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# London Luton Airport Expansion

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**7.08 Green Controlled Growth Framework Appendix A -  
Draft ESG Terms of Reference (Tracked Change Version)**

Application Document Ref: TR020001/APP/7.08

APFP Regulation 5(2)(q)

**The Planning Act 2008**

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure)  
Regulations 2009**

**London Luton Airport Expansion Development Consent  
Order 202x**

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**7.08 GREEN CONTROLLED GROWTH FRAMEWORK APPENDIX A –  
DRAFT ESG TERMS OF REFERENCE (TRACKED CHANGE  
VERSION)**

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## A1 Introduction

- A1.1.1 Luton Rising (a trading name of London Luton Airport Limited (LLAL)) (the Applicant) is promoting an application for a development consent order (DCO) for the expansion of London Luton Airport (the airport). As part of the application, the Applicant is putting forward a “Green Controlled Growth” (GCG) Framework to manage growth at the airport within defined environmental limits.
- A1.1.2 Through GCG, the Applicant is proposing a series of clearly specified ‘Limits’ for the individual environmental impacts of the expanding, expanded, and lifetime operation of airport. The ongoing growth of the airport up to the new overall passenger cap will depend on maintaining impacts below these Limits. Limits are defined for each of the following environmental topics:
- a. Aircraft Noise;
  - b. Air Quality;
  - c. Greenhouse Gas Emissions; and
  - d. Surface Access.
- A1.1.3 The GCG Framework, legally enshrining these Limits as part of the DCO, will therefore ensure the airport takes account of the actual impacts of expansion as they manifest over time, rather than predicating all permitted growth up to 32 mppa based on the impacts predicted through the Environmental Impact Assessment (EIA) process at the point of the application for development consent.
- A1.1.4 As part of this approach, it is proposed to establish a new Environmental Scrutiny Group (the ESG) to provide independent oversight of the GCG Framework in operation. The ESG’s role is to provide assurance that relevant plans put in place under the GCG Framework are appropriate considering the GCG Limits. The ESG should not be used as a mechanism for limiting growth where it is occurring in accordance with the GCG Framework, or GCG Limits.
- A1.1.5 This document sets out the Terms of Reference for the ESG. The ESG must operate, meet and make decisions in accordance with these Terms of Reference, unless otherwise agreed by the ESG and airport operator in accordance with the process set out in these Terms of Reference.
- A1.1.6 The ESG is intended to be a streamlined, independent governance body. It is proposed that the ESG will be established as a company limited by guarantee. It is required to be established by the airport operator no later than 56 days prior to the due date of the submission of the first Monitoring Report. When the ESG makes decisions on approvals or refusals, it will formally be the body which is making such decisions, but the decisions are made based on the Terms of Reference.

- A1.1.7 In exercising its powers and functions, the ESG would be supported by four new Technical Panels established by the DCO (one for each of the environmental topics covered by GCG, being Air Quality, Aircraft Noise, Greenhouse Gas Emissions and Surface Access). Please refer to the **Green Controlled Growth Framework Appendix B - Draft Technical Panels Terms of Reference [TR020001/APP/7.08]** setting out the Terms of Reference for the Technical Panels.
- A1.1.8 As the airport's owner, the Applicant has a significant role to play in shaping the airport's long-term future. However, Article 8 of the **Draft DCO [TR020001/APP/2.01]** sets out the proposed mechanism by which the benefit of the order (as defined by Article 7) would be granted by the Applicant, as the undertaker for the Proposed Development, to the airport operator pursuant to an agreement between the parties. This would transfer the restrictions, liabilities and obligations to the airport operator, currently London Luton Airport Operations Limited (LLAOL), to implement Green Controlled Growth in accordance with the relevant provisions of the DCO. Within this document therefore, when referring to the processes and requirements of the GCG Framework, reference is made to the airport operator, rather than the Applicant, as if the benefit of the Order had been transferred and the airport operator is the undertaker for the purposes of the Part 3 of Schedule 2 to the DCO. Similarly, references to the Applicant includes any successor organisation that acts as the owner of the airport.

