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## Glossary

Applicant	Luton Rising (London Luton Airport Ltd)
Application	This application TR020001 for a Development Consent Order
LBC	Luton Borough Council, ultimate owner of and Local Planning Authority for LLA
LLA	London Luton Airport
LLAOL	London Luton Airport Operations Ltd, the operator of LLA
mppa	‘million passengers per annum’: a measure of an airport’s passenger capacity or actual passenger throughput
Project Curium	Application 12/01400/FUL on the LBC Planning Portal – submitted by LLAOL to LBC in 2012 for development works to increase LLA capacity to 18mppa by 2028

# 1. Executive summary

This document responds to:

- LR Commentary on the Overarching Aviation Noise Policy Statement (REP1-012)
- Role and Responsibilities of Luton Borough Council (REP1-018)
- Comments made by the Applicant on RRs (REP1-020 and REP1-023)

## 1.1 Summary of comments on Responses to Representations in REP1-020

Section 2 of this document provides our comments on the responses to representations in REP1-020 and can be summarised as follows:

- There are significant, specific and cogent representations across the range of Topics which oppose the Application and evidence the detrimental effect it would have to quality of life and the nature and character of the area
- Many of the supportive representations relate to Topics which the airport operator is already committed to deliver as part of Project Curium, important aspects of which remain outstanding
- Air quality impacts of additional passenger vehicles and aircraft movements on the ground are unlikely to be 'not significant'
- Achieving a higher modal split of passengers using public transport has been challenging at LLA
- Consultation information for the DCO Application failed to provide transparent information about the original timeframe for Project Curium nor its accelerated unmitigated growth
- The mitigation work committed to as part of making Project Curium acceptable development in planning terms remains incomplete
- The focus of the current Application is simply demand-led rather than a balanced approach between benefits and harms, with no 'need to accommodate 32 mppa' being established
- Fleet evolution is led by airlines seeking to reduce costs rather than to reduce noise, and next generation aircraft which form part of the Jet Zero pathway may be noisier
- No fair balance is being struck between airlines wanting to schedule early departures and people wanting to sleep at night
- Green Controlled Growth simply adopts the forecasts of the Applicant and reflects its growth trajectory
- Green Controlled Growth ought to include controls over the aviation emissions from aircraft in flight if the Applicant relies on Jet Zero pathways
- A significant number of representations still oppose the destruction of Wigmore Valley Park
- No case is made that the economic benefits promised by Project Curium have become inadequate and why the benefits now needed could not have been delivered by other means
- Noise and vibration impacts of the Airport remain a significant issue in many of the representations
- The trigger Thresholds beneath Limits in the noise controls for Green Controlled Growth have been rendered ineffective without the agreement of the NEDG
- The Application needs to be weighed in the context of its harms and benefits: national aviation policy does not support carte-blanche increase of airport capacity
- The demand forecasts in 'Jet Zero strategy - one year on' have been revised down to below the proposed increase in the Application
- Multiple stakeholders have represented that the mitigations have been and will be inadequate
- The M1 area between J9 and J11 is still prone to queuing, gridlock and delays and local roads will be inadequate for the probable additional load
- We remain sceptical that significant improvement will be achieved in the proportion of passengers using public transport

## 1.2 Summary of comments on Responses to Representations in REP1-023

Section 3 of this document provides our comments on the responses to representations in REP1-023 and can be summarised as follows:

- It is inappropriate for the Applicant to seek to divorce assessment of this Application from any consideration of Project Curium, since Curium is an essential part of the context
- The contractual position between the Applicant and the Airport Operator was and is for delivery of Project Curium to be phased over 16 years
- Scoping information for the DCO Application failed to provide transparent information about the original timeframe for Project Curium nor its accelerated unmitigated growth and planning breach
- The unbalanced growth without mitigation since 2014 contravenes not only planning permissions but also the examples in the guidance about assessment and design of noise envelopes
- Question marks exist regarding the extent to which the Airport Access Road and DART permissions and expenditure facilitated the current Application and would reduce its costs, at public expense
- Developments which form part of the airport's expansion have been or will be funded by public money, as was the growth incentivisation, therefore a WebTAG assessment is required
- There is inconsistency in the Response that the Proposed Development will be a private sector investment funded from airport profits
- The proposed development appears to increase, rather than reduce, financial pressures linked to LBC's ownership of the airport, and LBC's financial exposure to the airport
- There is an unusual arrangement by which LBC's public airport company has directly funded charities working in the community
- All practicable measures to reduce noise impacts have not been adequately explored
- Caddington, and the Park Homes in Pepperstock, are in our view special cases for an improved noise insulation criterion
- The noise mitigation hierarchy has little to offer in the context of the proposed scale of impact increase
- Relative noise benefits of neo-engined types used in 2018 and 2019 by the Airport Operator did not tally with its annual noise measurements
- Mobile noise monitoring can be inaccurate for a number of reasons and may not be suitable for noise model verification
- We disagree that the ICAO report on environmental trends suggests aircraft will continue to get quieter over time by the proposed yearly amounts
- We disagree that the A321neo noise issue is likely to be resolved over time
- Sections 17 and 17(A) of the Airports Act appear to indicate that unless the Applicant had regulations from the Secretary of State it ought not to have funded the growth incentivisation
- The alteration of Threshold levels by the Applicant have undermined the intended operation of the Green Controlled Growth in respect of the Noise Envelope
- There is ambivalence in Response as to whether Green Controlled Growth will prevent exceedance of Limits or not
- It is inappropriate for the Airport Operator which permitted a Limit to be breached, to be the first recourse for a Mitigation Plan
- The process of assessing noise contours ahead of capacity declarations could be speeded up
- It is misleading to imply that the Jet Zero modelling incorporates growth at Luton Airport at the same level as proposed
- There is risk in assuming that the Jet Zero strategy can be relied on to deliver aviation greenhouse gas reductions without policy changes which may affect demand
- Non-CO<sub>2</sub> emissions should be quantified

### 1.3 Summary of comments on Responses in REP1-023 regarding Noise Envelope Design

Section 4 of this document provides our top-level comments on the responses to representations in REP1-020 relating to the Noise Envelope design process and can be summarised as follows:

- The Noise Envelope Design process did not achieve the full agreement required between all stakeholders, and the work of the Group was curtailed before it was completed
- The Noise Envelope design was not consulted on to the extent set out in the CAA's CAP 1129<sup>1</sup>, the definitive guidance on Noise Envelopes, nor was the recent history of the noise envelope at Luton given due consideration
- The alteration of Thresholds by the Applicant has undermined the operation of the Noise Envelope
- As a result of the Responses to these and similar concerns, we have updated our PADSS to include an additional Principal Area of Disagreement, that the guidance in CAP 1129 was not followed in the way the Applicant managed the Noise Envelope Design process

### 1.4 Evidence in Annex 1 to support comments on Noise Envelope Design process

The comments in section 4 are supplemented by Annex 1 which provides a rounded set of extracts from the CAP 1129 guidance on Noise Envelopes, which taken together summarise the comprehensive guidance.

We have provided comments beneath each relevant section expanding on our top-level comments in section 4 and relating to the process adopted by the Applicant, to evidence our overarching comment that the guidelines were not followed and therefore the Noise Envelope Design process was inadequate.

## 2. Comments on LR Responses to RRs- Part 1 of 4

This section contains our comments on examples of the Responses made by the Applicant to concerns raised across the range of Topics being examined, as documented in REP1-020. **Page numbers in this section refer to REP1-020 unless otherwise indicated.**

To save space and avoid duplication we have not reproduced large sections of the Tables in REP1-020, but simply quote the LR Response in italics and provide a printed page number, making our comments beneath.

Many of the LR Responses are duplicated using the same or very similar wording throughout the document. Where we comment on a typical LR Response, our comments apply to all similar responses.

### 2.1 General comments

It is noteworthy that throughout REP1-020 the Concerns expressed by members of the public and other bodies throughout the local area are wide-ranging, cogent, and specific to the risks or impacts they oppose. These are not trivial, generic, copy/paste representations – they evidence the detrimental impact which the Proposed Development would have on quality of life and the nature and character of the local area.

Reading through the 17 Topic Tables into which the representations are grouped, it is clear that concerns far outweigh support. The majority of supportive statements are for generic measures which LLAOL is already obliged to pursue, such as: noise insulation; reducing noise through fleet modernisation; reducing its carbon footprint; working to be more sustainable; making contributions to charities; supporting the local economy; delivering airspace modernisation; and achieving an improved modal split in favour of sustainable transport for passengers and employees.

Our comments beneath example Luton Rising Responses are provided in the subsections below:

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<sup>1</sup> CAP 1129 Noise Envelopes, Civil Aviation Authority, Dec 2013, available from <https://publicapps.caa.co.uk/docs/33/CAP%201129%20Noise%20Envelopes.pdf>

## 2.2 Air quality

*“The air quality assessment (Chapter 7 Air Quality [AS-076] of the ES) has provided an assessment of air quality impacts from all related sources (road vehicles, aircraft and airport sources) following the methodology agreed with the local councils. The assessment concludes that the impact of the Proposed Development would be not significant.” (p 4)*

The Proposed Development could potentially increase passenger road vehicles by the increase in numbers of passengers (78%) if a significant modal shift is not achieved, therefore the increase in air quality impacts (NO<sub>x</sub>, particulates) of those additional vehicles ought not to be dismissed as ‘not significant’.

The Habitat Regulation Assessment in any case concludes that air quality impacts from increased emissions from road traffic to ecological receptors would be ‘moderate’.

The Proposed Development would increase numbers of aircraft movements by some 50%, therefore the increase in air quality impacts (NO<sub>x</sub>, particulates, odours from kerosene) ought not to be dismissed as ‘not significant’, even allowing for a gradual introduction of more fuel-efficient aircraft.

*“The application includes a commitment to increase the proportion of passengers by sustainable modes which should reduce the number of vehicles. Whilst there is a focus on growing the sustainable transport mode share, the growth of the Airport will lead to an overall increase in vehicle numbers.”*

Neither the Applicant nor LLAOL have any direct control over passenger transport modal split and this is a key weakness of such commitments, on an issue which has proved to be challenging in the past.

## 2.3 Climate Change

*“The GCG proposals mean that growth at the airport will only be delivered where limits on GHG emissions, amongst other impacts such as on aircraft noise, air quality, and surface access, are adhered to.” (p24)*

The GHG emissions from the airport operation amount to some 3% of its total emissions. The pathway to reducing the remaining 97% in line with the High Ambition scenario of the Jet Zero Strategy should be part of the GCG Limits, and growth should be controlled in an effective way against that pathway.

*“Targets have been set for the aspects of the Proposed Development over which the Applicant has some control, including a goal of zero emission airport ground operations and carbon neutral surface access by 2040 and carbon neutral surface access emissions by 2040.” (p23)*

We can see no justification for omitting aviation emissions from the GCG framework. Limits have been set for noise, but the Airport Operator has no more or less control over aircraft noise than it does over aviation emissions. The same is true of surface access emissions; the Airport Operator does not have more control over these than it does over aviation emissions. The ExA is asked to consider whether GCG ought to include aviation emissions as a further essential means of environmental impact control.

*“The UK government has set a legally binding target, under section 1 of the Climate Change Act 2008, to achieve net zero GHG emissions by the year 2050 and to meet their 5-yearly carbon budgets.” (p23)*

The Applicant argues that it is unnecessary for GCG to limit emissions from aircraft in flight. The fact that the Government is ultimately responsible for ensuring that carbon budgets are met is equally true of GHG emissions over which the airport is setting targets and for which it is assuming some responsibility. We see no justification for any distinction being drawn between surface access and airport emissions on the one hand, and aviation emissions on the other, in order to assure delivery of limits and targets.

## 2.4 Consultation

*“Details of the 2018 non-statutory consultation, 2019 Statutory consultations and 2022 statutory consultation can be found in sections 2, 4 and 6 respectively in the Consultation Report [AS-048].” (p59)*

The non-statutory consultation on this Application took place four years into Project Curium, itself intended to last 15 years. The Foreword to the Vision 2020-2050 consultation<sup>2</sup> is attributed to Cllr Andy Malcolm, then a member of the local planning authority responsible for the conditions and constraints on Project Curium to protect residential amenity and make the development acceptable. At the same time, he was Chair of LLAL, the Applicant. He ought to have been aware of those conditions and constraints.

