ignored. In fact, the CAA issued its *minded-to* position only 15 days after the consultation closed. This short timeframe is inconsistent with proper consideration of detailed stakeholder submissions. As a result, the *minded-to* outcome substantially replicated the CAA's earlier preferred position, strongly suggesting predetermination.
- 2.8 **Proposed guardrails are insufficient and ineffective:** The key safeguards, particularly the ex post review and the DIWE test, carry a high bar for disallowance, provide weak behavioural incentives, and are inconsistent with the CAA's own findings that these safeguards are not only inappropriate for assessing early expansion costs but also ineffective. A cap that can be reopened under timetable pressure is not a real constraint. The absence of clear rules on the true-up and disallowance process creates further uncertainty and weakens consumer protections.
- 2.9 **Departure from established regulatory practice:** Across other UK regulated sectors, early development expenditure is only recoverable after ex-ante regulatory approval, regulator-led gating and robust needs-case justification. The CAA's proposal stands in contrast, offering recovery of speculative costs without the cost controls typically required elsewhere.
- 2.10 **Risks to competition and the wider regulatory framework:** By underwriting early spend for HAL, the CAA risks entrenching HAL as the default developer and undermining contestability. The proposals also pre-judge the outcome of the CAA's own ongoing review of the regulatory model for expansion.
- 2.11 **Concerns on land and property acquisition:** Land and property purchases create irreversible commitments and can foreclose competing development options. The CAA has not explained how it will prevent HAL from using consumer-funded acquisitions to shape the scheme, influence the single till boundary, or disadvantage alternative promoters, particularly in a context where HAL's H8 Business Plan includes proposals for exiting property assets paid for by the consumer from the boundary of the single till.
- 2.12 **Our proposed guardrails (without prejudice to our overall rejection of the Proposals):** If any early cost recovery is allowed (including if the CAA adopts our primary position that recovery should not be granted before a DCO is obtained), it must be conditional on prior ex ante CAA approval against clear criteria and objectives set by the regulator, and based on a truly independent assessment. This must allow guarantee transparency and clear traceability of decisions that are made in scheme planning that could have a material impact on the overall cost envelope of capacity expansion. Any cap must be binding, with only a cost-of-debt return allowed (not the full WACC) pre-consent, verifiable non-duplication and protections on land transferability and a clawback mechanism if the



scheme is abandoned. There ought to be clear mechanisms to enable future competitive delivery which will guarantee that consumer-funded design work is accessible by alternative bidders (with appropriate confidentiality in place) and does not create an information advantage that forecloses competition. All proposals should be captured in any licence modifications proposed (including the efficiency assessment and true-up mechanisms).

3. BA'S PRIMARY POSITION - ALLOWING EARLY COST RECOVERY BEFORE A DCO IS GRANTED IS WRONG IN PRINCIPLE AND THE PROPOSALS OUGHT TO BE WITHDRAWN

3.1 We remain unequivocally opposed to the recovery of early costs prior to Heathrow obtaining DCO. No recovery of early costs best meets the CAA's duties by protecting consumers from unwarranted charges, preserving the integrity of competitive proposals, and maintaining proper investment incentives for efficiency. As we noted in our response to the CAP3149 of 10 September 2025, HAL's previous expansion attempt resulted in over £500 million added to its RAB¹. The CAA's reviews of that spend identified several inefficiencies with HAL's management of that programme (CAP2665E, paras F59 – 60) without however resulting in significant disallowances, resulting in ongoing inefficiencies rolling into the future and the consumer continuing to pay over the odds. The CAA's current Proposals will perpetuate this outcome, not encourage efficiency and harm the consumer, with no lessons drawn from previous experience including the CAA's own findings over the past decade.

3.2 The Proposals are also inconsistent with the CAA's duty to promote competition in the provision of airport operation services. By underwriting early scheme development, the Proposals risk hard-wiring HAL as the presumptive deliverer of expansion and undermining a level playing field precisely when design choices and option value are being set. The Proposals are therefore wrong in principle (in addition to suffering from serious issues of process and substance, as explained below); they should be withdrawn, and the CAA ought to reconsider its position on early cost recovery based on a thorough and balanced cost/benefit assessment.

¹ This consisted of both Category B (costs associated with seeking planning permission for the new runway capacity) of £384 million and Category C (costs on the implementation and construction of new capacity up to entry-into operation) costs of £109 million spent between 2017 and February 2020 – see CAP1996 (paragraph 4.5) and CAP2265E (page 52).



4. ISSUES WITH THE CAA'S OVERALL APPROACH – THERE ARE SERIOUS ISSUES OF PROCESS AND SUBSTANCE WITH THE CAA'S ASSESSMENT AND OVERALL APPROACH TO CAPACITY EXPANSION, WHICH RISK HAVING A PROFOUND NEGATIVE IMPACT ON THE CUMULATIVE LEVEL OF CHARGES AT HEATHROW AND GO AGAINST THE CAA'S DUTIES TO FURTHER THE INTERESTS OF CONSUMERS AND PROMOTE COMPETITION, ECONOMY AND EFFICIENCY

4.1 Before addressing the specific Proposals in CAP3201, we set out wider concerns with the CAA's approach to expansion and stakeholder engagement. Early-stage regulatory signals are pivotal: they shape incentives, expectations, and the regulator's own freedom of action. The recoverability of early costs is not a narrow or technical question about a limited sum. If the CAA provides comfort now, it will create regulatory expectation that expansion-related costs are recoverable in principle, long before the consumer interest case has been independently established. That expectation will matter far more when the programme moves from hundreds of millions to the much larger expenditure envelope that follows.

4.2 The sub-sections below explain how the CAA's approach is fundamentally flawed because it:

4.2.1 Prioritises speed of delivery over cost control and value for consumers, while ignoring the impact on the level of charges;

4.2.2 Improperly gives precedence to the Government's timetable rather than its statutory duties;

4.2.3 Accepts HAL's claimed consumer-benefit case without an independent assessment of the impact on the level of charges, the consumer and cost efficiency;

4.2.4 Wrongly treats early cost recovery as a separable question and, in doing so, undermines competition for delivery of expansion, contrary to its statutory duties;

4.2.5 Incorrectly concludes that it is both necessary and in the consumer interest to provide early cost recovery now despite numerous examples of other regulators rolling up recovery to a future date. Allowing early cost recovery only following Heathrow obtaining DCO would:

(a) preserve stronger commercial incentives on HAL to manage its expansion development activities more efficiently;

(b) be more consistent with the basis on which early stage investment is normally made in commercial, competitive, project development environments, and the level of commercial returns that Heathrow's future expansion may potentially give rise to;

(c) address an imbalance between risk and reward that exists in HAL's favour under the CAA Proposals, whereby Heathrow stands to expect to receive significant returns should capacity expansion be taken forward – both through its regulated income and from opportunities to outperform future regulatory settlements – while, in contrast, pre-consent downside risk is transferred to consumers;

4.2.6 Risks distorting the outcome of the CAA's review of regulatory models for capacity expansion; and



4.2.7 Is rendered unsound due to serious deficiencies in the CAA's consultation process and reasoning.

4.3 The CAA is prioritising speed of delivery over cost control and consumer value, while ignoring the impact on the level of charges

4.3.1 The CAA repeatedly frames its objective as enabling HAL to progress at pace, allowing early funding so that HAL can "plan its activities and secure resources [...] to meet the challenging timetable" set by Government (para 1.16). The CAA states that "[n]ot providing this certainty now could mean HAL slowing down its work on such planning and preparation, leading to delays" (ibid).

4.3.2 The CAA's framing puts speed before cost control or consumer protection, as if speed itself is the primary driver of consumer value. That is not credible and runs counter to the Government's clear position that "rigorous and effective cost control will be essential to the scheme's success both in minimising any impact on airline charges and costs to passengers" (November 25 Announcement).

4.3.3 As the recent *Stewart Review: Major Transport Projects Governance and Assurance Review: The HS2 Experience* (published 18 June 2025) ("Stewart Review") emphasised only last year, major infrastructure projects "*don't go wrong, they start wrong*" (p. 8). The Stewart Review highlights the risk of schedule being prioritised over cost, with pressure from politicians to maintain momentum, fear of project cancellation, and the belief that costs will increase as a result of delay featuring strongly among the reasons given for this flawed prioritisation. To combat this risk, the Stewart Review stresses the importance of effective safeguards and time taken in the planning, development, and design phase of major project delivery to mitigate the risk of cost escalation, as has occurred in many recent major UK infrastructure projects.

4.3.4 In its proposed regulatory treatment of early costs, the CAA risks disregarding these critical lessons and setting the expansion programme on a trajectory that weakens cost discipline, reduces optionality, and exposes consumers to unnecessary and avoidable risks from the outset.