## **A2 Governance and Administration**

### **A2.1 Membership**

- A2.1.1 The ESG's membership will comprise the following individuals and officers of the following authorities:
- a. an independent chairperson;
  - b. an independent aviation specialist;
  - c. a representative of Central Bedfordshire Council;
  - d. a representative of Hertfordshire County Council;
  - e. a representative of Luton Borough Council;
  - f. a representative of North Hertfordshire District Council; and
  - g. a representative of a body involved with, or an individual with suitable knowledge, skills and experience related to, the implementation and / or operation of the Worldwide Airport Slot Guidelines (WASG), or any successor document to establish best practice for the allocation of airport slots ('the slot allocation expert').
- A2.1.2 References at paragraph A2.1.1(c) to A2.1.1(g) include any successor bodies to these organisations, provided that where members split into two or more bodies this requires the consent of the ESG (as comprised prior to the split) and the Undertaker and should not alter the overall balance of voting rights across the ESG.
- A2.1.3 Additional members can be added to those listed in Paragraph A2.1.1 pursuant to a decision made by the ESG to do so following the process set out in Section A4 of these Terms of Reference and with the agreement of the airport operator.
- A2.1.4 The chairperson will convene and lead the meetings of the ESG in accordance with these Terms of Reference.
- A2.1.5 The Applicant and the airport operator are permitted to attend the proceedings of the ESG and may make representations at the proceedings and present reports and plans.
- A2.1.6 Meetings of the ESG will be open for observation by the general public. For the avoidance of doubt, this could be through access to a live video stream of meetings. There will however not be the ability for members of the public to make representations at these meetings. The airport operator or ESG will be able to request that specific discussions are not open to the public where they, for example, relate to commercially sensitive matters. Where this request is accepted by the chairperson of ESG, this will be shown on the meeting agenda.
- A2.1.7 The airport operator will, following consultation with the Applicant, submit a recommendation to the Secretary of State of suitable candidates for the role of

independent chairperson, independent aviation specialist and slot allocation expert as soon as reasonably practicable after notice has been served under article 44(1) of the DCO confirming implementation of the Proposed Development.

- A2.1.8 The Secretary of State must appoint an independent chairperson, independent aviation specialist and slot allocation expert having due regard to the recommendation received under paragraph A2.1.7 as soon as reasonably practicable and no more than 56 days after the recommendation is made by the airport operator. Where an appointment has not been made by this date, the recommendation of the airport operator will be deemed to be accepted.
- A2.1.9 Should the position of independent chairperson, independent aviation specialist or slot allocation expert become vacant, the airport operator will, following consultation with the other members of ESG (including the outgoing member(s) where appropriate), submit a recommendation to the Secretary of State of suitable candidates for the relevant role as soon as reasonably practicable.
- A2.1.10 The Secretary of State must thereafter appoint an independent chairperson, independent aviation specialist or slot allocation expert when the relevant position becomes vacant, having due regard to the recommendation received under paragraph A2.1.9 as soon as reasonably practicable after the recommendation and no later than 56 days prior to the due date for submission of the next Monitoring Report by the airport operator. Where an appointment has not been made by this date, the recommendation of the airport operator will be deemed to be accepted.
- A2.1.11 Unless otherwise agreed by the Applicant and the airport operator, following consultation with the bodies listed at Paragraph A2.1.1(c) to A2.1.1(g), an independent chairperson, independent aviation specialist and slot allocation expert are to be appointed for a maximum of two 3-year terms.
- A2.1.12 The appointed chairperson, independent aviation specialist and slot allocation expert should make reasonable endeavours to ensure that they are able to attend meetings of the ESG. If, however, the chairperson, independent aviation specialist or slot allocation expert is unable to attend a particular meeting of the ESG, the Applicant and the airport operator must agree on a suitably qualified substitute to ensure a meeting of ESG is quorate (see Section A2.2).
- A2.1.13 Each local authority may nominate an officer to represent them on the ESG. The officer must be a suitably qualified senior planning professional (i.e., a chartered town planner or someone with equivalent professional experience) ~~from the department dealing with planning functions~~ working within the relevant body and must not be an elected councillor.
- A2.1.14 The final decision as to whether a nominated officer ~~is suitably qualified~~ meets the criteria in Paragraph A2.1.13 rests with the chair of the ESG. Suitably qualified senior planning professionals will be allowed as substitutes if for any reason the nominated representative of a local authority is unable to attend a

particular ESG meeting, subject to prior approval of the nominated substitute by the chair of the ESG.