The Vision 2020-2050 document states in its section headed "LTN's growth" on PDF p7:

*"In 2014, planning permission was granted to increase the capacity of LTN from 12 million to 18 mppa and it was forecast at the time that this capacity would be reached by 2026/27 at the earliest. Implemented by LLAOL as 'Project Curium', it involves supplementing, improving and making best use of existing infrastructure, and will be largely delivered by the end of 2018. When complete, the works will significantly improve the experience for LTN passengers.*

*However, latest forecasts for LTN show that the capacity provided by Project Curium (18 mppa) is expected to be fully utilised by circa 2020/21, which is six to seven years ahead of original expectations."*

We draw to the ExA's attention that information of this kind created the misleading impression in much of the DCO consultation material and associated publicity that somehow the growth of throughput at LLA was unexpected and evidenced the great success of the Airport, whereas we and others (notably Hertfordshire County Council) see it as mismanagement of a development which was known to have significant impact.

Project Curium involved both development work to increase capacity and mitigations necessary to make the development acceptable in planning terms. The development works were funded by LLAOL in return for an extension to the concession, as confirmed in the Funding Statement (APP-012, printed page 6):

*"4.2.1(a) ... This was executed in 2012 when both parties agreed commercial terms to enable the concession to be extended by two years and seven months to enable the financing of growth from 12 million to 18 million passengers per year conditional on the delivery of construction works phased over 16 years."*

The mitigations, primarily by fleet modernisation, were also tied to this timeframe, as we evidenced in WRs. Neither the development work nor the mitigations are yet complete, but the prioritisation of development over mitigation made that development unacceptable in planning terms.

We contend that this should have been made clear both in Consultation, and to the Planning Inspectorate at the outset of scoping the DCO application.

## 2.5 Design

*"The delivery approach is aimed at ensuring there is sufficient capacity at each point of the project to accommodate the predicted demand, in accordance with assessment cases." (p64)*

We note the focus of the Application is on accommodating predicted demand rather than operating within reasonable environmental limits, therefore not reflecting the balanced approach required by policy.

*"To meet the demands of passengers and need to accommodate 32 mppa there is a need for a significant addition of new infrastructure." (p67)*

A 'need to accommodate 32 mppa' has not been evidenced, yet that alleged need must be balanced against the need to abide by existing planning conditions and constraints; and to protect the environment, the amenity and quality of life of local residents, and the nature and character of the local area.

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<sup>2</sup> 'London Luton Airport Vision for Sustainable Growth 2020-2050', LLAL, 2018, available at this link: <https://lutonrising.org.uk/wp-content/uploads/2021/11/vision2020-2050.pdf>

## 2.6 FleetMix

*“The airlines are transitioning to a newer fleet in order to realise savings in operating cost, principally through fuel efficiency.” (p69)*

It is clear that the airlines are motivated by cost-savings, not by noise reduction, and this point needs to be borne in mind when assessing mitigation. We invite the ExA to consider whether the uptick in noise impacts at stage 2A is appropriate and fully justified, or whether growth should wait until mitigation would avoid it.

*“The fleet mix projections used in the environmental assessment do not rely on next generation aircraft using new technology delivering noise and fuel efficiency benefits including alternative fuels. Such technologies are, however, part of the Government’s strategy for delivering its net zero carbon target for aviation as set out in the Jet Zero Strategy and this has been assessed.” (p70)*

The Applicant has indicated that it is relying on the Jet Zero strategy to be delivered. That strategy includes the development of next generation aircraft. If introduced, we contend they are likely to be noisier.

## 2.7 Flight paths

*“Many respondents to the consultation identified their dislike of night flights. This is reflected in the Applicant’s commitment to remain within existing night flight quota limits. However, it is acknowledged that there is expected to be an increase in flights in the remainder of the night noise period, particularly in the 06:00 to 07:00 period reflecting the requirement for the airlines to maximise their aircraft utilisation through the operating day by operating the first departure as early as possible in the morning.” (p76/77)*

Again, there is no balance being struck between the requirement of airlines, and the requirement of people in the wider area to be able to sleep at night (23:00-07:00) without being awoken at 5am or even 6am.

## 2.8 Green Controlled Growth

*“The Applicant acknowledges that airports, and increased airport activity, can generate negative environmental impacts, that unless controlled and managed, can impact on the communities around the airport. As such, it has developed Green Controlled Growth (GCG) proposals to ensure that growth can take place at the airport, but not at any cost.” (p86)*

GCG adopts the growth trajectory forecast by the Applicant based on demand and fleet evolution, rather than defining a development trajectory with less ‘cost’. The impacts on the environment, and on the health and well-being of people affected by the noise, air pollution, particulates, emissions and surface transport congestion of the Proposed Development, would still occur.

*“Aviation emissions are dealt with at a national level, including through the UK Emissions Trading Scheme (UK ETS), the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), and the national policy commitments of the Government’s Jet Zero Strategy.” (p87)*

Since the Applicant relies on these emission reduction pathways being achieved, GCG must by definition control that commitment and set corresponding limits for aviation emissions. A DCO application for airport expansion should be decided by balancing its merits in the context of its local issues, to accord with policy. We invite the ExA to consider whether, given the local context, it would be appropriate to include control of the aviation emissions pathways in GCG.

## 2.9 Landscape, Environment and Wigmore Valley Park

*“The Applicant has changed the design following consultation to retain as much of the existing Wigmore Valley Park as possible, but the majority of the current Wigmore Park County Wildlife Site will be lost as a result of the Proposed Development.” (p96)*



We ask the ExA to consider and weigh in the balance the significant number of individual representations expressing concern and opposition to the destruction of Wigmore Valley Park – including representations in the section of REP1-020 headed “Wigmore Valley Park, Green Belt and Open Space” starting on p117.

## 2.10 Need

*“It is not clear how the economic benefits of the scale proposed could be realised locally without the Proposed Development.” (p141)*

No case has been made that economic benefits on the scale proposed are required, and the response shows a lack of active consideration of alternatives. Project Curium made a case that the economic benefits of expansion to 18mppa by 2028 were sufficient for the local and wider economy. The Applicant has already stated that it seeks growth but not at any cost (section 2.8). It is apparent that the government regards the exposure of LBC to airport revenue as a risk to its financial sustainability (see section 3.4).

## 2.11 Noise and Vibration

We respectfully draw the ExA’s attention to the significant number of individual representations expressing concern about noise in section 2.16 of REP1-020 (pages 146 to 172), the range and detail of issues raised, and the depth of feeling over this issue. This reflects the proximity of the airport and flight tracks to local communities, in the context of towns and villages in an otherwise peaceful rural area.

We provide specific comments regarding Noise and Vibration responses, in sections 3.5, 3.6 and 3.7.

## 2.12 Planning

*“Appendix 16.2 Operational Noise Management (Explanatory Note) of the Environmental Statement [APP-111] sets out how the proposed Noise Envelope contains mechanisms that should have avoided the noise Limit breaches that occurred at the airport from 2017-2019.” (p176)*

The work to confirm whether the NEDG-proposed mechanisms (particularly the Threshold settings) would have prevented the breaches in 2017-2019, was not undertaken. Because the Thresholds have now been set so close to the Limits, we have no confidence that the control mechanism would be effective. In 2016 a breach in 2017 was forecast, but effective corrective action could not apparently be taken by LLAOL.

*“As stated in the Planning Statement [APP-194], the Proposed Development is compliant with national aviation policy, national planning policy and the relevant development plan documents when taken as a whole.” (p178)*

Policy is clear in all cases that there is no carte blanche for airport expansion, and that every case needs to be weighed on its own merits against the environmental impacts which would arise in light of local context.

*“This application for development consent seeks to expand the airport to 32 mppa in response to the demand forecasts for the airport which are in line with the Government’s overall projections for the growth in air passenger demand over the period to 2040 and beyond.” (p180)*

The recently published ‘Jet Zero strategy - one year on’ document<sup>3</sup> states on page 11:

*“This year, we have updated our scenarios to reflect the latest macroeconomic conditions, including updating inputs on oil prices, GDP and consumption growth, and foreign exchange rates. This has had the impact of reducing forecast passenger demand growth under our High Ambition scenario to 52% in 2050, relative to 2018 levels, compared to 70% in the published Jet Zero Strategy.”*

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<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1174385/jet-zero-strategy-one-year-on.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1174385/jet-zero-strategy-one-year-on.pdf) , DfT, July 2023

This downward revision of demand growth means that the Application, for a passenger increase of 78%, no longer aligns with government projections and therefore is at risk of over-capacity and consequent inability to repay the development costs from net airport revenues in line with the Funding Statement.

*“Appropriate mitigation measures and implementation plans have been the subject of extensive discussion with multiple stakeholders.” (p180)*

Use of the word ‘Appropriate’ is misleading: multiple stakeholders in the form of local authorities, parish councils, community groups, MPs and members of the public have consistently opposed this DCO proposal since its launch in 2018. The lack of effective noise mitigation remains one of the key areas of disagreement.

### 2.13 Surface Access

*“The provision of an east west link between the airport and A1(M) to accommodate airport growth was not found to be necessary through the highway modelling, with a significant majority of passengers accessing the airport from the M1 at Junction 10.” (p189)*

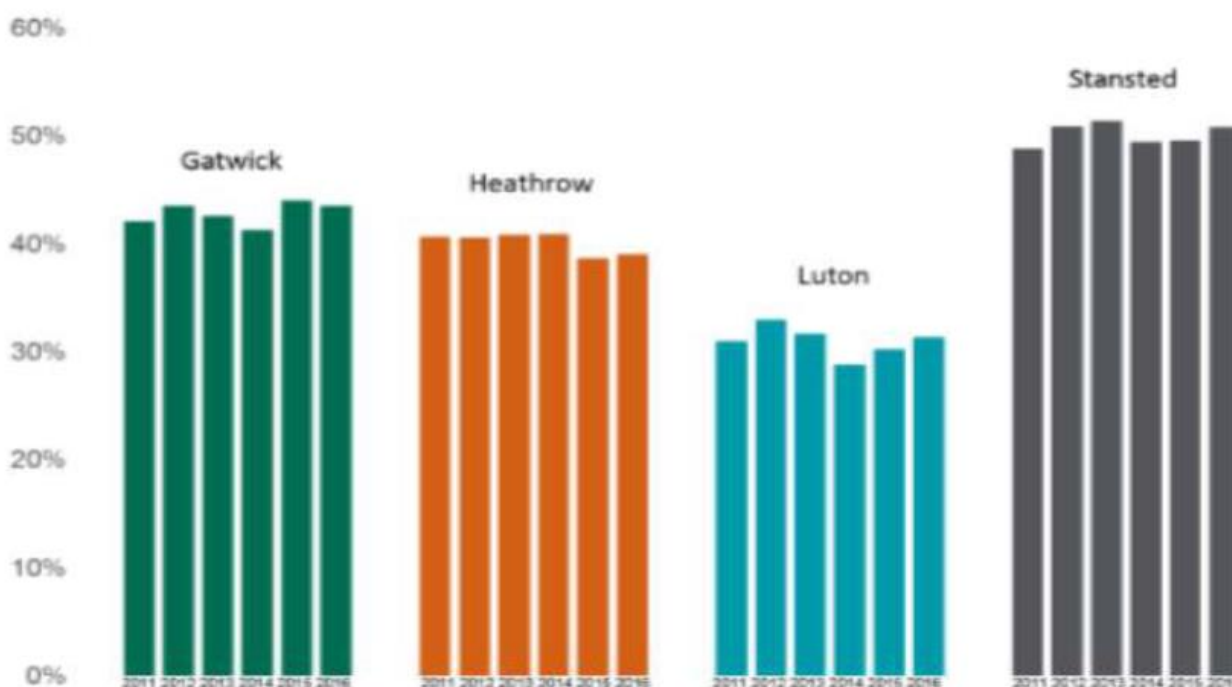
As we have noted in RRs, the M1 is notorious for delays and gridlock in the J9-J11 area and the ExA is urged to request evidence of the prevalence of such delays from the relevant Highways Authority.

Adding 14 million passengers per annum would add on average 38,000 passenger journeys per day, but in peak seasons some 42,000 of which (even at 40% modal share on public transport) would lead to 25,000 additional journeys by road, on top of the unconnected increases due to population and housing growth.

*“As part of the Proposed Development the airport is planning an increase in passenger public transport usage from the current (pre-pandemic) 38% to 45% as a minimum.” (p190)*

Given the poor east/west transport links, and the historically poor modal share of public transport usage at LLA, we are sceptical that this aspiration will be achieved. See modal access chart from DART business case<sup>4</sup>:

Figure 1 - Passengers arriving by public transport at London Airports 2011 – 2016 (DFT July 2017)



We are certain that the ExA will examine carefully the assertions made regarding improved modal split.