4.3.5 Consumers benefit from expansion only if it is delivered efficiently and delivers a wide range of services and connectivity through affordable charges. The affordability of charges is not a secondary concern; it is key to ensuring expansion is in the consumer interest. Yet, the consultation does not quantify what early cost recovery means for charges and consumers in practice. Nor does it consider:

- (a) The cumulative effect alongside other imminent pressures on the level of charges – most obviously HAL's H8 proposals, which include a very substantial increase in airport charges (at least 47% over 2027-2031 in 2024 prices);
- (b) The impact of potentially very significant expansionary cost, with HAL having submitted a proposal in August 2025 totalling £49 billion; and



- (c) The CAA's own recent finding that charges at Heathrow are high compared to other airports that are subject to a greater degree of competitive pressure (CAP3195, para 1.13).

4.3.6 The CAA has acknowledged, as part of a separate consultation on regulatory models for capacity expansion, that increases to airport charges from expansion, when combined with proposed increases under H8 "are likely to result in HAL's charges significantly exceeding current charges at other airports even after controlling for other relevant factors" (CAP3195, para 2.68). The CAA has failed to engage with this issue as part of the early cost consultation. Given the very significant impact on the overall level of charges, and the ensuing consequences for consumers, connectivity, and Heathrow's role as a hub, this was a material consideration which the CAA was required to have regard to in its decision-making. Its failure to do so may amount to an error in the exercise of its discretion. Considering early costs in isolation therefore gives an incomplete and false picture and fails to reflect the total impact on consumers.

4.3.7 A key additional element the CAA should consider as part of its analytical framework to ensure its Proposals align with consumer interests is updated modelling on airline economics. The models used by the Department for Transport and the Airports Commission to underpin decisions on airports policy and regulation fail to take account of airline economics and the realities of the aviation market. Moreover, it is essential that the CAA decisions are not made without an assessment of all relevant factors (such as airline economics) as this would be omitting relevant evidence and be procedurally unfair to the airlines.

4.4 **The CAA's approach improperly gives precedence to the Government's timetable at the expense of complying with its statutory duties as an independent regulator**

4.4.1 The CAA's decision on early cost recovery must be guided by its statutory duties under the Civil Aviation Act ("CAA12"). In particular, the CAA must comply with its duties to carry out its functions in a manner which it considers will further the interests of consumers and promote competition, while having regard to the need to promote economy and efficiency on HAL's part. Importantly, the CAA is not under any obligation to ensure expansion is delivered in accordance with the Government's preferred timetable, and if doing so would require the CAA to make decisions which run counter to its statutory duties, as an independent regulator the CAA must prioritise compliance with its duties. Prioritising short-term expedience (even if this is what the Government wants) over the pursuit of regulation that will secure the long-term interests of consumers cannot be consistent with the CAA's duties, and any decision made otherwise by the CAA would be wrong in law.

4.4.2 Against this backdrop, BA cannot fully support the CAA's fourth "guiding principle", which states that the CAA's approach to early costs will be to support and complement Government policy where appropriate (para 2.4). This puts the cart before the horse: the CAA must be guided first and foremost by its statutory duties, and only to the extent that Government policy aligns with those duties can the CAA appropriately support it.



- 4.4.3 If the CAA signals at this early stage that costs will be recoverable in the interests of protecting the Government's timetable, the CAA: (i) weakens the discipline that comes from expenditure being genuinely at risk; (ii) makes it harder for the CAA and other stakeholders to challenge scope growth and premature spend later; and (iii) creates an unintended consequence whereby the CAA (and by extension consumers) become vulnerable to being held to ransom by HAL.
- 4.4.4 To resist reasonable regulatory oversight, HAL can simply deploy the argument that any resistance or friction is unacceptable because it could jeopardise deliverability in line with the Government's timetable. In its Proposals, the CAA fails to distinguish between the risk of this strategic behaviour by HAL and genuine delays outside HAL's control. Instead, the CAA reaches a general and sweeping conclusion, without justification, that "not providing certainty now could mean that HAL would slow down its work on the process to prepare for capacity expansion" (CAP3201, para 2.54), an un-evidenced speculation that is repeated throughout the Proposals (paras 1.16, 2.54, and 3.2).
- 4.5 **The CAA has accepted HAL's consumer-benefit case for providing early costs certainty without completing its own independent assessment, despite acknowledging significant uncertainty around the costs and benefits of expansion**
- 4.5.1 The CAA appears to have accepted HAL's position on trust that allowing for early cost recovery furthers the interests of consumers by avoiding delays to the project, which would postpone and reduce the benefits to consumers (para 3.2). However, BA considers that the CAA has reached this conclusion without adequate supporting evidence and in defiance of logic, given that:
- (a) The CAA is relying on HAL-sponsored analysis, and has not yet completed its own assessment of the consumer-benefit case;
 - (b) Even on a high-level technical review, the CAA acknowledges there is "material uncertainty" around the total costs of expansion (para 1.11), yet proceeds to guarantee early cost recovery without testing whether its conclusions are robust to that uncertainty;
 - (c) Given that the welfare case for expansion is sensitive to costs, if costs are materially uncertain, the CAA cannot credibly assert that early cost recovery is justified on consumer-interest grounds; and
 - (d) In taking this approach, the CAA treats these early costs as inherently and persistently in consumers' interests regardless of whether expansion is ultimately delivered, or the outturn costs of expansion.
- 4.5.2 This is not a sufficient or logical basis for the regulatory commitments the CAA is proposing. Sponsor-commissioned analysis necessarily depends on HAL-provided inputs on costs, phasing, and scope. These are precisely the parameters that are uncertain and contested at this stage. Without an independent CAA view, an unsupported premise becomes self-reinforcing: expansion is assumed to be beneficial; therefore early costs must be incurred;



therefore early costs should be recovered; and once consumers begin paying, it becomes harder to reassess the underlying welfare case.

4.5.3 The CAA is asking consumers to underwrite costs for a programme whose net benefits it cannot independently verify. Delivering the wrong scheme or an unaffordable scheme (supported by the underwriting of early cost recovery) would mean consumers do not receive the range and quality of services that expansion is supposed to provide.

4.5.4 If the CAA wants to justify early recovery on consumer-interest grounds, it should demonstrate an independent assessment of welfare that is robust to realistic sensitivities: higher capex, higher financing costs, delivery risk, demand uncertainty, and alternative assumptions that drive the benefits from expansion. It should be explicit about the point at which expansion ceases to be in the consumer interest. Without that, it is not credible to present guarantees on early cost recovery as a measured consumer-interest intervention.

4.6 The CAA's approach wrongly treats early costs as a separable question and, in doing so, undermines competition for delivery of expansion, contrary to its statutory duties

4.6.1 The Proposals focus on whether early costs are "manageable" within near-term charges. However, this risks giving an incomplete and false picture. Early costs are not a self-contained episode; they are the first stage of a programme that moves into a much larger expenditure phase. The appropriate consumer test is whether the CAA has established a whole-programme affordability envelope, not whether £320 million can be absorbed in isolation.

4.6.2 The CAA is treating this consultation as a separable isolated question despite acknowledging, as part of a separate consultation on regulatory models for capacity expansion, that increases to airport charges from expansion, when combined with HAL's proposed increases under H8 "are likely to result in HAL's charges significantly exceeding current charges at other airports even after controlling for other relevant factors" (CAP3195, para 2.68). However, the present consultation sets a clear direction for the expansion programme. It pays lip service to contestability while cementing HAL's position as the party to deliver expansion. It allows HAL to develop a scheme and purchase land best suited to its objectives, regardless of whether that is in the consumer interest. It creates an expectation that HAL's capital expenditure does not need to be scrutinised by airlines, even though airlines (and consumers) will ultimately bear the cost.

4.6.3 This is not consistent with the CAA's duty to promote competition in the provision of airport operation services. By underwriting early scheme development, the Proposals risk hard-wiring HAL as the presumptive deliverer of expansion and undermining a level playing field precisely when design choices and option value are being set. The CAA cannot responsibly treat early cost recovery as a bounded, near-term affordability adjustment. It is a pivotal signal that shapes incentives and regulatory optionality at the start of a very large programme.