<sup>4</sup> “DART FBC v6 Final - REDACTION APPLIED.pdf” – commercial in confidence, obtained under Fol, p8

### 3. Comments on LR Responses to RRs- Part 2C of 4

This section contains our comments on examples of the Responses made by the Applicant to concerns raised by non-statutory organisations as documented in REP1-023. **Page numbers in this section refer to REP1-023 unless otherwise indicated.** We have grouped comments by Topic. Comments relating to Noise Envelope Design are provided in section 4 and Annex 1.

To save space and avoid duplication we have not reproduced large sections of Table 3.1 from REP1-023, but simply quote the LR Response in italics and provide a printed page number, making our comments beneath.

Many of the LR Responses are duplicated using the same or very similar wording throughout the document. Where we comment on a typical LR Response, those comments apply to all similar responses.

Our specific comments relating to the Noise Envelope Design are provided in Section 4 of this document.

#### 3.1 Planning

*“This application for development consent has been made by the airport owner, Luton Rising, to central Government, it is therefore not appropriate to compare it to historic commitments made in planning applications by the operator.” (p215);*

*and “... it is not appropriate to compare whether or not historic commitments made in separate planning applications by the operator have yet been fully implemented.” (p227)*

We disagree with these Responses. The following factors are relevant to the current planning assessment:

- the planning context includes the current state of development of the Airport and the environmental baselines, both of which have been affected by incentivisation to which the Applicant was a party<sup>5</sup>
- the Applicant’s Board includes members of the Council which as local planning authority is responsible for conditions, constraints, monitoring and enforcement in respect of the development of the Airport under Project Curium, and should therefore be aware that the Airport has been operated in breach of existing consents
- the Airport was being operated in a non-consented way when the Applicant undertook environmental noise monitoring and at the time chosen for the ‘2019 Actuals’ environmental impact baselines
- Project Curium includes outstanding commitments to mitigate environmental impacts and make the development acceptable (eg sufficient modernisation of the fleet to reduce noise contours and noise quota count to lower levels by 2028; and creation of a taxiway to feed the western end of the runway)

Furthermore, the Funding Statement (APP-012, printed page 6) describes the concession contract linking the Applicant to the operator in the context of Project Curium:

*“4.2.1(a) ... From the outset of the concession, flexibility was built in to enable the duration of the concession to be extended to accommodate material growth. This was executed in 2012 when both parties [ie London Luton Airport Ltd and LLAOL] agreed commercial terms to enable the concession to be extended by two years and seven months to enable the financing of growth from 12 million to 18 million passengers per year conditional on the delivery of construction works phased over 16 years.” (our underline)*

The Applicant appears not to have acknowledged in its early discussions with the Inspectorate regarding the DCO, nor in its Vision 2020-2050 consultation document<sup>6</sup>, that development and mitigation was outstanding from Project Curium, and that LLAOL was in breach of a noise planning condition due to accelerated growth.

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<sup>5</sup> REP1-095 Appendix 1 section 7 “Growth incentive scheme”, paragraphs 64-67, including also Annex-A

<sup>6</sup> ‘London Luton Airport Vision for Sustainable Growth 2020-2050’, LLAL, 2018, available at this link:

<https://lutonrising.org.uk/wp-content/uploads/2021/11/vision2020-2050.pdf>

Its Scoping Report highlights the passenger growth trends but fails to mention that these were caused by unmitigated accelerated growth which breached noise conditions, instead focusing on the alleged economic benefits. For example:

*“1.1.3 LTN is presently the fifth largest airport in the United Kingdom (UK), providing for almost 16.8 mppa in 2018. It is the only major UK airport that is publicly owned, with Luton Borough Council (LBC) being the sole shareholder of LLAL. In 2017, it sustained around 27,000 jobs across the UK, strongly supporting the subregional economy, and contributes approximately £1.8billion to the UK economy.*

*Current passenger growth trends show LTN to be one of the fastest growing airports in the UK, and it is forecast to reach its currently permitted capacity of 18mppa by 2020 (ahead of the 2026/27 planned delivery date).”<sup>7</sup>*

We urge the ExA to consider that LLA has not achieved balanced growth and mitigation since 2014, merely unmitigated and uncontrolled satisfaction of demand, which is contrary to aviation noise policy. This should not form the basis for further capacity expansion at least until the Project Curium development has been completed and all its mitigations have been delivered to the full extent required by existing consents.

### 3.2 Facilitating permissions and works

*“The separate planning permission obtained by the Applicant, for Green Horizons Park which is assumed to be the subject of the reference to ‘facilitating permissions’, is nothing of the sort. All of the relevant permissions and powers required for the proposed expansion to 32 mppa are contained within this application for development consent.” (p218/9)*

The issue of facilitation ahead of DCO permission needs to be separated from the proposed Business Park developments (originally New Century Park, now Green Horizons Park), and instead focused on the use of Wigmore Valley Park for Terminal 2 development; the corresponding access road (originally Century Park Access Road, now Airport Access Road); and the DART.

The Applicant acknowledged to the Planning Inspectorate that land ownership and road works were necessary for the DCO, and the DART was necessary for airport expansion. These points are covered in the minutes of initial meetings:

*“The Applicant explained that it was currently working on its masterplan and confirmed that the emerging analysis, with regard to additional terminals and taxi-ways, was that they would be included within its current land ownership. The Inspectorate queried elements of the land ownership arrangement and the Applicant confirmed that it had procured land outside of the existing airport boundary in anticipation of the expansion proposals.”<sup>8</sup> (our underline)*

*“The surrounding road network works were discussed with the Inspectorate querying whether the access roads were fundamental to the scheme. The Applicant confirmed that some road works were being prepared under a different consenting regime but might be mirrored in the Development Consent Order (DCO). The Inspectorate advised that the Applicant should be careful how the access roads were presented within the Scoping Report if the options were still not decided.”<sup>9</sup> (our underline)*

*“The Applicant provided a brief update on the other developments that formed part of the airports expansion – Luton Direct Air to Rail Transit (DART), New Century Park and Bartlett Square – which do not form part of the Development Consent Order (DCO) application, but are identified in the consultation*

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<sup>7</sup> ‘TR020001-000048-LUTN - Scoping Report (Volume 1 - Main Report)’, LLAL, Mar 2019, printed page 6

<sup>8</sup> ‘TR020001-Advice-00002-1-180130\_TR020001\_Luton Airport Extension Inception Meeting note FINAL’, Jan 2018, p2

<sup>9</sup> ibid

material. The Inspectorate emphasised the importance of clarifying what was to be applied for within the DCO application/ NSIP regime and what would be delivered through other regimes.”<sup>10</sup> (our underline)

The Airport Access Road is key to providing road access to Terminal 2. LBC has granted planning permission for it ahead of the Business Park being developed and, we understand, has agreed to pay for it. This road also facilitates the DCO development, by providing access to Terminal 2, and reduces its costs since public money will fund the AAR.

The DART was also paid for with public money, and is a necessary facilitator for Terminal 2 and the modal shift predicted for the DCO. Its alignment precluded any southern option for a Terminal 2 location.

The Applicant’s Final Business Case (FBC) for DART in 2017 identified DART as being critical to achieving 18mppa throughput<sup>11</sup>:

*“The Outline Business Case (OBC) for the project was approved by the Board of Directors of LLAL on 3<sup>rd</sup> October 2016.”* (FBC p6)

*“Delivery of an efficient and effective mass passenger transfer system is therefore a critical factor in the Airport being able to grow to, and effectively service up to 18 million passengers per annum.”* (FBC p9)

The DART cannot have been such a critical factor in the Airport reaching 18mppa, since that throughput was achieved in 2019 without the DART, which only opened to the public in March 2023. Local perception is that its criticality was over-emphasised in order to accelerate its development to assist a DCO agenda.

Redacted paragraphs in the Business Case may shed light on that if a non-redacted version were available.

### 3.3 WebTAG

It is clear from the foregoing that public money has been invested in infrastructure upon which the DCO depends, and our argument still stands that WebTAG analysis is required. We do not accept the reasoning in the LR Response regarding WebTAG:

*“WebTAG analysis is normally associated with assessing the overall value to society of a public sector investment. As the Proposed Development will be a private sector investment funded from airport profits, a full WebTAG appraisal is not required.”* (p232)

This Response also appears to be self-contradictory. This is a publicly owned Airport (see extract from the Applicant’s Scoping Report in section 3.1 above), so any funding from airport profits is public money.

If the Response was meant to imply the investment would be funded by profits from the airport operation, which is currently private sector, then it appears to contradict the Funding Statement APP-012.

We had understood the question of which body would operate the airport not to have been finally agreed, with the option of the Applicant – a public airport owning company – operating it. Funding options are also not yet clear, but the Response cited above suggests that for the development to be private sector funded by airport profits it must be undertaken and paid for by a private sector concessionaire – be it LLAOL, or a successor to LLAOL (which would also imply early termination of the current concession).

No doubt the ExA will seek clarification on all these points since the sources of funding for the remaining development work on which delivery of the DCO would rely is, as yet, unclear.

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<sup>10</sup> ‘TR020001-Advice-00004-1-180620\_TR020001\_Project update meeting and site visit\_FINAL’, Jun 2018, p2

<sup>11</sup> “DART FBC v6 Final - REDACTION APPLIED.pdf” Sep 2017 – commercial in confidence, obtained under Fol

### 3.4 Funding statement and financial sustainability

We had reminded the Applicant in RRs of the letter from Kemi Badenoch of DLUHC in Dec 2021<sup>12</sup> regarding reducing financial exposure to the airport. For clarity we quote the relevant paragraphs of that letter here:

*“The report published today sets out some significant challenges and risks for Luton Borough Council, including the financial pressures linked to the Council’s ownership of Luton Airport, and wider savings and transformation required to put the Council on a fully sustainable position. It makes a series of sensible recommendations for addressing these challenges, to which it is important that the Council responds accordingly.*

*I trust that the report and its findings will be helpful in focusing the Council on the activity and change that are needed, at both officer and member level, to lead to sustainable change.*

*Based on some of the key findings of the assurance reviews, I would expect your response and those discussions to include an appropriate focus on the following priorities:*

- *Identifying specific opportunities to generate capital receipts through asset sales, to avoid the need for ongoing borrowing under any agreed capitalisation.*
- *Confirming the precise level of support needed in 2021/22, and if you think the Council will need further support in future years.*
- *Actions the Council plans to take to address any identified challenges or risks in relation to your position on borrowing, commercial investment, and capital plans.*
- *Steps you will be taking to strengthen your overall financial governance.*

*I would also expect your response to address a specific condition of the capitalisation direction, specifically around your ability to present a plan to Government for reducing the Council’s financial exposure to the airport, with the intention of it resulting in agreement between the Authority and the Secretary of State to address the review’s recommendations.”*

We agree that the letter was to LBC, but note that it goes to question of sustainability, a matter of interest to the ExA as it assesses this Application in the wider context.

The Applicant’s response in REP1-023 to our reminder of those requirements is as follows:

*“The Government instruction referred to was in fact a recommendation to Luton Borough Council. The Applicant is Luton Rising which has continued to invest in projects that were under way at the time in order to bring them to completion.*

*Luton Borough Council’s medium-term financial plan has removed dependence on dividend income from its airport subsidiary in accordance with the recommendation from the Department for Levelling Up, Housing and Communities.”*

Whilst it may be the case that dependence on dividend income from Luton Rising has been removed, this is not the only dependency, and may indeed prove to be the least in financial terms for the following reasons:

Loans from LBC to the Applicant totalled some £490m as of March 2023 arising from the capital investment projects and DCO preparation. These loans, serviced from airport concession revenue, have increased from around £60m in 2018. Much of the interest on the loan for DART was capitalised until the DART came into

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<sup>12</sup> The letter can be downloaded from: [https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer\\_public/d4/2a/d42a8442-47c9-4031-bd80-bbd59eb94518/cd1717\\_kb\\_to\\_luton\\_leader\\_dec\\_2021.pdf](https://gat04-live-1517c8a4486c41609369c68f30c8-aa81074.divio-media.org/filer_public/d4/2a/d42a8442-47c9-4031-bd80-bbd59eb94518/cd1717_kb_to_luton_leader_dec_2021.pdf)

service, but will now be payable out of airport concession revenue, and the DCO preparation costs have also been capitalised.

The capitalised interest payments have steadily increased since 2018, whilst dividends from the Applicant to LBC since 2018 have fallen. Capitalised interest in 2022 exceeded the 2018 high-point dividend payments.

The Funding Statement (APP-012) says:

*“2.1.5 ... Current contributions made to frontline services amount to 15% of LBC income. Additional significant support is given to community groups and services in Luton and the surrounding area amounting to £8 million each year. ... Through expansion the proposed ‘Community First’ scheme will further increase such contributions by up to £14 million a year.”*

Viewed in the round, LBC’s ‘financial exposure to the airport’ (the matter of concern to the government from a sustainability perspective) appears since 2021 to have increased, not decreased, as a consequence of ‘the financial pressures linked to the Council’s ownership of Luton Airport’.

The unusual arrangement by which Luton Rising (a public airport company, not an elected provider of public services) uses public money from the airport concession to fund community groups of its choice, and the provision of frontline services described as ‘current’ (ie not via dividends, since these were zero in FY2021 and 2022), means that the commitment to increasing such contributions through Community First further increases, rather than decreases, LBC’s financial exposure to the Airport since ultimately it is responsible for ensuring adequate frontline and community services are provided.

We urge the ExA to consider whether LBC has satisfied the terms of the government instruction and reduced its financial dependency on airport revenue, or whether (given uncertainties about future sources of funding for the Proposed Development; the financial risks inherent in major development projects; its exposure via PWLB loans to the Applicant; and reliance on increased community funding) it is in fact more dependent now on airport revenue than it was in 2021 when the instruction was issued.

If there is increased dependency, then – in the terms of the letter – there is reduced financial sustainability, and LBC is the 100% shareholder in the Applicant and the owner of the Airport, so the two are interlinked.

### 3.5 Noise and vibration

*“The impact of noise due to aircraft movements from the Proposed Development has been assessed and all practicable measures have been explored to reduce noise impacts”* (p220 and elsewhere)

The ICAO Balanced Approach indicates the methods which should be explored to reduce noise impacts, as we set out in our comments on the Overarching Noise Policy Statement.<sup>13</sup> The Balanced Approach involves first identifying the noise problem at a specific airport, and then analysing and exploring various measures available to reduce noise using four principal elements:

- Reduction of Noise at Source (Technology Standards)
- Land-use Planning and Management
- Noise Abatement Operational Procedures
- Operating Restrictions

The Applicant has set out the noise assessment resulting from its own required capacity expansion but has not documented an exploration of all these various measures to reduce noise, simply relying on gradual fleet modernisation supplemented by compensation in the form of noise insulation.

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<sup>13</sup> REP1-088

*“The noise exposure in Breachwood Green and Caddington differs because of the way aircraft fly over these communities to a different extent when on easterly or westerly operations.” (p 222)*

We appreciate the fact that Caddington is mainly impacted by easterly arrivals whereas Breachwood Green is impacted by easterly departures and westerly arrivals, therefore LAeq values will be lower in Caddington; nevertheless our concern is that the peak noise levels, particularly at night, are approximately the same and Caddington should therefore be treated as a special case due to the risk of health harms. This illustrates the need at least to consider other metrics when gauging noise, disturbance and health impacts at night: it may only take one loud noise event to wake a person, and people do not hear in averages.

Our foregoing remark also applies to *“UK specific research from the Civil Aviation Authority (Ref 12, Ref 13) shows that there is no evidence to suggest that any noise indicators correlate better with the principal health effects from aircraft noise (daytime annoyance and night-time sleep disturbance) than the LAeq metric.”* on p225. It is accepted that LAeq correlates with annoyance but it is not the only metric to do so.

Equally in this context: the response *“Park homes are equally as eligible for the insulation schemes as other forms of residential property provided that they meet the eligibility criteria”* on p225 misses the point: Park Homes are not as substantial as permanent residential buildings, yet no specific measures are provided to assess their internal noise levels and remediate if possible. The sites mentioned are outside the Scheme.

The Applicant then describes its 'mitigation hierarchy': *“The hierarchy therefore starts with mitigation at source (such as the Noise Envelope) and mitigation by intervention (such as airport boundary screening). ... Only once these mitigations have been employed is mitigation by compensation (noise insulation) provided to avoid any residual significant effects.”* (p224)

Our comments regarding the Noise Envelope are in section 4 below, and this does not constitute mitigation of the noise resulting from the projected demand growth and fleet evolution, but simply quantifies it. Any mitigation by intervention is limited to airport boundary screening which appears to be unquantified, may be limited to Engine Run-Up Bays, and only mitigates ground noise. Therefore, there is very little mitigation at source by way of new or already-outstanding measures to address the noise problem.

Given the response *“The proposed noise insulation scheme does not specifically exclude properties that have been insulated under previous schemes from eligibility.”* (p225) we suggest the Scheme makes it clear how, when and whether already-insulated homes will be offered improved insulation, and what account will be taken of the existing insulation.

*“The Noise Envelope includes a defined mechanism to share the noise reduction benefits of future technological improvements in aircraft between the airport and local communities”* (p226)

Our understanding is that policy requires industry to reduce and mitigate noise, and that industry can take its share of the benefits only as noise levels fall.

*“All reasonably practicable measures have been explored to reduce noise impacts. The Applicant would welcome further detail of the mitigation measures that LADACAN believes have not been explored.”* (p226)

We cover this point in our WRs<sup>14</sup>.

*“A degree of flying at night is an inherent part of the operations of low fares airlines that are expected to continue to account for a substantial proportion of demand at London Luton Airport.”* (p227)

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<sup>14</sup> REP1-095, sections 0.2 and 7.6.2



The “demand” referred to is demand by airlines (ie industry), which will always “demand” capacity where money can be made. It is for the ExA to assess whether it has sufficient information to balance the benefits of satisfying such demand against the health harms caused to people living in the area around the Airport.

### 3.6 Baseline

We have dealt with the emissions baseline issue in our WRs<sup>15</sup>.

### 3.7 Noise assessment

*“The noise model has been extensively validated using radar track data and noise measurements, exceeding the requirements for noise model validation set by the Civil Aviation Authority (Ref 11). It is not agreed that the data was shown to be flawed at the 2022 inquiry.”* (p230)

See our Written Reps (REP1-095) section 7.4 for comments concerning the noise survey and modelling. Our reference to data from the concessionaire shown at the 2022 Inquiry to be flawed related to the calculation of relative noise benefits of neo-engined aircraft types compared to their ceo counterparts.

It is also known that the use of mobile noise monitoring for relatively short periods of time can deliver unrepresentative results due to different atmospheric conditions (such as temperature, air pressure, wind); due to location relative to the centre line of the swathe; due to erroneous cutoff settings leading to reduced sample sizes, and due to loss of calibration which has affected such data gathering in the past.

### 3.8 Fleetmix

*“Information in the International Civil Aviation Organization report on Environmental Trends in Aviation to 2050 (Ref 20) suggests that aircraft will continue to get quieter over time as they have done since the 1970s, and predicts a decrease in ranging from 0.1 To 0.3 EPNdB per year as a result of next generation aircraft.”* (p230)

This statement is misleading, as evidenced in our WRs<sup>16</sup>. The ICAO report on Environmental Trends in Aviation develops four scenarios based on assumptions regarding what may happen in future, then applies those scenarios to amalgamated contours from 319 global airports to gauge the effect of the assumptions.

*“There is currently no evidence to suggest that next generation aircraft will get noisier on average.”* (p230)

Given our previous comment, and the information in our WRs<sup>17</sup> concerning hydrogen fuel tanks and the constant battery weight issues, the Applicant ought to have conducted a sensitivity analysis on the more likely probability that next generation aircraft will be noisier on average.

*“Measured noise data was used to predict A321Neo (assessment Phase 1) noise in the 2027 scenario; however, it is assumed that, by 2039, any issues with the A321Neo performance would be resolved through fleet transition to equivalent aircraft that are no worse than the expected performance from noise certification testing.”* (p231)

This statement is misleading, as evidenced in our WRs<sup>18</sup>. LLAOL’s Quarterly Monitoring Reports from Q1 2022 to Q2 2023 inclusive show the noise benefit of the A321neo compared to the A321ceo on departure as typically 1dB, not the 2dB claimed by LR. (NMT03 does not provide reliable data as LR has agreed.)

There is no evidence that the issues with A321neo noise performance would be resolved through fleet transition: this has proved to be an intractable issue for which Airbus has no answer. The different engine

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<sup>15</sup> REP1-095 section 7.3

<sup>16</sup> REP1-095 section 7.4.4 paragraphs 176 to 178

<sup>17</sup> REP1-095 section 7.4.4 paragraph 180

<sup>18</sup> REP1-095 section 7.4.3 paragraphs 168 to 173

types are relevant (Pratt & Whitney engines deliver noisier departures than CFM-LEAP) and the airlines at LLA using Airbus types adopt a common engine family for obvious maintenance reasons.

### 3.9 Governance

In relation to our concerns regarding the Airports Act 1986 as amended (“the Act”) LR has responded: *“The management of the airport is conducted by London Luton Airport Operations Ltd (LLAOL) under a concession agreement entered into in 1998 and the Secretary of State has directed that section 17(1) does not apply to Luton Rising and hence does not govern the relationship between Luton Rising and LLAOL.”* (p235)

This Response misses the point we were making, namely that the Applicant ought not to have interfered in the management of the Airport by targeting financially incentivising rapid growth, however it does confirm that Section 17(1) of the Act does not apply to the Applicant since it is not qualified to manage an airport.

Nevertheless, Section 17(4) of the Act does apply, which precludes the Applicant from engaging in activities in which LBC (as the controlling authority) does not have the power to engage, unless such activity is permitted under Section 17(A) by virtue of Section 17(6).

Section 17A(1) indicates that the Secretary of State may, by regulations which can carry conditions, permit a public airport companies or a particular public airport company (Section 17A(5)) which is a subsidiary of a controlling authority (Section 17A(7)) to carry out an activity which appears to the Secretary of State to be incidental to, or connected with, carrying on the business of operating an airport as a commercial undertaking (Section 17A(2)), where such activity involves participating in, or making financial contributions towards, an activity carried on by, or jointly with, other persons (Section 17A(6)).

Since the Applicant did make a financial contribution connected with the business of operating an airport (ie by providing rebates on the concession fee in the case of ‘growth’ and ‘super growth’ airlines) to other persons involved in the operation of the Airport (ie the concessionaire, LLAOL), then Section 17(A) of the Act, which applies in this case, would require appropriate regulations from the Secretary of State to have been in place at the times (2014-2020) when such financial contributions were made.

If such regulations were not in place at the relevant times, then the Applicant appears to be in breach of Section 17(A) of the Act, and LBC, as the controlling authority, in breach of Section 17(4) for failing to prevent such activities.

We urge the ExA to seek clarity on this point, since this goes to the heart of probity and governance.

### 3.10 Green Controlled Growth

*“If monitoring were to indicate at any point that a Limit was in danger of being breached, then plans must be produced by the airport operator to set out how that breach will be avoided, for approval by the ESG.”* (p220)

The Thresholds at which corrective action was supposed to be taken were agreed by the NEDG to be set sufficiently below the Limits in order to allow for inevitable inertia in achieving correction and avoidance of breach. The rationale was explained in its Interim Report:

*“A threshold value should be set at 85% of the control limit for each contour area. If this threshold is exceeded, the operator must take steps to avoid breaches in future years. This value was chosen to be lower than the equivalent threshold values for movement caps and QC limits given the retrospective nature of the noise contours.”<sup>19</sup>*

The footnote applying to all the Thresholds indicates the ‘safety margins’ agreed for all Limits.<sup>20</sup>

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<sup>19</sup> APP-111 PDF p66, NEDG Interim Report, section 2.5.3 last bullet

<sup>20</sup> APP-111 PDF p70, NEDG Interim Report, footnote 5 to all Threshold settings in Table 2

This particularly applied in the case of noise contours. By altering the Thresholds to be so close to the Limits, the Applicant has subverted this means of control and rendered it potentially ineffective.

*“It is not agreed that the Green Controlled Growth (GCG) Thresholds leave no opportunity for effective corrective action. It is accepted the Level 1 and Level 2 Thresholds are set close to the GCG noise Limits, but this is necessarily so, as the noise forecasts show that initially the airport would be operating close to (but not in breach of the Limits), if the DCO is approved and the reasonable worst-case assumptions for growth materialise.” (p234)*

This Response is significant, since it indicates that the agreement of the NEDG on prudent Thresholds for GCG was set aside in order to allow the Airport to operate close to the Limits initially by responding to worst-case assumptions for growth. Thereby the Applicant confirms that demand takes precedence over effective control, and ‘Green Controlled Growth’ is no such thing.