- 4.6.4 In addition to being incompatible with the CAA's duty to promote competition, this approach is also inconsistent with the CAA's statutory duties to further the interests of consumers, or to promote economy and efficiency on the part of licence holders.
- 4.7 **The CAA's approach incorrectly concludes that it is necessary to provide certainty on early cost recovery now despite numerous examples of other regulators rolling up recovery to a future date**
- 4.7.1 At various points in its consultation document, the CAA concludes that it would not be rational, or in HAL's interest, for it to deploy the resources necessary to proceed with capacity expansion unless the CAA provides certainty on early cost recovery now. In particular, the CAA states that "*[n]ot providing this certainty now could mean HAL slowing down its work on such planning and preparation, leading to delays*" (CAP3201, para 1.16).
- 4.7.2 However, these conclusions fail to take account of the numerous examples of other regulators in other major infrastructure project contexts rolling up the recovery of development expenditure to a future date. The Proposals are unnecessary for ensuring appropriate returns from expansion development and create an imbalance between risk and reward in HAL's favour, misapplying the "fair bet" principle – see discussion below.
- 4.8 **The CAA's approach risks undermining the procedural fairness and outcome of the CAA's parallel review of regulatory models for expansion**
- 4.8.1 The CAA is currently consulting on the finding that there is sufficient evidence to warrant revisiting the current regulatory model for capacity expansion to determine whether it can be improved or whether an alternative model can better serve the interests of consumers (CAP3195, para 1.14) ("CAA Review"). The reasons for this include:
- (a) That characteristics of major capital projects may limit the effectiveness of the current regulatory model in protecting the interests of consumers;
 - (b) That HAL's charges are high compared to other airports that are subject to greater competitive pressure;
 - (c) The CAA's initial view is that HAL's service quality has deteriorated since COVID; and
 - (d) The CAA's concerns regarding the processes under which HAL has historically undertaken large capital projects.
- 4.8.2 Clearly, the outcome of the CAA Review could fundamentally reshape how expansion is planned, financed, and delivered. Proceeding with a parallel consultation on early cost recovery (rooted in the current regulatory model) creates a real risk of undermining the procedural fairness and integrity of the CAA Review, which expressly includes consideration of alternative models for regulating expansion. It is essential that the CAA does not compromise its own review process or the stability of the H7/H8 regulatory framework by providing premature assurances on cost recovery before the appropriate regulatory model for capacity expansion has been properly considered and consulted upon.



4.8.3 BA's unequivocal and consistent position is that any question of cost recovery should be approached with caution until expansion is approved and the delivery model is settled. Should the CAA disregard this position, it must, at a minimum, ensure that any regulatory treatment of early costs remains fully capable of being brought in line with the conclusions of the CAA Review once published.

4.9 Serious deficiencies in the CAA's consultation process and reasoning

4.9.1 There are serious deficiencies in the CAA's early-costs consultation that put any subsequent decision at material risk of legal challenge:

- (a) **Premature "minded-to" statement suggests predetermination:** The CAA issued its minded-to statement on early cost recovery on 25 September 2025, only fifteen days after the August 2025 Consultation closed. This timeframe is plainly inconsistent with meaningful engagement with detailed stakeholder submissions. Unsurprisingly, the minded-to position substantially replicated the CAA's original preferred approach. This sequencing creates a legitimate concern that the consultation process served principally to ratify a predetermined view rather than to evaluate evidence with an open mind, contrary to established principles for proper consultation.
- (b) **Reliance on HAL's assertions without independent analysis:** Throughout the process, the CAA has repeatedly accepted HAL's characterisations of costs, benefits, risks, and timing without demonstrating any independent assessment. Where analysis has been undertaken (such as the Steer technical review) it has not been made publicly available, contrary to the Better Regulation principle of transparency. The CAA's admission that it "*will continue to assess*" HAL's early-cost forecasts (paras 1.17, 2.80, and 3.8) implicitly concedes that its assessment is incomplete, meaning the Proposals rest on an unstable, speculative evidential base.
- (c) **Proceeding despite acknowledged uncertainty in costs and benefits:** The CAA explicitly recognises that there is a "*wide range of uncertainty*" in relation to HAL's expected costs and the likely consumer benefits even if expansion proceeds according to the Government's timetable. Proceeding with a major regulatory intervention in the face of such uncertainty (and without completing its own inquiries) renders the Proposals speculative and undermines the evidential robustness of any final decision. As the recent Stewart Review of HS2 emphasised only last year, major infrastructure projects "*don't go wrong, they start wrong*" (p. 8). The Stewart Review highlights the risk of schedule being prioritised over cost to maintain momentum, fear of project cancellation, and the belief that costs will increase as a result of delay featuring strongly among the reasons given for this flawed prioritisation.
- (d) **Failure to meaningfully consider stakeholder evidence:** In CAP3201, the CAA repeatedly (e.g., paras 2.32, 2.36, and 2.52) takes the approach of simply noting stakeholder disagreement, without analysing their reasoning or considering whether the alternatives they put forward may be superior. The speed of the minded-to



publication further reinforces the perception of a process designed to validate a pre-existing policy preference rather than engage with contrary evidence, and seriously calls into question the consultation's procedural integrity. Stakeholders have raised serious concerns about the CAA's approach, on issues which go to the heart of the long-term operational viability of AOS and ATS at Heathrow. These concerns should be engaged with and properly addressed by the CAA, as required under its statutory obligations.

- (e) **Inconsistent reasoning:** The CAA has applied an inconsistent approach to assessing its Proposals, considering the unintended consequences of measures in some cases (e.g. the bonus / penalty incentive mechanism) but not others (e.g. widening the scope of early recovery to include all of 2026 and enabling and land acquisition costs, and allowing for a flexible cap, among others).
- (f) **Failure to provide reasons:** The CAA has repeatedly failed to provide reasons for its conclusions (e.g. not explaining why it proposes to add costs to the RAB on a full WACC basis rather than cost of debt as proposed by BA and IAG) (CAP3201, paras 2.89 and 2.99).
- (g) **Lack of clarity on key implementation mechanisms:** The CAA has failed to set out essential aspects of its Proposals. Key measures, including the true-up and the ex-post review, are absent from the draft licence modifications, leaving stakeholders unable to assess how the proposals would function in practice. The CAA also indicates that local authority costs may be recoverable as part of early costs (para 2.27) yet provides no explanation for how this will be achieved. The absence of procedural detail prevents proper scrutiny and undermines the transparency of the regulatory process.
- (h) **Unexplained reversals on the CAA's own published positions:** The Proposals contain U-turns from the CAA's published positions, without justification. Notably, the CAA now proposes to rely on ex post efficiency controls despite concluding that such controls do "not offer any incentive to find efficiencies". These conclusions are illogical and inconsistent with the CAA's stated position and appear to amount to errors in the CAA's exercise of its discretion, and a breach of the principle of Better Regulation that regulatory activities should be carried out in a way which is consistent.
- (i) **Conclusions made without a proper evidential basis:** In several cases, the CAA has made conclusions without any supporting evidence or based on flawed logic, including that:
 - (i) The benefit to consumers from the Arora Group/Heathrow West Limited ("HWL") competing proposal will benefit consumers in excess of the £3.5 to 4 million costs incurred by HWL (para 1.31) – no supporting evidence;



- (ii) That it "*would not be rational for HAL to continue with work on capacity expansion without regulatory arrangements that support recovery of costs*" (para 2.23) – no supporting evidence; and
 - (iii) That, notwithstanding it has not completed its assessment of HAL's early costs forecasts, "*we consider that the higher costs of HAL could reflect planning and enabling activities to allow it to proceed with the timely delivery of capacity expansion and meet the Government's timetable*" (para 2.79) – flawed logic, this ignores the fact that all promoters were preparing proposals to the same timetable, yet HWL's early costs were at least twenty times lower than HAL's.
- (j) **Use of illogical comparisons to justify early cost recovery:** The CAA argues that recovery of early costs is acceptable because they are "*relatively modest*" compared to the projected total costs of expansion. This is a false comparison. Costs must be justified on their own merits and assessed in light of cumulative upward pressure on airport charges (including HAL's H8 proposals). Treating £320 million as trivial because HAL's total projected costs are very large is analytically unsound and inconsistent with the CAA's duties.
- (k) **Creation of a two-tier scrutiny threshold incompatible with statutory duties:** Statements such as the need for "*much greater certainty about the overall benefits for capacity expansion*" before allowing "*significantly greater allowances for land and enabling costs*" (para 2.57) imply the existence of a de facto materiality threshold below which regulatory scrutiny is relaxed. This raises the question of what level of expenditure warrants proper inquiry. Such an approach risks artificially manufacturing a two-tier regulatory regime in which sums as large as £320 million are treated as inherently low-risk, contrary to the CAA's statutory duties to protect consumers and promote economy and efficiency.

5. SPECIFIC CONCERNS WITH THE PROPOSALS – POTENTIAL DUPLICATION OF COST, CUMULATIVE IMPACT ON CHARGES, DEPARTURE FROM REGULATORY PRECEDENT, IGNORING LESSONS FROM PREVIOUS CAA FINDINGS, 'FAIR BET', PRECEDENT-SETTING AND IGNORING OTHER ISSUES SUCH AS LAND PROPERTY ACQUISITION

- 5.1 We have consistently opposed any reimbursement or recovery of early costs for any promoter for costs incurred prior to the selection of that promoter by the Government. In line with economic first principles, such early costs are normal business risks for promoters and should only become reimbursable to the successful promoter once a DCO has been secured.
- 5.2 Despite strong opposition from BA and other stakeholders, the CAA is proposing to allow recovery of early costs for HAL and HWL. We do not support the CAA's Proposals to allow recovery of early costs from consumers through airport charges on the basis that:
- 5.2.1 It departs from established regulatory practice and its own findings without justification;
 - 5.2.2 It is inconsistent with the CAA's statutory duties and demonstrates a failure to appropriately weigh competing considerations;



- 5.2.3 It is unnecessary for ensuring appropriate returns from expansion development and creates an imbalance between risk and reward in HAL's favour (misapplying the "fair bet" principle);
 - 5.2.4 Information asymmetry in HAL's favour makes it difficult to prevent double payment in practice, and restricts future optionality for the CAA;
 - 5.2.5 Early cost recovery shifts risk at the worst possible time;
 - 5.2.6 Early cost recovery creates hold out risk and path dependency; and
 - 5.2.7 Land and property acquisition raise particular concern.
- 5.3 The following sections address each of these concerns in turn.
- 5.4 **The CAA's approach departs from established regulatory practice and its own findings without justification**
- 5.4.1 The CAA's approach would be an outlier relative to established practice in other UK regulated sectors. Where early or anticipatory expenditure is permitted elsewhere, it is typically tied to a regulator-approved needs case and explicit regulator-controlled ex ante gating. It is not treated as a broad entitlement to recover speculative development costs before consent and cost certainty are established.
 - 5.4.2 Examples from other regulated sectors demonstrate a consistent principle: companies bear development risk unless and until a project is approved as being in consumers' interest:
 - (a) In energy networks (Ofgem), companies cannot pass speculative early development costs to consumers if projects are not ultimately approved. Ofgem operates under a "recover only if beneficial" principle.
 - (b) In water (Ofwat), companies cannot add sunk investigatory costs for failed projects to customer bills. Ofwat's Direct Procurement for Customers model requires bidders to bear their own bidding costs.
 - (c) Under the previous rail franchising modelled, unsuccessful bidders bore their own proposal costs. There is no expectation that consumers will underwrite speculative activity.
 - (d) The Airports Commission process itself did not provide for consumer reimbursement of early proposal costs.
 - 5.4.3 Where early-stage development costs are recoverable, regulatory programmes such as 'RAPID' in the water sector – designed with the objective of facilitating investment into large nationally significant infrastructure projects – and a number of the large enhancement schemes under PR24, apply a strengthened gated process with ex ante regulatory approval of funding and requirements for the development of the scheme tied to proceeding with works, criteria and objectives set by the regulator at each gateway. Alternatively, pre-construction funding is tied to fixed ex ante allowances set by the regulator (e.g.,



percentages of the current forecast of the total cost of the project, as is the case in Ofgem's accelerated strategic transmission investment (ASTI) framework).

- 5.4.4 Both approaches provide the funding certainty needed to support scheme developers to submit robust, high quality planning applications, but include stronger guardrails and cost controls than the CAA's proposal in Heathrow's case. The activities are underpinned by predictability of recovery of development expenditure but is also tied to independent regulatory assessment of the scheme and its development over time at key project milestones.
- 5.4.5 Risk and return should be aligned. Investors should bear the risks they control; consumers should pay for costs that are efficient, necessary, and demonstrably linked to benefit delivery. By proposing to socialise speculative, pre-consent development risk, the CAA is departing from this principle. If the CAA believes Heathrow should be treated differently, it should say so explicitly and explain why.
- 5.4.6 The Proposals have also ignored and are inconsistent with:
- (a) the CAA's own findings that an ex post approach: sets a high bar for disallowance whilst offering no incentive to find efficiencies (CAP3195, para 264); is challenging to carry out (particularly in the context of land acquisition and enabling costs) (CAP1996, para 3 and CAP3201, para 2.55); makes it difficult to translate concerns into findings, resulting in minimal disallowance even where material issues are identified (CAP2665E, paras F59 – 60); and has already been abandoned in favour of ex ante assessment as of H7, with the CAA stating that ex post evaluation should only be considered "in extreme cases" (CAP3195, FN 53) (see section 6.3.2 for further detail). This inconsistency is wholly at odds with the principles of Better Regulation, which require the CAA to carry out its regulatory activities in a way which is consistent. There is no credible basis to expect a different outcome here: adopting an ex post approach for early costs would replicate the same defects and, in practice, fail to protect consumers.
 - (b) the CAA's own recent commentary on the implications of an already-large RAB at Heathrow (see CAP3000 and the current consultation on regulatory models at Heathrow (CAP3195)). These publications highlight how HAL's charges are already high compared to other airports subject to a greater degree of competitive pressure and the concerns that airlines and other stakeholders have raised with the size of the RAB and its impacts at Heathrow. Having already identified RAB size and capital intensity as key consumer concerns, and indicated approaches that would strengthen cost discipline or reduce the RAB over time (such as encouraging disposal of underperforming assets), the CAA should explain why it is now proposing to add further speculative expenditure into the RAB ahead of consent and better cost certainty.

5.5 The Proposals are inconsistent with the CAA's statutory duties and demonstrate a failure to appropriately weigh competing considerations

5.5.1 The CAA is required by the CAA12 to have regard to the Better Regulation principles of proportionality, and that regulatory activities should be targeted only at cases where action is needed. The Proposals fail both tests. The CAA has not demonstrated that the proposed regulatory intervention is proportionate or necessary given that HAL is already incurring expansion costs and alternative promoters have already invested at their own risk. No evidence has been presented that expansion work would halt or slow down without guaranteed early cost recovery.

5.5.2 The proposed reopener further highlights this issue. If the CAA subsequently decides it was wrong to allow recovery of early costs (because such costs are found upon inspection to outweigh the benefits to consumers) the reopener would merely limit further recovery to the amount needed to "close down" the early-cost programme. In practice, HAL can withdraw without penalty where it has a "genuine business reason" to do so (para 1.18) (i.e., a commercial reason as opposed to a change in circumstance beyond its control), while consumers remain exposed to sunk costs they have funded. This prioritises HAL's financeability over consumer protection and is incompatible with the CAA's primary statutory duty.

5.5.3 Passengers have already paid for multiple abortive expansion attempts. Forcing consumers again to underwrite speculative development while allowing HAL to walk away risk-free is contrary to proportionate regulation and to the overriding requirement to further consumer interests.

5.6 The Proposals are unnecessary for ensuring appropriate returns from expansion development and create an imbalance between risk and reward in HAL's favour, misapplying the "fair bet" principle

5.6.1 The CAA states that the existing regulatory framework for HAL does not provide it with an opportunity to earn a commercial return which will allow it to recover early costs at a later stage (paras 2.24-2.25). Despite the ongoing consultation on the future regulatory framework at Heathrow, the CAA states that it would be premature to conclude that HAL may be able to recover its costs through a higher rate of return at a later stage of expansion.

5.6.2 In doing so, the CAA in effect invokes the 'fair bet' principle in the context of its proposed approach to early cost recovery. In arguing that, were it not to provide an explicit allowance for early cost recovery during the pre-construction period then it would not be in HAL's interest to deploy the resources necessary to proceed with the capacity expansion, the CAA is in effect concluding that HAL's expected future returns from expansion at the airport cannot, and will not, be sufficient to reflect the risks that it will bear from its investment in pre-construction, or to provide the opportunity (the 'fair bet') for HAL to recover its development expenditure and financing costs from future returns where its charges are capped at an allowed cost of capital in future.

5.6.3 This line of reasoning, which leads the CAA to its proposed approach, is misconceived:



- (a) First, it is within the CAA's powers (through its regulatory framework) to ensure that HAL has the opportunity to earn a return aligned with the expectation that it can recover pre-DCO spending at a future date, including a fair rate of return on its invested capital where these early costs are not recoverable in its charges during the pre-DCO period:
- (i) Pre-DCO spending is development expenditure for the prospect of future returns – in HAL's case, the prospect of a larger RAB, decades of regulated income and opportunities to outperform its cost of capital (see discussion below), is what justifies its development expenditure and activities in expansion. In any normal commercial context, the risk of this development expenditure being recoverable at a future date is a risk the sponsoring company and its investors bear themselves, and importantly this creates effective commercial incentives for the scheme promotor to manage their preconstruction activities efficiently.
 - (ii) Numerous examples exist of other regulators in other major infrastructure project contexts – for example, electricity interconnectors – rolling up the recovery of development expenditure, including an allowance for financing costs during pre-construction, to a future date. These alternative approaches help preserve stronger commercial incentives on scheme promotors to manage early-stage project development risks and act to protect consumers from those risks. While the CAA may (and indeed, does) argue that such approach would increase allowed returns and prices in the future, this comes with benefits of sharper commercial incentives to manage development risk and greater consumer protection. It also ensures that the costs are borne by those who actually benefit - in this case, future users of Heathrow, rather than today's passengers who would see no corresponding benefit and already face higher charges as a result of previous aborted expansion attempts.
 - (iii) The CAA's line of reasoning helps highlight why the regulatory treatment of early costs cannot, and should not, be considered independently from the broader regulatory framework for expansion at Heathrow (see Section 4.8 above on the CAA's parallel review of regulatory models for expansion).
 - (iv) It provides further indication that schedule and speed of delivery is being prioritised over effective planning and the design and development of an enduring regulatory framework for Heathrow that preserves commercial incentives to deliver capacity expansion at an efficient cost, and which allocates development risks to the party that is best able to manage and control those risks, namely HAL.
- (b) Second, as noted above, investments in competitive, commercial contexts, are made with the prospect (i.e. the expectation) of an investment realising future value



for the asset owner and investor. The CAA argues that the existing regulatory framework at Heathrow will not provide HAL with sufficient opportunity to earn a required commercial return in future from its early investment in capacity expansion:

- (i) The CAA's position fails to recognise that, as part of its expansion proposals, HAL has proposed a significant premium in its required rate of return, above the CAA's current allowed rate of return in H7. We consider that HAL's proposal exceeds efficient financing costs and will be reduced by the CAA. However, any allowed rate of return above previous CAA decisions (particularly where it could potentially endure for several price control periods), provides the prospect of a significant future return for HAL from early investment in Heathrow's expansion. Such a return can only be considered consistent with HAL bearing pre-consent development risks.
- (ii) Furthermore, unlike many regulated monopolies where opportunities for outperformance are limited to regulatory returns and incentive income, HAL's existing regulatory framework provides several ways for it to outperform its allowed cost of capital. Opportunities for outperformance of both passenger and commercial revenue assumptions used to set Heathrow's price cap can, for a period of time, provide HAL with realistic upside: future value for investors, over and above CAA's allowed rate of return. HAL is not strictly limited to earning its allowed cost of capital and no more, as may be the case in some other price controlled regulatory contexts.
- (iii) A predictable cost recovery route and mechanism is necessary to provide the expectation that early expansion costs will be reimbursed to the successful promoter, including a fair rate of return, at a future date. This should also provide a balanced regulatory treatment that efficiently incurred costs can, and will be, recoverable in scenarios where Heathrow efficiently overs, as well as under spends, a prior ex ante CAA approved cap on allowed expenditure based on criteria and objectives set by the regulator (see discussion below of the ex ante guardrails BA considers are necessary for any form of early expansion cost recovery including if recovery is not granted before a DCO is obtained by the CAA).
- (iv) However, at the level of return that has been proposed by HAL (even if moderated by the CAA) and returns that are not capped at the CAA's allowed rate, an expectation that full early expansion cost recovery should be at risk pre-DCO is the only regulatory treatment that is consistent with the commercial returns that HAL could expect to realise from its investment in early stage expansion development at Heathrow.

5.6.4 There are, therefore, several reasons to dispute the CAA's conclusion that the proposed regulatory treatment of early costs are necessary to ensure appropriate commercial returns from early expansion development.



- 5.6.5 In practice, the CAA's proposals instead create an imbalance between risk and reward in HAL's favour. Heathrow stands to expect to receive significant returns should expansion be taken forward, both through its regulated income and from opportunities to outperform future regulatory settlements – future sources of value to the owner that provide the basis for HAL investing in development of Heathrow's expansion. In contrast, pre-consent downside risk is transferred to consumers.
- 5.6.6 The history of expansion at Heathrow demonstrates the consequences of this imbalanced approach; users have funded approximately £500 million of pre-COVID expansion costs with no tangible benefit, while HAL's investors were protected.
- 5.6.7 The balanced approach would be to expect HAL to invest with the prospect its development expenditure will be recoverable at a future date if it is the successful promoter and will give rise to future regulated allowed returns and opportunities for outperformance. Such approach would be:
- (a) consistent with a normal commercial context; and
 - (b) in contrast to the Proposals, would ensure a regulatory treatment that incentivises HAL to manage early expansion development risks prudently and to incur pre-construction costs efficiently.

5.7 Information asymmetry makes it difficult to prevent double payment and inefficiencies, and restricts future optionality for the CAA

- 5.7.1 Consumers have already funded substantial pre-COVID expansion expenditure for a programme that did not proceed. The current Proposals risk repeating that pattern: consumers paying for speculative work that is later abandoned, superseded, or rendered redundant.
- 5.7.2 The CAA recognises this risk by flagging duplication with pre-COVID activities as something that could be addressed through disallowance in an ex post review. This concern is not hypothetical. [...]². This precisely demonstrates our concerns over potential duplication of costs, governance confusion and transparency shortcomings, leading to an incomplete and hybrid assessment of costs which will make establishing any inefficiencies difficult. Similarly, it is unclear whether HAL is applying an addition for "Leadership & Logistics" within its requested early costs as done for capital projects, which we have previously highlighted to the CAA as problematic for lacking in transparency on the type of costs included, the justification for those costs being required or not, and for distorting the true cost of projects.
- 5.7.3 This example illustrates the core problem: the CAA cannot protect consumers from double payment by relying on HAL's assurances; it needs a verifiable mechanism and an upfront burden of proof on HAL to demonstrate there is no duplication or double payment.

² [...]



5.7.4 HAL holds the detail of what was done pre-COVID, what remains usable, what has been superseded, and how today's work maps onto earlier programmes. In those circumstances, it is easy for HAL to assert that any additional spend is not duplicative and hard for the CAA to verify. In contrast, under the proposed DIWE standard, the onus is on the CAA to demonstrate that the material was duplicative, rather than on HAL to demonstrate that it was not. This is a very high bar for the CAA to demonstrate given that HAL has all the information. Hence, if early recovery is contemplated at all, the burden of proof must sit with HAL, up front. At minimum, this requires:

- (a) A structured mapping of new workstreams to pre-COVID activity;
- (b) Independent assurance of what is being reused versus redone, and why; and
- (c) Sufficient transparency for airlines and the CAA to test the logic.

5.7.5 Together with further early spend expected until DCO is granted, costs on the consumer are likely to be very significant. According to the CAA, HAL expects costs "*in excess of £4 billion*" for "*significant amounts of land [that] would need to be acquired prior to a DCO being granted in 2029*" (CAP3201, para. 2.50). Early recovery sets a precedent, creates expectations, and restricts the CAA's future optionality exactly when decisions become larger, harder, and more consequential for consumers.

5.8 Early recovery shifts risk at the worst possible time

5.8.1 Even if the CAA could satisfy itself on non-duplication, the larger problem remains: early recovery shifts risk from promoters and their shareholders to consumers at the stage when uncertainty is greatest and discipline matters most.

5.8.2 Pre-DCO activity is inherently speculative. As already discussed above, under a coherent incentive framework, that risk should sit with shareholders, not be transferred to consumers who do not control those decisions. The CAA and HAL argue that certainty over recovery is needed to mobilise efficiently. However, certainty of recovery does not just reduce friction; it also removes discipline. Once spend is no longer genuinely at risk, the incentive to challenge scope, resist premature activity, and pursue cost-minimising alternatives is weakened.

5.8.3 This heavily distorts the balance of risk and reward, which in turn creates a set of misaligned incentives. As discussed above, HAL stands to gain substantially if expansion proceeds (through a larger RAB and higher allowed returns and opportunities for outperformance), while facing limited downside if the scheme is delayed, scaled back, or abandoned because early costs are recovered from consumers. The CAA's framework relies on retrospective correction to restore discipline, but the consultation recognises that ex post disallowance is difficult to apply in practice. The Proposals both weaken incentives and then rely on a mechanism the CAA acknowledges is hard to use to put things right later.

5.8.4 Stronger guardrails, such as an ex ante process for early cost assessment (as discussed further below), is therefore essential if the CAA decides to proceed with the Proposals, or to allow any form of early cost recovery.

5.9 Early cost recovery creates hold-out risk and path dependency

- 5.9.1 This is a critical concern. Once consumers are committed to funding early expenditure, sunk costs begin to distort future regulatory and policy decisions (see discussion above, including risk of similar outcomes to the cost escalation experienced with HS2). The leverage in subsequent negotiations shifts towards HAL, regardless of whether the project continues to represent the best outcome for consumers.
- 5.9.2 As early costs are incurred and committed to recovery, the consumer cost of abandoning or materially revising the project rises, creating pressure to "see it through" even if costs escalate or benefits weaken. The CAA itself acknowledges elements of this risk, noting that insulating HAL from downside risk could strengthen HAL's position ahead of later decisions.
- 5.9.3 A cap may limit near-term exposure, but it does not prevent the underlying dynamic: once a substantial quantum is sunk, pressure to expand allowances and accommodate further recovery intensifies. The apparent "modesty" of early sums is misleading. Early recovery sets a precedent, creates expectations, and restricts the CAA's future optionality exactly when decisions become larger, harder, and more consequential for consumers, in particular where:
- (a) the early costs invested in pre-construction – the design and planning of the capacity expansion scheme – will have a significant impact on the overall cost envelope of the scheme; and
 - (b) total early costs may prove to be very significant: HAL had tabled early costs of at least £2 billion tabled by HAL pre-Covid and currently expects costs "*in excess of £4 billion*" for "*significant amounts of land [that] would need to be acquired prior to a DCO being granted in 2029*" (CAP3201, para. 2.50).
- 5.9.4 As noted above, the recent Stewart Review highlighted a mantra which it identified as essential best practice in infrastructure delivery: "*projects don't go wrong, they start wrong*" (p.8). The Stewart Review found that, in the case of HS2, it is impossible to escape the early decisions which set the initial vision for the project and drove up the scope and cost dramatically (p. 8). The Review concludes that a culture of cost control and affordability must be established and prioritised on any project (p.63) and that this issue "*needs to be tackled head on, and actions taken to address it from the outset of the project. Affordability needs to be the top priority, and we must stop designing and building things we cannot afford*" (p.106).
- 5.9.5 In Heathrow's context, the approach and dynamic for recovery and regulatory treatment of early costs will help to shape the scope of capacity expansion and the ultimate cost envelope at the airport. It will be critical to the transparency and the traceability of decisions that Heathrow will be making in early scheme development that could have profound (potentially multiple billions of pounds) impacts on the cost envelope of capacity expansion. It is, therefore, critical that the appropriate approach and safeguards are in place from the outset.