The previous Response continues: *“In setting the Thresholds, the Applicant has sought to balance the need for sufficient ‘early-warning’ that environmental effects are increasing, and creating a proportionate process for the airport operator and Environmental Scrutiny Group members.” (p234/5)*

It is inappropriate, but very revealing of motivation, for the Applicant to be watering down the effectiveness of the GCG process on which it has placed so much store in publicising the so-called green credentials of the Application, by making a judgement on what would be a proportionate process for the airport operator and the ESG members, and modifying key Thresholds accordingly, without any consultation.

The ExA is urged to examine whether the Airport will be able to operate within its currently consented limits in the 2024 season, given projected levels of demand, since its slot allocations would have been confirmed in advance of any permission for the DCO taking effect if granted, and additional modernised aircraft with higher seat capacity would have entered the fleet.

It would be appropriate for the Applicant, once having corrected the modelling of a Do Nothing consented 2019 fleet<sup>21</sup>, to indicate the noise contours and passenger throughput for 2024-2026 to fill in the early years transition to the first assessment year 2027.

*“The GCG process is designed to be self-enforcing in respect of mitigating environmental effects above Limits, with the process designed to require action by the airport operator to address any exceedances of the Limits.” (p236)*

The early-warning Thresholds were set by the NEDG at levels which were expected (though not confirmed as requested, due to the curtailment of its work) to ensure breaches never occurred. Yet the Applicant seems comfortable here and elsewhere that exceedances will occur.

*“There will be no ability to change any of the Level 1, Level 2 Thresholds or Limits to permit materially worse environmental effects than those identified in the Environmental Statement.” (p238)*

Based on the way materiality is defined for noise impacts, a less-than-materially-worse environmental effect could amount to an increase in equivalent contour noise levels of 2.9dB, which corresponds to a substantial additional burden for residents. This is unacceptable: either Green Controlled Growth sets limits which are not exceeded nor increased by any amount, or it is ineffective.

*“This ensures that GCG can operate effectively over time and the reasonable worst case environmental effects forecast through the Environmental Impact Assessment process will not be exceeded.” (p238)*

Here we have an assurance that Limits will not be exceeded:

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<sup>21</sup> See our WRs, REP1-095, section 7.3.2

*“In the unlikely scenario that a Limit is exceeded, it is considered appropriate for the airport operator to prepare a Mitigation Plan in a way that they consider will be most effective at managing the relevant environmental impact.” (p238)*

Yet in the very next Response an admission that they could be, and apparent comfort given by recourse to a Mitigation Plan prepared by the airport operator which had failed to operate the airport in such a way as to avoid the exceedance. This is reminiscent of the assurances given in 2017 and 2018 that mitigation plans produced and put in place by LLAOL would avoid successive breaches of noise condition – they did not, the breaches worsened, and industry benefited as a result.

Communities can be forgiven for having no confidence in the GCG provisions, particularly with Thresholds now rendered apparently ineffective, since as indicated in our WRs they could become mired in committees rather than prompt and effective action being taken in line with the ICAO Balanced Approach.

*“The timing of the airport’s capacity declaration is fixed and cannot be amended by the Proposed Development through the Draft DCO. The GCG timings have, therefore, been established to balance this deadline with the time needed for the airport operator to collect, process and report on monitoring data and the need to allow time for scrutiny of monitoring results (including by the public. This is also no different from the potential lag associated with a breach of the existing planning conditions (i.e. summertime noise contours), for which noise monitoring data covering the whole summer season is similarly not available to inform the following summer season’s capacity declaration.” (p240/241)*

We suggest this process could be speeded up. The noise monitoring data for the 92-day summer contour period is not currently subject to public scrutiny as far as we are aware. Noise monitoring data could be passed to the Airport’s noise consultants on 16<sup>th</sup> September each year and checked and processed by the end of September. Similarly, annual noise monitoring data from 17<sup>th</sup> September the previous year until 16<sup>th</sup> September in the current year could be checked and analysed to verify the noise model by mid-October. That would then allow two months for modelling, forecasting and updating to take place in order to submit summer season capacity declarations by the January of the following year for the following season.

### 3.11 Climate Change

*“The Applicant is aware that the rate of expansion of London Luton Airport is broadly aligned to the Jet Zero Strategy High Ambition Scenario, which reinforces the view that the Application aligns with Government ambitions on carbon reduction.” (p2)*

*“The modelling behind the Jet Zero Strategy (Ref 1) (and the update) incorporated growth at other airports and at Luton at the same level as that proposed by the application.” (p202)*

We believe that these statements are capable of misinterpretation. In order that the correct weight is attached, we quote what the Jet Zero Framework<sup>22</sup> (JZF) says about the modelling assumptions it has made:

*“3.17 The capacity assumptions required by the model do not pre-judge the outcome of any future planning applications, including decisions taken by Ministers. The capacity assumptions do not represent any proposal for limits on future capacity growth at specific airports, nor do they indicate maximum appropriate levels of capacity growth at specific airports for the purpose of planning decision-making.” (JZF PDF p25)*

*“3.19 This modelling scenario is not therefore a prediction of what the Department of Transport thinks will happen with future capacity expansion but acts as a reasonable upper bound of possible future airport capacity levels and therefore associated UK aviation emissions. Its purpose is limited to providing a consistent basis to better test the potential effectiveness of measures to meet net zero.” (JZF PDF p26)*

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<sup>22</sup> jet-zero-modelling-framework.pdf, DfT, March 2022

The JZF document stresses that its modelling is seeking to capture an upper bound at this stage. It does not indicate that the proposed levels of expansion are appropriate or that the model is intended to condone an expansion trajectory against which Applicant can portray itself as 'aligned'.

### 3.12 Greenhouse Gas assessment

*"The change in outcome of the greenhouse gas (GHG) emissions assessment is due to the publication of the UK Government's Jet Zero Strategy, which occurred after the publication of the Preliminary Environmental Information Report (PEIR) and provided a more detailed understanding of mitigation measures to be included within the subsequent GHG emissions assessment."* (p246)

It is a concern that the increases in aviation GHG emissions resulting from the Application have been reduced so significantly as a result of applying assumptions based on the Jet Zero Strategy, for which few measures are yet in place. There can be little certainty about these assumed emissions abatements being realised. However, if the Applicant has confidence in them then they should be included in the Green Controlled Growth Limits.

*"The greenhouse gas emissions from aviation at LLA will be managed and capped by the UK Emissions Trading Scheme (UK ETS) within the European Economic Area, and the global Carbon Offsetting and Reduction Scheme for International Aviation (CORSA). The UK government has made it clear that available allowances under the UK ETS will be aligned with the UK meeting the Sixth Carbon Budget and later Carbon Budgets to net zero in 2050."* (p246)

CORSIA is only scheduled to operate until 2035. No discussions have taken place regarding a market-based measure for 2036-2050. CORSIA does not impose a cap, it simply requires emissions to be offset above the baseline. The CCC has advised the Government that CORSIA units should not be used for UK Carbon Budget compliance unless the scheme is reformed. While most flights are currently covered by the UK ETS, the question of whether CORSIA rules or UK ETS rules, or a combination of both, will apply to routes subject to both schemes has yet to be finalised. One potential outcome is that a significant proportion of routes currently covered by the capped UK ETS could be transferred to the uncapped CORSIA scheme.

*"As the Jet Zero Strategy represents current UK government policy, it was not deemed appropriate to model alternative pathways as part of this assessment."* (p247, end of a Response reiterating some points above)

Again, the now-modelled pathway should be a core part of the GCG Limits at each stage of the proposed development.

*"Non-CO2 emissions are discussed within Section 12.12 of Chapter 12 of the ES [APP-038]. There remains significant scientific uncertainty around the overall warming effect of non-CO2 impacts. Furthermore, there is no recognised benchmark against which to compare the emissions of non-CO2 impacts. They are not within the Nationally Determined Contributions declared pursuant to the 2015 Paris Agreement or the Carbon Budgets set pursuant to the UK Climate Change Act 2008 (Ref 5), and are not included in the Aviation emissions trajectory for the Jet Zero Strategy High Ambition scenario that this assessment uses as a comparator for Aviation emissions. For these reasons, this assessment has not sought to quantify non-CO2 impacts, consistent with current Government and Committee on Climate Change advice. Ongoing greenhouse gas emission reporting by the airport will follow all government policy as it evolves on this issue. In the Jet Zero Strategy – one year on report of July 2023 (page 33) (Ref 22), the Department of Transport has made clear that further work is required to understand the impact of aviation's non-CO2 emissions on climate change. It indicates that consideration is being given to how such impacts could in future be captured within the UK Emissions Trading Scheme."* (p248)

We are not aware of advice from either the Government or the CCC that airports should not seek to quantify non-CO<sub>2</sub> emissions. We ask the ExA to request the Applicant to clarify which advice it is relying on from these two bodies. While it is true that no regulatory benchmarks yet exist for judging the acceptability

of these impacts, the ExA Panel may prefer to reach its own judgement on this matter, weighing the climate harm of these impacts in the balance alongside other impacts of the Application.

#### 4. Comments on LR Responses relating to Noise Envelope Design

This section contains our comments on Responses in REP1-023 made by the Applicant to concerns raised by LADACAN and others concerning the process of Noise Envelope Design. **Page numbers in this section refer to REP1-023 unless otherwise indicated.**

LADACAN's RRs raised concerns about the Noise Envelope Design process, including:

*"The NEDG discussed noise parameters and thresholds, and initial calibration of the AEDT model. Its work was curtailed before completing other tasks necessary to give confidence to the stakeholders."* (p232);

and *"The Applicant has fundamentally altered the "early warning" Thresholds, which the NEDG agreed should be 85- 90% of corresponding Limits, leaving no opportunity for effective corrective action."* (p234)

The Applicant's Response states:

*"It is not agreed that the work of the Noise Envelope Design Group (NEDG) was curtailed and the NEDG issued their Final Report in December 2022."* (p232)

*"It is not agreed that the Green Controlled Growth (GCG) Thresholds leave no opportunity for effective corrective action. It is accepted the Level 1 and Level 2 Thresholds are set close to the GCG noise Limits, but this is necessarily so, as the noise forecasts show that initially the airport would be operating close to (but not in breach of the Limits), if the DCO is approved and the reasonable worst-case assumptions for growth materialise.*

*In setting the Thresholds, the Applicant has sought to balance the need for sufficient 'early-warning' that environmental effects are increasing, and creating a proportionate process for the airport operator and Environmental Scrutiny Group members."* (p234)

We do not accept the Response, and have already commented in section 3.10 of this report on its final paragraph.

LADACAN also said *"Significant concerns expressed by community groups about the Noise Envelope Design process are documented in Appendix B of APP-111."* (p233)

The Harpenden Sky community group raised the following concern in its RRs regarding lack of consultation on the Noise Envelope Design, and that the process did not follow CAP 1129 guidance:

*"According to CAA Guidance, CAP 1129 & the NED Final report 12/2022 'For an envelope to function as intended, it is essential that full agreement is achieved between all stakeholders on the envelope's criteria, limit values, means of implementation & enforcement'."* (p89)

The Response from the Applicant is reproduced in full here and echoes similar stock responses repeated elsewhere, but does not address the specific point about failure to follow guidance:

*"The Noise Envelope proposals have been developed in consultation with the Noise Envelope Design Group (NEDG) and the Applicant has taken regard of their recommendations. The Noise Envelope Design Group contains representatives from industry, community groups, local authorities and independent experts. The membership of the NEDG is described in Section 16.4 of Chapter 16 Noise and vibration [AS-080] of the ES.*

*Engagement with the NEDG is also described in the NEDG Final Report (see Annex A of Appendix 16.2 of the ES [APP-111]). A total of 19 meetings have been held with the NEDG between 2019 and 2022. This engagement is summarised in Section 16.4 of Chapter 16 Noise and vibration [AS-080] of the ES.*

*Throughout this process, community groups have been represented in the NEDG by the Luton and District Association for the Control of Aircraft Noise (LADACAN) representative and, whilst they were active, the London Luton Airport Town and Village Community Committee (LLATVCC, now disbanded).*

*As part of the NEDG terms of reference, this representation was on behalf of all community groups. The NEDG worked with the LADACAN representative to enable draft proposals to be shared and commented on by other established community groups.*

*The Applicant is pleased to note that there are a large number of recommendations from the NEDG that have been accepted and adopted in the Noise Envelope proposals. Whilst the Applicant has carefully considered all of the recommendations from the NEDG, there are some recommendations which have not been adopted, and in such cases the Applicant has developed alternative proposals based upon relevant best practice, guidance and policy. A summary of the NEDG recommendations and the Applicant responses are provided in Annex B of Appendix 16.2 of the ES [APP-111].” (p89)*

These responses are not adequate in respect of the seriousness of the points raised.