5.10 Land and property acquisition raises particular concerns



- 5.10.1 The Proposals on land and property acquisition require particular scrutiny. This category of early expenditure is irreversible, option-foreclosing, and creates significant incentive distortions, particularly in the context of HAL's proposals in its H8 Business Plan to alter the boundary of the single till.
- 5.10.2 The CAA notes that expected land resale proceeds during this period are relatively modest, meaning resale cannot meaningfully neutralise consumer exposure if acquisition decisions prove premature. Mitigation after the fact is not a substitute for preventing harm at source.
- 5.10.3 The CAA has not explained how it will prevent HAL from:
- (a) purchasing property that is not genuinely needed if it used its existing footprint more effectively;
 - (b) purchasing property or land that it then seeks to exit from the single till, with consumers having taken on all the risk around land value and being ultimately harmed; and
 - (c) paying inflated valuations and / or purchasing land or property outright instead of acquiring an option to purchase the land once a DCO is granted.
- 5.10.4 These are not hypothetical concerns. HAL has already made proposals to move property investments outside the single till regulatory boundary in the context of the H8 Constructive Engagement, arguing that the single till creates insufficient incentives for property development. If HAL acquires land using consumer-funded early cost allowances, and then seeks to develop or dispose of that land outside the single till, consumers will bear the acquisition risk while HAL retains any upside.
- 5.10.5 Furthermore, the CAA suggests that its approach to early cost recovery is intended to maintain the optionality for alternative, more contestable, regulatory models for expansion in future, and the prospect for an alternative developer other than HAL to proceed with expansion works. The CAA, however, does not address how the transferability of land and property to an alternative developer (purchased by HAL during early expansion development) will be achieved in practice under its current proposals. And the CAA itself has acknowledged the "potential for enabling costs (such as for land acquisition) to act as a barrier to competition" (CAP3201, para 2.46).
- 5.10.6 The CAA's proposed approach risks distorting competition, and a level playing field between developers, if the surety of early cost recovery proposed enables HAL to:
- (a) influence the detailed design and planning of the expansion scheme to favour its own delivery model; and/or
 - (b) alternative promoters appear to have less certainty and predictability of the expected regulatory treatment and terms on which land and property could be used and transferred in future.
- 5.10.7 Notwithstanding our strong disagreement with the CAA's overall proposed approach to the treatment of early cost recovery and HAL's proposals to alter the boundary of the single till



(expressed on multiple occasions during the H8 Constructive Engagement process and through the evidence submitted by BA to the CAA), the CAA should explicitly confirm that:

- (a) Land acquired through early cost recovery cannot be exited from the single till without full return of acquisition costs to consumers;
- (b) Any commercial development value from such land must be credited to the single till;
- (c) HAL cannot use consumer-funded land acquisition for expansion in future regulatory negotiations on the single till boundary for development of commercial property opportunities;
- (d) HAL must be required to demonstrate why its strategy on land and property acquisition facilitates and does not foreclose, alternative developers of the expansion scheme;
- (e) HAL must be constrained from paying above market valuation, or purchasing land and property outright when an option would be sufficient; and
- (f) Any land acquired must carry full access and development easements that are transferable to any alternative developer proposing a scheme on the site.

6. THE CAA'S PROPOSED ARRANGEMENTS TO PROTECT CONSUMERS (THE "GUARDRAILS") ARE FUNDAMENTALLY INADEQUATE – EX POST, DIWE, FLEXIBLE CAP, OMISSION OF TRUE-UP AND EX POST FROM MODIFICATION, INDEPENDENT ASSESSOR NEEDS TO BE INDEPENDENT

6.1 While we strongly object to the CAA's proposal to allow early cost recovery for any promoter, should the CAA proceed with the Proposals, the outcome for consumers will be determined almost entirely by whether the proposed guardrails provide meaningful assurance on cost efficiency. We do not believe the guardrails proposed by the CAA will deliver this because:

- 6.1.1 An ex post review is illogical and will not protect consumers from inefficient and unnecessary costs;
- 6.1.2 The "demonstrably inefficient and/or wasteful" ("DIWE") standard for assessing efficiency (i) shifts the burden of proof onto the CAA, (ii) sets an unreasonably high bar for disallowance, and (iii) has not deterred HAL from inefficiencies on previous projects. The CAA itself has previously identified that DIWE is not designed for early expansion costs³;
- 6.1.3 An ex post review would not sufficiently scrutinise the timing or purpose of costs, or assess efficiency in the round;

³ See CAA H7 Initial Proposals, CAP2265E, paragraph F12.



- 6.1.4 An ex post correction would happen after the harm has crystallised and cannot recreate the discipline of at-risk capital;
 - 6.1.5 Ex ante approval should be the default for any early cost recovery (including if the CAA adopts our primary position that recovery should not be granted before a DCO is obtained), as it is the only approach capable of constraining inefficient or option foreclosing spend;
 - 6.1.6 The cap must be a real cap;
 - 6.1.7 Pre-consent remuneration should be debt-like, not a full WACC return, to provide appropriate cost discipline;
 - 6.1.8 There needs to be a clear and unequivocal clawback mechanism if the scheme is abandoned;
 - 6.1.9 The CAA's proposal to not include the true-up mechanism and approach to ex post review in its proposed licence modifications is an omission; and
 - 6.1.10 The independent assessor must be truly independent and appointed by the CAA.
- 6.2 Strictly without prejudice to our position that CAA should not proceed with its proposed approach to allow early cost recovery, below we set out why we consider the guardrails that the CAA has proposed are insufficient and what BA would consider to be the minimum safeguards required.
- 6.3 **An ex post review is illogical and will not protect consumers from inefficient and unnecessary costs**
- 6.3.1 The CAA acknowledges that it is important, within the context of early costs, to protect consumers from inefficient costs, inappropriate cost escalation, and unnecessary duplication of costs incurred previously or between promoters (CAP3201, para 2.74). The CAA notes that this importance is increased by its proposal to widen the scope for cost recovery to include all of 2026 and enabling and land acquisition costs (CAP3201, para 2.76).
 - 6.3.2 It therefore defies logic that the CAA has proposed an ex post assessment of early costs as one of its central guardrails, given that:
 - (a) Until H7, the CAA assessed HAL's capex based on an ex post review; however, the CAA acknowledged in both the H7 price control determination and subsequent publications that this approach led to a "high bar being set for costs to be excluded on the basis of inefficiency, even where out-turn costs are much higher than the expected budget" and that "it does not offer any incentive to find efficiencies in the delivery of a project to outperform budget expectations" (CAP3195, para 2.64 and CAP2365, para 7.16);
 - (b) The CAA has acknowledged that ex post reviews are "*challenging*" and "*not straightforward*" to carry out in practice (CAP1996, para 3), particularly in the context of land acquisition and enabling costs (CAP3201, para 2.55), which makes up a substantial portion of HAL's projected early costs;

The CAA has also noted (across multiple publications) the difficulties it has identified with the effectiveness of ex post reviews (CAP3201, para 2.70, and the September 2025 Update, p.7). Its own assessment of pre-Covid early expansion costs illustrates this point: despite identifying "*a number of issues related to HAL's management of expansion*", including with how HAL set and modified budgets, the CAA concluded that its approach to quantifying inefficiency made it "*difficult to translate*" these concerns into inefficiency findings (CAP2665E, paras F59 – 60). The outcome, a finding of only £0 - £5.2 million of inefficiency out of nearly £500 million spent demonstrates just how little protection ex post review offers to consumers, even when numerous material issues are identified;

- (c) As a result of these well-recognised and profound flaws with the ex post approach, the CAA has moved to an ex ante approach for assessing capital efficiency from H7. The CAA has confirmed that this move to an ex ante approach "*has the potential to improve the effectiveness with which the current regulatory model protects the interests of consumers significantly*" (CAP3195, para 2.65); and
- (d) In its latest consultation on regulatory models for capacity expansion, the CAA itself stated that reliance on ex post evaluation "*might be appropriate*" only "*in extreme cases*" – clear evidence that the CAA does not regard ex post assessment as an appropriate evaluation method to apply as standard (CAP3195, footnote 53).

6.3.3 It is therefore illogical, in breach of the principles of Better Regulation, and amounts to an error in the exercise of its discretion, for the CAA to now propose an ex post approach for early costs. This reversal contradicts the CAA's own rationale for abandoning ex post assessments and undermines its stated objective of ensuring that consumers are protected from inefficient, escalating, and unnecessary costs.

6.3.4 The CAA has failed to provide any reasons for this reversal, nor is there any evidence that the CAA has considered or meaningfully engaged with the option of an ex ante assessment. On the contrary, the CAA's proposal appears to be based solely on HAL's preference for an ex post approach (September 2025 Update, p. 4), notwithstanding the CAA's own view that "*the broad framework that HAL has suggested [...] would appear to have a number of disadvantages*", including "relatively weak incentives for efficiency" (ibid).

6.3.5 The CAA's proposed approach is particularly troubling when viewed alongside its own recent findings, set out in the regulatory review running in parallel with this consultation, that (i) HAL's airport charges are high relative to a broad selection of other airports (even once factors that are outside of HAL's control are taken into account); (ii) capital costs account for around 70% of the increases in charges between 2003 and 2024, and (iii) taken together, these points could indicate that capital inefficiencies have occurred that were not identified through the CAA's previous assessment processes (CAP3195, para 252). This concern is even more acute in the context of early costs for capacity expansion, given the CAA's acknowledgement that large infrastructure projects may be at greater risk of significant cost overruns (CAP3195, para 2.69).



6.4 The "demonstrably inefficient and/or wasteful" ("DIWE") standard for assessing efficiency (i) shifts the burden of proof onto the CAA, (ii) sets an unreasonably high bar for disallowance, and (iii) has not deterred HAL from inefficiencies on previous projects

6.4.1 The CAA proposes an assessment of HAL's early costs to identify any "demonstrably inefficient and/or wasteful" early costs (CAP3201, para 1.17). However, applying this standard would have the unintended consequence of shifting the burden of proof onto the CAA so that costs are prima facie deemed efficient unless shown to be inefficient. This would not only fail to incentivise HAL on cost efficiency but would also require significant monitoring and enforcement by the CAA. This approach is at odds with the Better Regulation principle of proportionate regulation (s1(4) CAA12), as it risks creating a resource-intensive oversight regime while offering poor protection for consumers.

6.4.2 The CAA has itself recognised that DIWE creates a "*relatively high bar*" for disallowance (CAP3201, para 2.80), which BA considers to be unreasonably high in circumstances where:

- (a) The Government has made its position clear that expansion at Heathrow must be cost-effective and minimise the burden on passengers (November 2025 Announcement);
- (b) As discussed above, the CAA has recently found indication of HAL's capital inefficiencies which were not identified through the CAA's previous assessments (presumably including where DIWE criteria were applied);
- (c) There is no regulatory precedent for the CAA assessing early expansion costs using the DIWE framework - the CAA opted not to use DIWE to review early expansion costs pre-Covid, and has itself acknowledged that the DIWE framework "was designed primarily for capex projects where the construction phase was substantially complete, rather than for project planning and development costs such as early expansion costs" (CAP2265E, paras F11 - 12);
- (d) The DIWE framework has failed to prevent HAL's inefficiencies on previous projects, as BA has highlighted to the CAA in respect of both the Terminal 3 Integrated Baggage project and Terminal 5 Western Baggage Upgrade (CAP1996, para 1.23). There is no basis to believe DIWE will operate as an effective constraint now; and
- (e) In a complex, iterative DCO development process where scope evolves and counterfactuals are hard to evidence, DIWE is not a deterrent. Rather, it is an invitation for HAL to argue that spend was "reasonable enough". Once HAL understands that disallowance is exceptional, the DIWE assessment loses its behavioural force.

6.4.3 It is therefore illogical, in breach of the principles of Better Regulation, and amounts to an error in the exercise of its discretion, for the CAA to now propose the DIWE framework for assessing the efficiency of early costs. The CAA should instead adopt an ex ante approach to assessing any early cost recovery (as set out below), which is the only mechanism capable of constraining inefficient or option-foreclosing spend.



6.5 An ex post review would not sufficiently scrutinise the timing or purpose of costs, or assess efficiency in the round

6.5.1 Not only is an ex post approach illogical, but the CAA's proposed framework for an ex post review also fails to provide the level of scrutiny required on the timing and purpose of costs. The CAA does not commit to any hard test for determining whether expenditure must be incurred now, as opposed to later when consent risk is reduced. For any efficiency assessment (whether ex post or ex ante) to be credible, it must rigorously test necessity and timing: why is the spend required at this stage; what alternatives exist; and what is the quantified value case for bringing the expenditure forward?

6.5.2 These deficiencies are especially problematic in the context of the CAA's current Proposals, which anticipate the development of further incentive mechanisms from 2027 onwards. This creates a clear risk that HAL may be incentivised to incur premature or front-loaded expenditure before those incentive structures take effect – precisely the kind of behaviour an effective regulatory framework should guard against, not enable.

6.5.3 Furthermore, based on the CAA's previous ex post assessments, it is evident that such reviews are resource-intensive and inherently selective. In practice, the CAA has only been able to scrutinise a subset of projects in depth, meaning it cannot reasonably detect inefficiencies across the full capacity-expansion envelope. This limitation is structural: an ex post model cannot deliver a holistic or comprehensive efficiency assessment, particularly for a multi-year, multi-component expansion programme of this scale.

6.6 An ex post correction would happen after the harm has crystallised and cannot recreate the discipline of at-risk capital

6.6.1 Once costs are sunk and a recovery pathway exists, regulatory and political pressure to validate spend increases, not decreases. An ex post review cannot recreate the discipline of at-risk capital, and it cannot reverse the path dependency created once consumers have started paying. An effective ex post review regime would need to be capable of changing behaviour before money is spent, by creating a real prospect that unnecessary or inefficient costs will not be recovered. The CAA's proposed ex post approach does not meet this test, and would therefore fail to achieve its stated intent and run counter to the CAA's duties, both to further the interests of consumers and to promote economy and efficiency on the part of HAL.

6.7 Ex ante approval should be the default for any early cost recovery (including if the CAA adopts our primary position that recovery should not be granted before a DCO is obtained), as it is the only approach capable of constraining inefficient or option-foreclosing spend

6.7.1 If any early cost recovery is permitted, it should be conditional on prior CAA approval against clear criteria (necessity, timing, options preserved, and a quantified value case). Ex ante assessment should apply across the entire early cost programme, with heightened requirements for spend that creates lock-in or forecloses alternatives (such as land and property acquisition). This will also help ensure there is transparency and clear traceability



of decisions that are made in scheme planning that could have a material impact on the overall cost envelope of capacity expansion.

- 6.7.2 A central weakness of relying on ex post review is that it cannot prevent the most harmful categories of early expenditure: land and property acquisition and other activities that lock in design choices, foreclose alternatives, and drive long-run cost. If, despite the clear advantages of ex ante, the CAA nevertheless decides to rely on ex post review, it should at the very least require prior CAA approval (informed by airline views through meaningful consultation) for such spend against clear criteria, objectives and an independent assessment, covering: critical-path necessity; quantified cost-minimisation relative to alternatives; and preservation of optionality and contestability. Airlines should have the opportunity to scrutinise and challenge proposed option-foreclosing expenditure before it is incurred, not merely receive reports after the fact.