We fundamentally disagree that the Applicant followed the rounded guidance on the creation of a Noise Envelope Design provided by CAA’s CAP 1129 (the key and only document for such guidance, since ICCAN was disbanded before having published its own guidance as far as we are aware).

Item 8.1 in our PADSS indicates concern that the work of the NEDG was curtailed before completion, and given the Applicant’s Responses which do not adequately address that and other concerns regarding the Noise Envelope Design process, we have amended our PADSS to add a disagreement over whether the rounded process set out in CAP 1129 guidance was followed.

It is our contention that:

- The Noise Envelope (which necessarily includes the assessed parameters, the limits on those parameters, and the means of control to ensure parameters stay within limits) was not consulted on to the degree required by CAP 1129
- The recent history of accelerated and non-mitigated capacity growth at LLA without fair sharing of the benefits has not been accounted for in the Noise Envelope, despite clear guidance in CAP 1129 to the contrary
- The work of the NEDG did not cover the scope of what the Group envisaged as necessary, nor the scope of what CAP 1129 sets out, hence our representation that the work was curtailed. Its Interim and Final Reports both mention work-items which were not completed because the NEDG work was drawn to a close in haste to meet DCO submission deadlines set by the Applicant
- The non-consulted modifications to the Noise Envelope Design made by the Applicant after the submission of the NEDG Final Report fundamentally weaken the effectiveness of the controls, and its justification for doing so gives further cause for concern<sup>23</sup>

To evidence our concerns, we have created, as Annex 1 to this document, a set of rounded extracts from across the scope of CAP 1129, rather than the cherry-picking approach of the Application, with comments

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<sup>23</sup> See our comments in section 3.10

beneath each main section. In doing this, we draw on our experience as a member of the LLA LLACC, Noise and Track Sub-Committee and of the NEDG, to provide the ExA with the Luton Airport context which CAP 1129 requires to be considered and reflected in the Noise Envelope Design.

We urge the ExA to take account of this in deciding whether the Applicant followed appropriate process in the production of the Noise Envelope required for the proposed development.



## Annex 1 – Commented extracts from the scope of CAP 1129

The extracts from CAP 1129 are shown below *in italics* in the sequence of its chapter headings and sub-headings, with any brief continuity guidance provided in normal type. Page numbers refer to CAP 1129.

Our contextualising comments relevant to LLA and this Application are provided **in red** after a given section.

### Executive summary (p6 and onward)

*This review provides information in response to the Department for Transport's (DfT) Aviation Policy Framework (APF). The overall aim is to inform the definition of a noise envelope concept which can be applied to airports looking to increase their capacity, which: is aligned to the Government's overall noise policy; helps achieves a balance between growth and noise reduction; and incentivises noise reduction at source through airline fleet evolution.*

**The noise envelope concept is a key means of aligning growth in airport capacity to overall noise policy. CAP 1129 was published on 13 Dec 2013, a week before the planning agreement for Project Curium. It is therefore reasonable to apply its guidance to the evolution of the Airport capacity and noise impacts during Curium as context for the current Application.**

*The study addresses:*

*How the noise envelope concept could be used to help share the benefits of quieter aircraft technology between industry and local community stakeholders.*

*The key characteristics that we believe an envelope should have ... and how a noise envelope could be defined, principally in terms of measurable parameters grouped according to whether they restrict inputs, noise exposure or noise impact.*

*The variation in noise impacts depending on the time of day that aviation activity occurs.*

*Approaches for setting [parameter] limits to control the noise produced by the associated airport.*

*This is done in the context of sharing the benefits of quieter aircraft technology, providing assurance to stakeholders, a framework for periodic review of a noise envelope, and the ways in which the limit requirements may differ from one airport to another.*

**Noise control conditions and obligations agreed for Project Curium and confirmed in the 2015 Permission, taken together with the Revised Masterplan 2012 consultation document, did provide clear assurance to all stakeholders of the airport-specific limits and controls and the timeframe over which they applied: to 2028.**

**This, and the history of what ensued, is key context to the application of CAP 1129 guidance in the round.**

*The process of implementing a noise envelope ... including obtaining agreement from stakeholders, how a noise envelope might be applied within current legislation and the Government's role in the implementation.*

*Consideration is given to operational aspects such as how compliance with the limits is monitored and enforced. The concept of a local monitoring and enforcement plan is introduced.*

*Throughout the study, illustrative examples are provided of where some of the ideas have already been put into practice.*

**The illustrative examples are a key part of appreciating what the CAP 1129 guidance requires, as indicated below.**

(The CAP 1129 Executive summary also reiterates its Key Conclusions: we have placed these at the end of this Annex so the rounded context on which they are based can first be appreciated.)

## Chapter 1: Purpose (p8 and onward)

CAP 1129 reiterates noise policy and adds: *“Whereas the ICAO aircraft noise certification standards have resulted in steady progress to reduce global aircraft noise emissions, they do not address specific noise issues at individual airports.”*

CAP 1129 stresses what noise policy also stresses: there is not a carte-blanche mandate for airport capacity expansion or noise mitigation, and each case has to be considered on its own merits and in its own context.

CAP 1129 stresses applicable policy from NPS 2013:

*“3.28 The Government expects airports to make particular efforts to mitigate noise where changes are planned which will adversely impact the noise environment. This would be particularly relevant in the case of proposals for new airport capacity, changes to operational procedures or where an increase in movements is expected which will have a noticeable impact on local communities. In these cases, it would be appropriate to consider new and innovative approaches such as noise envelopes or provision of respite for communities already affected.”*

CAP 1129 requires “particular efforts to mitigate noise” in the case of this Application – not just the gradual results of steady reductions in noise certifications. Noise is not limited to air noise, and “particular efforts” can be taken to apply to ground noise and surface transport noise.

New and innovative approaches are required. Respite is mentioned – and one of the provisions potentially available to LLA from the FASI Airspace Change Project is some provision for respite, and the Application is premature in not awaiting implementation of such mitigation. In fact, apart from a noise barrier (very local unquantified benefit) and gradual fleet modernisation, its only proposed (partial and hence ineffective) noise mitigation is compensation via noise insulation.

Insulation criteria for Day noise start at 54d B LAeq rising to 63dbLAeq (SAOEL) but there appears to be no mitigation for Night noise below 55dB LAeq (SAOEL), which does not comply with NPSE<sup>24</sup>.

*“3.29 The Government wishes to pursue the concept of noise envelopes as a means of giving certainty to local communities about the levels of noise which can be expected in the future and to give developers certainty on how they can use their airports.”*

The Project Curium gave that certainty to local communities and to the developer (in that case LLAOL) on both counts, but LLAOL then mismanaged the airport operation and exceeded the levels of noise.

The Revised ANPS (in the context of the Heathrow runway but providing clear Government guidance) states *“5.59 The applicant should put forward plans for a noise envelope. Such an envelope should be tailored to local priorities and include clear noise performance targets. As such, the design of the envelope should be defined in consultation with local communities and relevant stakeholders, and take account of any independent guidance such as from the Independent Commission on Civil Aviation Noise. The benefits of future technological improvements should be shared between the applicant and its local communities, hence helping to achieve a balance between growth and noise reduction. Suitable review periods should be set in consultation with the parties mentioned above to ensure the noise envelope’s framework remains relevant.”*

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<sup>24</sup> NPSE paragraph 2.2.4 *“The second aim of the NPSE refers to the situation where the impact lies somewhere between LOAEL and SOAEL. It requires that all reasonable steps should be taken to mitigate and minimise adverse impacts on health and quality of life while also taking into account the guiding principles of sustainable development (paragraph 1.8). This does not mean that such adverse effects cannot occur.”*

Review periods were set as part of Project Curium obligations under its Noise Control Scheme, and review of the Long Term Noise Contour Reduction Strategy, but both appear to have been bypassed.

In the absence of ICCAN guidance, CAA guidance on applicability to non-designated airports is: *“At existing airports which are not designated for noise management by the Secretary of State, local communities are encouraged to work with airports to develop acceptable solutions which are proportionate to the scale of the noise impact and be involved in discussions about what is the appropriate level of noise impact. The CAA believes that the process of designing and consulting on a noise envelope may be a suitable mechanism to help achieve this.”*

The Applicant did create a Noise Envelope Design Group and by doing so engaged with a process for which CAP 1129 offers the only comprehensive guidance. Therefore its performance needs to be examined against the CAP 1129 guidance in the round.

CAA concludes: *“The overall aim of this study is therefore to inform the definition of a noise envelope concept which can be applied to airports looking to increase their capacity, which:*

- 1. is aligned to the Government’s overall noise policy;*
- 2. helps achieves a balance between growth and noise reduction; and*
- 3. incentivises noise reduction at source through airline fleet evolution.”*

It is important to note that the noise envelope concept is intended to incentivise noise reduction at source through airline fleet evolution. If the noise envelope simply models the effects of fleet modernisation which would occur anyway (since it is also shown in the Do Nothing case) on the Applicant’s demand projections – which is what the setting of the parameter values in this Noise Envelope has done – then it does not in fact incentive noise reduction at source, it simply reflects it. This approach is summarised (un-grammatically) in the response to RR-1448 at the foot of p292 of REP1-023: *“The noise model that has been used to set the Noise Envelope limits and that shall be adopted for the purposes of monitoring and modelling compliance with the Noise Envelope...”*. In other words, the Limits were derived from the model which in turn reflects the forecasts; rather than the Limits being defined and agreed, and the model then being used to derive the capacity trajectory which would fit within them.

Project Curium, by contrast, accepted the 1999 noise contour limits carried over from the Saved Local Plan, the Airport Operator confirmed it would abide by these as we have evidenced, but failed to do so. Those limits constitute a noise envelope which incentivises noise mitigation. The limits defined by the Applicant for this DCO reflect an Airport simply fulfilling projected demand, which is quite a different matter and one to which we and the majority of Interested Parties strongly object.

## Chapter 2: Current thinking on the Noise Envelope Concept (p11 and onward)

On stakeholders: *“consideration must be given to the opinions of local community and industry stakeholders in the development of a noise envelope concept if it is to function as intended.”*

As a local community representative in the NEDG, LADACAN objected strongly to the excessive growth of capacity, noise and emissions enshrined in the proposed development trajectory, and to the adoption of a 2019 Actuals baseline.

## Chapter 3: Defining a Noise Envelope (p14 and onward)

On the characteristics of a noise envelope and the setting of its parameters:

*“To function as intended, a noise envelope should as a minimum:*

- 1. be clearly defined*
- 2. be agreed among stakeholders*
- 3. be legally binding*
- 4. not be compromised by the lack of up-to-date understanding of the relationship between annoyance and*

*the exposure to aircraft noise*

5. *take account of new technology*

6. *have proportionate aims which are appropriate for the airport to which it applies i.e. to permit growth, maintain a status quo, or manage a reduction in noise impact."*

The noise envelope was not agreed among stakeholders. The Non Statutory consultation responses roundly rejected the proposed further significant development of capacity at the Airport ahead of delivering the noise mitigations committed to in Project Curium. The "consultation" on the noise envelope which resulted from the work of the NEDG was limited, significantly restricted by confidentiality provisions, and did not include sight of the limits and actual values of the originally agreed parameters, which were later altered in any case.

*"There are three possible approaches to setting an envelope. These comprise:*

- *restricting inputs*
- *restricting noise exposure*
- *restricting noise impact.*

*...these could be used singularly or in combination. In addition, other more bespoke parameters could also be used as the basis for restrictions."*

We do not see any restrictions reflected in the parameters and limit values of the proposed noise envelope, simply (as indicated above) a modelling of the demand forecasts and fleet update forecasts, other than an annual passenger limit of 32mppa which is more of an operational throughput constraint.

Restricting inputs (p15 and onward)

Possible input parameters are described, to which limits could be applied to define an envelope:

- Aircraft movement cap
- Passenger throughput cap
- Noise quota limits
- Noise contour area limits
- Noise level caps, based on integrating data from an airport's noise monitors

Specifically in respect of noise contour limits, CAP 1129 states:

*"Although average noise contours accurately quantify long-term noise exposure, the Government recognises that people do not experience noise in an averaged manner and that the value of the Leq indicator does not necessarily reflect all aspects of the perception of aircraft noise. For instance, the Inspector at the Heathrow Terminal 5 inquiry reported that the annual movement limit was needed in addition to a contour cap, as the Leq index on its own, in his view, was insensitive to the number of air transport movements."*

*"A contour limit may therefore be supplemented by a limit(s) that reflects other key aspects of this perception. Obtaining consensus amongst stakeholders on the noise metric to be used may be both one of the highest priorities and principal challenges in designing a noise envelope for an airport which uses noise contour area as a parameter."*

The NEDG did propose use of N-above metrics as a further means of control but this was relegated to the provision of some ancillary monitoring, but LLAOL has in any case resisted providing N-above contours.

Restricting noise impact (p31 and onward)

Population/dwellings exposed to noise - the population and number of dwellings enclosed within a noise contour. *"Being single numerical values, they lend themselves to use as envelope limit parameters."*

Number of people sleep-disturbed (night-time) - *“Whereas noise from aircraft operations during the daytime results in annoyance, noise from night operations tends to disturb people’s sleep. This parameter is almost identical to the number of people annoyed (above), but requires a different exposure-response relationship, namely the percentage of people who are highly sleep-disturbed by night-time aircraft noise at different Leq levels.”*

Person-Events Index (PEI) – *“Another means of calculating the noise impact on a resident is to calculate the number of noise events above a defined threshold level that the resident is exposed to. This is often referred to as the Number Above metric.”*

Again, none of these metrics has been used as a limit, simply a reflection of ‘satisfying demand’ and for the purposes of impact assessment. Retaining the 9,650 night movements limit is not virtuous when set beside the proposal to increase the late night and early morning movements by 70%, and the evasion of the Project Curium noise condition requirements to reduce night contour areas, and the noise quota, by 2028.

Restriction of other parameters (p36 and onward)

*“Parameters such as these focus on noise caused by individual aircraft operations. They are intended to provide reassurance to local communities that limits are set not just to control long-term average noise levels, but also to control the noise of individual events which may be of significant concern.”*

Examples are given (accurate when CAP 1129 was written) of other kinds of parameters available.

*“At Manchester Airport, there are a further two requirements in addition to the noise contour limits ... These are: the average level of noise of the 10% noisiest departures (over a 24-hour period) will remain lower than that in 2001; and the average level of noise for the 100 noisiest departures during the daytime and night-time, separately, will remain lower than those in 2001.”*

This is an example on a par with the commitment of Project Curium: to respect a historic limit (in this case the held-over 1999 contour areas) in order to provide continuity and consistency in local planning terms.

Stansted Airport: noise limited by restricting annual air transport movements, passenger numbers, and the area within the 57 dBA Leq,16hcontour as an example of an envelope based on three parameters.

*“The stepped growth of the limits since 1991 and the lobbying of local residents against expansion at the airport which has occurred over the years highlights that an envelope will not function as intended and provide reassurance to both the aviation industry and local residents if it is permitted to grow in this way.”*

This example clearly emphasises that airport expansion where noise which steps up over time does not provide reassurance. It also demonstrates that it is appropriate to take the longer view than a single planning application: the history of the expansion of capacity and increase or decrease in noise, in the context of policy that noise should decrease as capacity expands, is also significant. The context of Project Curium is a factor to be weighed in deciding whether further stepped growth at Luton is appropriate.

*“Where limits are set, consideration should be given to whether the limits apply to daytime, evening or night-time operations. Other airports may operate 24-hours per day, hence separate day and night criteria may be more appropriate.”*

*“For a noise envelope to be effective, it should be simple and easily understood by all stakeholders. Therefore, the introduction of separate criteria for different time periods and/or seasons must be on the condition that there is a clear and justifiable need for it.”*

In the context of the RRs received from the communities impacted by noise from LLA, and in the light of the specific focus on night noise in the Overarching Noise Policy Statement, night noise and the lack of effective mitigation of it is a significant concern which is not addressed by this Application, and which therefore weighs heavily against it.

## Chapter 4: Setting the limits (p39 and onwards)

*“The parameters should be set based on an agreement reached between industry and local community stakeholders in line with the vision defined by the Noise Policy Statement for England (NPSE), reiterated as to ‘promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development’. In other words, an appropriate balance between minimising noise impacts and maximising sustainable growth must be struck.”*

It remains unclear to us, and to community groups which commented on an extract from the NEDG Interim Report, how the Limits have been set to provide an appropriate balance between minimising noise impacts and maximising sustainable growth. Limits were set by the Applicant at a modelled from its forecasts of demand and fleet evolution, rather than (for example) at a level somewhere between that “high ambition” scenario and the Do Minimum scenario.

### Sharing the benefits

*“If the industry is to be encouraged to research and deploy innovative approaches to environmental issues then it should be rewarded with access to growth.*

*Heathrow’s noise contour is shrinking, whilst no further growth beyond 480,000 ATMs per year is currently permitted. Local communities receive the majority of the benefit of the work undertaken by industry in this case.*

*By contrast, Stansted has made a series of successful applications to increase its throughput to over three times its original permitted limit. At each step change local communities have experienced corresponding increases in permitted traffic levels, while industry has benefitted from growth as and when it has needed it.*

*Clearly, striking the right balance is not an easy task. Quantitative evidence may be necessary to inform how the needs of all stakeholders can most appropriately be met. For this, an independent assessment of the economic case for growth could be undertaken to provide input data and/or context for any noise predictions. Such an assessment could be funded jointly by the airport and the local authority to promote impartiality.”*

CAP 1129 advocates an independent assessment of the economic case, not one provided by a consultant of the Applicant alone. The advice suggests the local authority would share the cost: clearly this advice was intended to apply where the local authority was not conflicted and able to take adequate account of the environmental impacts. The advice also suggests rewarding innovative approaches to environmental issues, which do not feature in this Application. A larger noise insulation compensation budget is not innovative: an approach whereby the previous noise envelope is honoured first by reaching the reduced contour and noise quota limits currently consented to be reached by 2028 might attract more sympathy. Persisting an unfair split of benefits weighs heavily against the Application.

### Setting limits to facilitate sharing the benefits

*“If limits based on inputs are held at a constant level, once they are met, no further growth would be permitted and any improvements in quiet aircraft technology would be of greatest benefit to local communities rather than to industry.*

In the context of Project Curium the limits include:

- Aircraft movement cap (night 9,650 and early morning shoulder 7,000)
- Passenger throughput cap (18mppa up until 2028)
- Noise quota limits (3,500 reduced at each review to reach 2,800 by 2028)
- Noise contour area limits (INM 57dB day of 19.4sq km reducing to 15.2sq km by 2028; INM 48dB night of 37.2sq km reducing to 31.6sq km by 2028)
- Reducing Night Noise Violation Limits to 77dB by 1 Jan 2028

The limits have been chosen, in line with CAP 1129 guidance, to incentivise modernisation of the fleet, and LLAOL has not yet demonstrated sufficient modernisation to be able to operate the Airport at these limits, which weighs against permitting additional capacity since industry would then take further benefit.

*Conversely, if limits based on noise exposure or impact are held at a constant level, the improvements in quiet aircraft technology would most likely be used to permit increased numbers of movements. As such, the greatest benefit would be to industry rather than to local communities.*

LLA currently does not have limits based on noise exposure measured in terms of number of people or dwellings impacted by noise.

*In the former case, there would be little, if any, incentive to realise further noise reductions through the continued development of quiet aircraft technology. In the latter example, it is likely that industry would be highly incentivised to realise noise reductions.*

The assessment of the former case would apply once the limits have been met: the modelling of the DN case performed by the Applicant claims to demonstrate that this can be achieved (although the ExA would no doubt wish to confirm that the model as presented meets all the limits including passenger numbers and the reduced noise quota by 2028).

*To incentivise noise reduction such that the benefits are shared between industry and local communities, noise envelope limits could be dynamic. For example, as aircraft technology improves, the noise contour limit could reduce or tighten at a predefined rate in conjunction with a steady increase in the numbers of permitted ATMs. The setting of this rate of change could be informed by forecasting the rate of improvement of aircraft technology using manufacturers' data and identifying trends from historical noise data and using this to make predictions.*

There is not progressive reduction in the proposed noise contour limits – instead they step up at the 2039 assessment stages as shown in AS-121 Insets 1 and 2. Furthermore, on the previous page it states:

*"4.1.2 There are mechanisms within the Noise Envelope for the limits to be reduced from 2039 onwards where reasonably practicable (see Section 3.2 of the Green Controlled Growth Explanatory Note [TRO20001/APP/7.07]). However the potential reductions cannot be quantified at this time and so are not represented graphically in Inset 1 and Inset 2."*

Again, this is the opposite of what CAP 1129 advocates, which would be a reduction in the limit to incentivise noise reduction, rather than a reduction in the limit only if noise reduction is achieved. Again, this weighs against the proposed development.

*On the other hand, the longevity of aircraft and the significant lead times involved in aircraft manufacture results in a slow rate of fleet evolution. Where static limits based on inputs have been set in the past, obtaining planning permission for an increase in the limits has enabled further growth. The problem with this is that this may lower the trust and goodwill of the local communities."*

Significant numbers of the Relevant Representations to this Application speak of loss of trust for this very reason – a situation which CAP 1129 clearly seeks to avoid.

Providing assurance

This section needs to be read in the round and including the examples in order to avoid a misleading impression by cherry-picking.

*"The basis for setting the limits is likely to be forecast airport capacity and assessment and analysis of the noise impacts this would lead to.*

*The temporal horizon for which we have sufficient information on future aircraft noise levels to enable predictions to be made is limited by information provided by aircraft manufacturers. As it would be unfair to set envelope criteria to be applied at a future time for which we cannot make sufficiently accurate predictions, this horizon to some extent defines the lifetime of a noise envelope regime. In other words, even though a noise envelope regime should be a long-term agreement, it must also be finite and require renewal.”*

CAA then shows by examples the importance of envelopes being clearly defined and properly adhered to:

*“Stansted example*

*Stansted airport provides an example of how growth has been achieved using static noise management limits, at the expense of significant local community support.*

*The stepped growth of the limits since 1991 and the lobbying of local residents against expansion at the airport which has occurred over the years highlights that an envelope will not meet its aim to provide reassurance to both the aviation industry and local residents if it is permitted to grow in this way.*

*It is vital that the time-period over which an envelope is to apply is clearly defined and properly adhered to if all parties are have the assurance an envelope is intended to provide.*

*Frankfurt example*

*Frankfurt Airport ... has undergone several expansions since it opened in 1936, now having two terminals with a capacity of approximately 65 mppa, and four runways.*

*Terminal 1 was opened ... on March 14, 1972 on the assumption that the terminal capacity would be sufficient for the following 30 years. However, in 1990, construction began of a new Terminal 2 ... opened in 1994, which increased the airport’s terminal capacity to 54 mppa, eight years early.*

*Planning for a third runway began in 1973. The runway opened in 1984 despite protests and related lawsuits. ...[in] 2011, operations began on Frankfurt Airport’s fourth runway ... to enable the airport to meet the predicted demand of around 700,000 aircraft movements in 2020. To accommodate the 90 mppa which are forecast to use the airport in 2020, a new terminal section for an additional six million passengers opened on 10 October 2012, and construction of a large third terminal for 25 mppa is under consideration.*

*Again, the stepped growth of the airport and the vociferous protests identify that an envelope must handle growth clearly and transparently and with unilateral agreement if it is to function as intended.”*

By email on 8th Sep 2023 we asked the CAA’s Stuart Lindsey, Head of Airspace Modernisation, to explain the meaning of the unusual term “unilateral agreement” in the context of its three appearances in CAP 1129. His response after enquiring was:

*“I have spoken to the environmental team.*

*‘Unilateral agreement’ was intending to mean a single agreement, in other words a consensus between airport and stakeholders.*

*If you note the reference to ‘unilateral agreement’ on page 47, it is directly followed by the Schiphol Alders platform, which was the platform used to get consensus between airport and stakeholders there.”*

This guidance and the examples in the CAP 1129 document itself require a far more consensual approach than the Applicant has sought to achieve, and reflects poorly on the way the work of the NEDG was hastened to a close while significant disagreements still existed and with no attempt to reach agreement.