6.8 The cap must be a real cap

- 6.8.1 The CAA proposes a £320m cap (2024 prices) on HAL's early costs, but also proposes "flexibility" to increase the cap if HAL provides evidence that efficient costs are likely to exceed the cap (CAP3201, para 3.8). A cap that is readily reopenable under timetable pressure is not a constraint; it becomes a waypoint.
- 6.8.2 The default position should be that costs above the cap are not recoverable from consumers. HAL should bear the additional costs unless the CAA makes a fresh ex ante determination that an overspend of the cap is necessary and efficient. This is consistent with the approach taken elsewhere when regulators seek to protect customers from cost escalation. For example, Ofwat's framework for the Thames Tideway Tunnel treated costs above a defined threshold as subject to a separate determination and incentive framework, rather than automatic pass-through.
- 6.8.3 There are already indications from HAL that it will not keep within the proposed cap and that costs will escalate. After demanding recovery of early costs up to £320m on 10 September 2025, HAL has already upped the ante in its letter of 9 December 2025, requesting an amount closer to £400m, plus flexibility to allow for even more expenditure. According to the CAA, HAL expects costs "*in excess of £4 billion*" for "*significant amounts of land [that] would need to be acquired prior to a DCO being granted in 2029*" (CAP3201, para. 2.50).
- 6.8.4 Based on the CAA's numerous references in its Proposals to the importance of "flexibility in the cap" (paras 1.17, 2.80, and 3.8), the CAA seems to have accepted HAL's position without considering the potential unintended consequences of applying a flexible cap. In our view, the hypothetical consumer benefits which could potentially be secured by permitting exceedances to the cap are more than outweighed by the very real risk of cost overrun. HAL has a proven track record in this regard:
- (a) The CAA has previously raised concerns about escalation in cost forecasts prior to construction in respect of Terminal 5 (CAP3196, para 2.52);



- (b) The Competition Commission raised concerns during the Q4 price control regarding HAL's benchmarking and cost control processes; and
- (c) In a statement on 27 October 2025, the Shadow Minister for Transport set out HAL's history of major cost overruns, including a baggage system budgeted at £234 million but delivered for £435 million (86% overspend), and a cargo tunnel budgeted at £44.9 million but delivered for c.£197 million (approximately 339% overspend).⁴

6.9 Where a return is provided, pre-DCO remuneration should be debt-like, not a full WACC return, to provide appropriate cost discipline

- 6.9.1 Paying a full WACC-type return on speculative pre-consent spend weakens discipline and accelerates regulatory expectation that early activity will always be rewarded.
- 6.9.2 In such circumstances, it is clearly superior to allow only a cost-of-debt style return on efficiently incurred early costs until a major commitment milestone (such as DCO grant or scheme parameters confirmation), with any equity-style uplift conditional on achieving specified delivery milestones.
- 6.9.3 This aligns with established regulatory practice where consumer underwriting is focused on debt serviceability in risky phases. Ofgem's interconnector cap-and-floor regime illustrates the principle: where consumers provide downside protection, remuneration should be debt-like, not equity-like. The floor return is set as a low rate of return equal to a cost of debt index.
- 6.9.4 We anticipate the CAA may argue that these changes reduce financeability or create asymmetry. Our response is that asymmetry is inherent in the current Proposals: consumers are asked to carry pre-consent risk while HAL retains upside. Strengthening the framework would go some of the way to addressing this imbalance.

6.10 There needs to be a clear and unequivocal clawback mechanism if the scheme is abandoned

- 6.10.1 The Proposals are largely silent on what happens if expansion does not proceed. This is a material gap. Without a credible clawback mechanism, consumers bear downside risk with no protection. HAL can incur costs, recover them, and then - if circumstances change - retain the benefit while consumers bear the loss.
- 6.10.2 We recommend the CAA establishes the following:
 - (a) Mandatory clawback if expansion does not proceed to DCO within a defined period and removal/write-down of any costs added to the RAB.
 - (b) Clawback of any windfall from land acquired through early cost recovery if such land is subsequently sold.
 - (c) Ring-fencing of early cost recovery from future regulatory settlements.

⁴ <https://www.theyworkforyou.com/lords/?id=2025-10-27b.1133.0>

6.11 The CAA's proposal to not include the true-up mechanism and approach to ex post review in its proposed licence modifications is an omission

6.11.1 The CAA's proposal to exclude the ex post review and true-up mechanism from its proposed licence modification is a substantive weakening of the consumer protection. The CAA justifies this on the basis that these elements "would be conducted as part of a future price review and licence modification and subject to appeal to the CMA at that time" (CAP3201, para 3.12). However, consumers are being asked to accept exposure to early stage development activities now. It is therefore essential that the rules governing what happens later, including the basis on which costs can be disallowed, how the RAB is adjusted, and what happens if the cap is exceeded, are established up front, rather than left to future discretion once costs are sunk and the pressures to "validate" spend increase.

6.11.2 The CAA's own implementation outline underscores the ambiguity created by this omission. Appendix C indicates that the ex-post review and true-up would be conducted no sooner than 2027 and that the CAA will "look to integrate" decisions on these matters into the H8 price control "to the extent possible," or into a subsequent price control. This sits uneasily with the argument that the approach is being deferred because it is inherently part of a future price review. If the CAA intends to integrate these decisions into H8 where possible, that makes it even more important that stakeholders have clarity now on the decision criteria, process, and evidential requirements that will govern those judgments, not least to provide a credible safeguard and incentive for HAL that there is realistic risk that costs may be disallowed in any ex post review.

6.11.3 At a minimum, the licence modifications consulted on now should:

- (a) Define the scope and test for the ex-post review;
- (b) Specify the mechanics and timing of the true-up (including how disallowed / duplicative costs are removed from the RAB); and
- (c) Specify how the cap and any reopener interact with true-up decisions, so consumers are not relying on unenforceable statements of intent.

6.12 The independent assessor must be truly independent and appointed by the CAA

6.12.1 We are concerned by the governance implied by the Proposals. If an 'independent assessor' is to play any meaningful role in protecting consumers, they should be appointed by (and accountable to) the CAA, and not the regulated entity whose spend they are assessing. Anything weaker risks turning 'independent assurance' into a box-ticking exercise.

6.13 There needs to be tangible licence mechanisms to facilitate the transferability of a scheme to a third party

6.13.1 The CAA should introduce tangible licence mechanisms to ensure that HAL meaningfully engages with third-party deliverers transparently and in good faith, so that consumer-funded design work does not create an information advantage that forecloses competition. If consumers are funding early design, engineering and feasibility work, that expenditure



should serve the long-term consumer interest in competitive delivery, not entrench HAL's position as the sole credible deliverer.

6.13.2 At minimum, this requires a licence condition that any design work undertaken and funded as an early cost is documented, structured and transparent so that it can be transferred and is accessible to alternative bidders (with appropriate confidentiality in place). This is all the more needed considering the speed at which early cost funding is being requested by HAL. In order to deliver a competitive process for expansion, the question on early expansion costs cannot be looked at in isolation or lack those necessary safeguards.

7. SUMMARY OF BA'S RECOMMENDATIONS

7.1 As we have outlined above, we strongly oppose the CAA proceeding with the recovery of early costs from consumers prior to DCO grant. Our primary recommendation would therefore be that the CAA should withdraw its Proposals and reconsider its position on the treatment of early costs based on a thorough and balanced cost/benefit assessment.

7.2 Notwithstanding these concerns, and strictly without prejudice to our primary position, should the CAA still decide to proceed with a form of early cost recovery mechanism, then as a minimum the guardrails within the CAA's regulatory framework must be materially strengthened in the following ways:

7.2.1 **Ex-ante approval as the default for any early cost recovery:** If any early cost recovery is permitted (including if the CAA adopts our primary position that recovery should not be granted before a DCO is obtained), it should be conditional on prior CAA approval against clear criteria (necessity, timing, options preserved, quantified value case). Ex ante assessment should apply across the early cost programme, with heightened requirements for spend that creates lock-in or forecloses alternatives (such as land and property acquisition).

7.2.2 **The cap must be binding:** Costs incurred above the cap should not be recoverable from consumers unless the CAA makes a fresh ex ante determination following public consultation. The burden of proof should lie with HAL to demonstrate that additional costs are necessary and efficient.

7.2.3 **Debt-like remuneration pre-consent:** Early costs should attract only a cost-of-debt return until DCO is secured, with any equity return conditional on delivery milestones.

7.2.4 **Single till protection:** Any land acquired through early cost recovery must remain within the single till. It cannot be exited without full return of acquisition costs and any uplift to consumers.

7.2.5 **Transferability protections to facilitate competitive delivery:** Any land acquired must carry full access and development easements that are transferable to any alternative developer proposing a scheme on the site. There also needs to be tangible protections within HAL's licence to facilitate third-party delivery and guarantee that consumer-funded design work is documented, structured and transparent so it is accessible to alternative bidders (with



appropriate confidentiality in place) and does not create an information advantage that forecloses competition.

- 7.2.6 **Verifiable non-duplication:** HAL must provide structured mapping of new workstreams to pre-COVID activity, with independent assurance and transparency for airlines to test the logic.
- 7.2.7 **Strengthened ex post review:** If, contrary to BA's position, the CAA decides to proceed with an ex post approach, the review must test purpose and timing, not just efficiency, and the standard should enable meaningful disallowance, not create a "reasonable enough" safe harbour.
- 7.2.8 **Clawback mechanism:** There must be a clear and unequivocal clawback mechanism under clearly defined circumstances, in particular if the scheme is abandoned, including removal/write-down of any costs added to the RAB.
- 7.2.9 **Licence Modification:** the CAA should define the scope and test for the ex post review and true-up mechanism within its proposed licence modification.
- 7.2.10 **Independent Assessor:** Any independent assessor should be appointed by, and accountable to, the CAA (not HAL) to ensure genuine independence and consumer protection.
- 7.2.11 **Alignment with CAA Review:** Any regulatory treatment of early costs must remain fully capable of being brought in line with the conclusions of the CAA Review.