## Reviews

*“To strike the right balance, it is essential that the limits continue to be relevant and provide appropriate incentives at all times. Where capacity is constrained by noise, there should be a mechanism to release capacity at set intervals when incrementally challenging noise improvements have been achieved.*

*For this to occur, the degree to which the benefits are shared needs to be regularly tested. Reviews could include consideration of a number of actions or elements, some examples of which are given below. The aim would be to maintain the agreed balance between meeting the needs of industry and local community stakeholders. The appropriateness of these actions and elements may vary depending on local conditions and timing.*

*The frequency of reviews should be set to give the aviation industry certainty without fossilising the restrictions whilst giving local communities the assurance that growth will not be permitted without their agreement.*

*In addition to this short-term view, it would also be advisable to take a long-term strategic view to steer the system in alignment with the long-term policy aims (such as those to 2050), say over a period of 30 years.*

*All reviews should take early account of major developments to maintain trust with local residents and credibility with industry.”*

A key element of this section is the guidance to take a long-term strategy view specifically of long-term policy aims, specifically mentioning 2050, which as of now in 2023 – ten years after CAP 1129 was written – is even more pressing. It is acknowledged by the Applicant that the UK has committed in policy to achieve net zero emissions by 2050, yet the Applicant has not factored this in to its strategy in a precautionary way.

## Different envelope limits for different airports

*“A noise envelope should address precisely the noise issues local to the airport under consideration.*

*Different airports are subject to different constraints. Any noise envelope would therefore have to take these into account.”*

We see no assessment by the Applicant of the noise issues local to the Airport and how they are addressed precisely by the noise envelope. Environmental noise was measured but little account appears to have been taken of it; likewise of the topography nor the location of the runway relative to urban and rural areas.

Nor has the Applicant acknowledged and performed a careful analysis of the constraints affecting LLA – particularly the airspace constraints which mean flights are needlessly held at low altitudes for extended distances of 20 miles or more on departure and arrival; the taxiway constraints which mean that full-length departures cannot be performed on the (majority) westerly operations without disrupting flow due to turn-back; the runway length constraints which indicate that the largest aircraft cannot operate most efficiently. This weight heavily against the Application.

## Chapter 5: Implementation (p46 and onward)

*Having identified what a noise envelope could comprise, and having set the limits to achieve the appropriate balance between the needs of stakeholders, this section looks specifically at the process of obtaining agreement amongst stakeholders and the legal basis for implementing the envelope.*

## Process

*The key stages in the process of implementing a noise envelope at an airport are likely to include:*

*1. Establishing the need. A noise envelope would be necessary for a new major airport or a major airport undergoing significant expansion. A decision may also be required on how a major airport is defined.*

2. *Identify stakeholders. These are the groups of people for which the noise envelope is intended to provide assurances over the future growth and associated noise impact of the airport.*
3. *Set up an envelope design team including technical and legal representatives from stakeholder groups.*
4. *Produce a proposal for the noise envelope design including appropriate metrics and respective limit values.*
5. *Undertake an appropriate consultation exercise, with the extent of coverage, means of informing and duration agreed between stakeholders.*
6. *Revise envelope design in light of consultation responses.*
7. *Write the envelope criteria into the planning agreement between the local authority and the airport.*

**This section is clear and unambiguous: once the noise envelope is fully defined – including the appropriate metrics and limit values – it should be consulted on in a way agreed between the stakeholders. This was not done. A limited set of community groups members were permitted under confidentiality assurances to see and comment on a partial extract of an interim report. Their comments were then ignored.**

#### Obtaining agreement among stakeholders

If a noise envelope is to be effective at a given airport, it is essential that the majority of, if not all, stakeholders are in genuine agreement on the parameters used to define the envelope, the way in which it is enforced, and above all, about how growth of an airport can be controlled so that the noise aspect is sustainable. Without this agreement, the stakeholder(s) whose needs have not been appropriately met will have difficulty in engaging with the envelope and may continue to be, or become, objectionable.

**It is clear from the NEDG Final Report that consensus was not achieved: the community groups and LLAOL had both fed back areas on which they disagreed<sup>25</sup> yet these were not addressed due to the work being curtailed.**

#### Legal basis, planning controls

**CAP 1129 provides standard planning guidance on how a noise envelope can be implemented, made legally binding and enforced using the planning process (see p48-51) which we have not replicated here to save space. The planning conditions and Section 106 provisions relating to noise impacts of Project Curium fall within this scope.**

#### Consequences of a breach in the context of the planning controls

*When a development fails to comply with planning agreements and conditions, it becomes unacceptable in planning terms. This could result in the closure of a development.*

*This may be considered too grave a consequence for breaching one of possibly a handful of noise envelope criteria. Instead, it would be appropriate to draft the planning controls such that failure to take appropriate action following a breach (rather than the breach itself) constitutes failure to comply with the planning control.*

*Different actions would be appropriate for different situations, but are likely to include aspects such as:*

- any breaches in an envelope criterion should be rectified such that similar breaches do not occur in a subsequent measurement period*
- financial compensation should be paid to a community fund*

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<sup>25</sup> APP-111, NEDG Final Report, Community Group responses to “Extract of draft NEDG Final Report – November 2022”, PDF p79 and onwards; and Appendix C Statement from the Airport Operator, PDF p84 and onwards

- the limit criterion becomes accordingly tighter for the subsequent measurement period to off-set the excess in impact which occurred in the current period.

The advice of CAP 1129 is instructive: CAA considers it reasonable to tighten limits if a breach occurs. Taking this advice and applying it to the three consecutive years of noise contour breach at LLA (no enforcement action was taken), it would be appropriate at this juncture to reduce the contour limits for three years by the quanta of those breaches now that operations are returning to pre-COVID levels, in order to rebalance the equation.

#### Voluntary agreements

Major airports are required, under the Environmental Noise Regulations, to produce airport Noise Action Plans on a five-yearly cycle, or 'when a major development occurs affecting the existing noise situation'. These plans set out actions that the airport pledges to undertake in order to reduce noise emissions. The aim is to reduce noise impact on local communities as evidenced in the corresponding noise mapping exercises which are carried out on an according timescale. Although the noise action plans put pressure on airports to realise tangible reductions in noise, airports do not have a legal obligation to meet the actions set out.

It is our view that voluntary agreements would not have the legal weight to provide the necessary assurance to stakeholders, particularly those from local communities, that a noise envelope would be adhered to.

This is borne out by the LLA Noise Action Plan for 2019-2023 which claimed the airport would operate within its noise contour limits at a time when the operator knew it would not and had not been.

#### The role of Government in implementing envelopes

The above indicates that for all UK aerodromes, including those designated for noise management by the Secretary of State, the planning system is currently the most appropriate vehicle for implementing a noise envelope, despite its inflexibility. There is therefore currently no ideal mechanism for the Government to mandate a noise envelope at a UK airport.

For an envelope to be effective, more flexibility would be required in terms of when and under what circumstances the envelope could be implemented. Additionally, it would require a firm legal basis, so implementing through primary or secondary legislation would be an obvious route.

In the case of this DCO Application the noise envelope would become a legislative control, however we contend that it is pointless enshrining the current proposal in legislation since it fails the tests of what a noise envelope ought to address and how it ought to be designed and agreed, as we have indicated above.

#### Independent third parties

In the event that agreement between stakeholders cannot be achieved in setting an envelope, there may be a role for an independent and impartial third party to become involved to act as a broker between stakeholder groups in order to reach an agreement.

An independent expert, or group of experts, in the field of aviation noise and economics could be set up to undertake this mediation role for an airport that requires it. This third party should be able to work with the airport's consultative committee, and those of other UK airports to assist with the sharing of good practice and information between them.

The UK does not operate a national compensation scheme, and as such, setting up a national regulatory body in the UK may be considered contrary to the spirit of the Localism Act 2011 and therefore not appropriate. This again recognises that, in the UK, there is no one solution for all airports. To be effective, solutions should be tailored to local circumstances.

Again, had the Applicant heeded the guidance of CAP 1129 it would have put in place a mechanism such as that proposed above when it became clear that there was not 'unilateral agreement' (to use the words of CAP 1129) on the noise envelope. This weighs against the Application due to its heavy noise impacts.

#### Chapter 6: In operation (p56 and onward)

*The previous section considered putting a noise envelope into effect. This section discusses the running of the envelope following implementation. It considers monitoring compliance, enforcement action in the event of a breach, and the need to formalise the arrangement in a published monitoring and enforcement plan.*

##### Monitoring compliance in operation

*It may be that a scheme is agreed which permits a breach, if this is then offset in some way, perhaps with a corresponding tightening of the limit in the subsequent year. On the other hand, if a breach is not deemed acceptable, a combination of forecasting on the basis of schedules and a regime of active noise management at the airport would be required to make the system effective, and may also require some headroom to be built into the system, potentially making the envelope tighter than originally conceived.*

A regime of active noise management would require the Airport Operator to impose local limits designed and shown to be effective, such as seat caps and/or movement caps, to avoid breach. This addition to the Green Controlled Growth provisions for all limits would incentivise avoidance of breaches.

##### Enforcement

*To maintain public confidence in the planning system it is important that planning controls are enforced effectively. Although enforcement action is not mandatory, local planning authorities should take proportionate action in responding to suspected breaches of planning controls.*

*Clearly, any enforcement measures should be agreed during the design of the noise envelope and the writing of the associated planning controls. Such measures could include fines levied on the airport payable to a community fund, or a proportionate tightening of the controls in the subsequent measurement period as described above.*

One of the key actions which the NEDG requested, but which was not delivered as indicated in the Final report<sup>26</sup> was to test whether the proposed limits and controls would have prevented the noise contour breaches in 2017-2019. Again, CAA advocates a tightening of a limit if breach occurs: the current proposal for Green Controlled Growth does not do this, and as we have indicated the thresholds have been rendered ineffective by being changed after the NEDG had agreed them.

##### Local monitoring and enforcement plan

*As part of the design of a noise envelope, a local monitoring and enforcement plan should be established with unilateral stakeholder agreement, and published. This should set out how the local planning authority will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so. The plan should highlight how this is to be undertaken proactively and in a manner that is appropriate to the circumstances.*

Such an approach is required under Project Curium by a S106 obligation on the local planning authority to monitor the performance of the Airport Operator against the obligations including the noise control scheme, but it appeared that the monitoring was either ineffective or not performed<sup>27</sup>. This militates against LBC being involved in the monitoring or enforcement process due to the conflict of interest.

#### Chapter 7: Conclusions (p58)

*"The key conclusions and messages arising from this study on the Noise Envelope concept are as follows:*

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<sup>26</sup> APP-111, NEDG Final Report, paragraph 57, PDF p41

<sup>27</sup> REP1-095, Appendix 1, paragraphs 45 and 46, PDF p52

*1. For an envelope to function as intended, it is essential that full agreement is achieved between all stakeholders on the envelope's criteria, limit values and means of implementation and enforcement.*

The noise envelope proposed for this application, and the corresponding parts of Green Controlled Growth which deal with noise controls, fails the first key conclusion above. It is clear from the Final Report that neither the community groups agreed it, nor did LLAOL, as made clear in its statement.<sup>28</sup>

*2. The benefits of future technological improvements must be shared fairly between industry and local communities. This is fundamental to the noise envelope concept, and will need to be considered when defining parameters and setting limits.*

This test also fails, since the sharing of benefits was presented on the Applicant's terms and with its own interpretation, and was not considered when setting limits.

*3. An envelope is likely to be defined by a combination of parameters.*

This test reveals that the envelope was weakened by the Applicant after N-above parameters agreed by the NEDG were relegated to being informative only, and LLAOL did not agree to provide the contours.

*4. The life-span of an envelope must be agreed, and its parameters defined to maintain appropriate sharing of the benefits over its intended life-span.*

Appropriate sharing of the benefits has not been considered over the life-span which (following the example of CAP 1129) should also take into account the Project Curium era of LLA expansion.

*5. The parameters and limits, and means of implementation and enforcement of a noise envelope must be tailored to individual airports and their respective local conditions.*

Local conditions at LLA indicate there are particular noise issues which need to be addressed first, including arriving and departing aircraft being held low at 4,000 or 5,000ft for extended track miles.

*6. The current planning system offers limited flexibility in the means available to implement a noise envelope. A change in primary or secondary legislation may be required for noise envelopes to be implemented effectively and enforceable by law.*

As indicated above, communities regard it as of limited benefit to implement a deficient noise envelope in law.

*7. A possible need has been identified for independent third parties to assist stakeholders to reach agreement where necessary.*

The NEDG was independently chaired, but because its work was curtailed the chair did not have a chance to review with the Group whether the guidance given in CAP 1129 had been adequately followed, and whether the clear disagreements expressed in the feedback from the community groups and the Airport Operator could be resolved in order to reach agreement.

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<sup>28</sup> APP-111, NEDG Final Report, Community Group responses to "Extract of draft NEDG Final Report – November 2022", PDF p79 and onwards; and Appendix C – Statement from the Airport Operator, PDF p85 onward