- A2.1.15 Any dispute regarding a proposed decision to approve the individual or officer's nomination to the ESG will be determined in accordance with Article 52 of the DCO.

## **A2.2 Quorum**

- A2.2.1 A quorum for an ESG meeting is met where the independent chair, independent aviation specialist, slot allocation expert (or a substitute agreed as per paragraph A2.1.12) and a minimum of one representative from a local authority (or a substitute as agreed as per paragraph A2.1.13) are present.
- A2.2.2 Reasonable endeavours must be taken to ensure that each meeting is attended by 100% of the members, or that an agreed substitute can attend as per paragraph A2.1.12. The Applicant and the airport operator are to be invited to the meetings as soon as practicable after the date of the meeting has been set.

## **A2.3 Decision Making**

- A2.3.1 All members of the ESG listed at Paragraph A2.1.1 will have the ability to vote on decisions to be made by the ESG. Each member attending a meeting of ESG will have a single vote.
- A2.3.2 Any decision of the ESG must be passed by a majority of the votes. Where there are equal votes (for example, where not all members are in attendance or members abstain from voting) the chair shall have an additional casting vote.
- A2.3.3 When acting under the Terms of Reference, representatives from local authorities will not be personally liable and decisions of the ESG are to be taken as decisions of the corporate body established, not the individual organisations involved as members of the ESG. Such representatives will not be employees of ESG. For Technical Panels, members will not be treated as acting as ESG employees. Whilst the Technical Panels may provide advice to be adopted by ESG, without prejudice to the requirement for any advice to be provided in good faith and competently, ESG has full discretion in making any final decision.
- A2.3.4 The airport operator will have a right of appeal against decisions made by the ESG, as set out at paragraph 38 of Schedule 2 of the DCO. Any appeal decision will be binding on the ESG, the airport operator and the Applicant.

## **A2.4 Timescales for Establishment**

- A2.4.1 The ESG will be established as soon as is reasonably practicable following service of the notice under Article 44(1) of the DCO, and no later than 56 days prior to the planned submission of the first Monitoring Report by the airport operator.



## **A2.5 ESG Meetings Following Establishment**

- A2.5.1 The first meeting of the ESG must be held no more than 14 days following the date of submission of the first Monitoring Report to the ESG under paragraph 20 of Schedule 2 to the DCO, unless otherwise agreed with the airport operator. There is an intention that Monitoring Reports relating to noise, air quality, carbon and surface access will be 'synchronised' as far as possible to reduce the number of meetings.
- A2.5.2 In subsequent years, whilst there is a presumption that the ESG will meet following submission of a Monitoring Report to the ESG there is no absolute requirement to do so. Any such meetings will be held at the discretion of the chairperson of the ESG. Where a meeting is to take place, the meeting must be held no more than 14 days following the date of submission of the Monitoring Report to the ESG.
- A2.5.3 Where the ESG wishes to provide commentary on a Monitoring Report, it must do so in writing to the airport operator within seven days of the meeting referenced in Paragraph A2.5.1 (or, where no meeting is held, within 14 days following the date of submission of the Monitoring Report to the ESG).
- A2.5.4 The ESG must meet following the submission of a draft Level 2 Plan or a draft Mitigation Plan. This meeting must be held no more than 21 days following the date of the submission of the draft Level 2 Plan or draft Mitigation Plan to the ESG.
- A2.5.5 Any meetings of the Technical Panels should take place in advance of any meeting of the ESG in order to ensure that the ESG has sufficient time to consider any recommendations made by the Technical Panels and to enable the timeframes in section A.4 of these Terms of Reference to be met.

## **A2.6 Administration and Costs**

- A2.6.1 The reasonable costs of the involvement of the independent chairperson, independent aviation specialist, and slot allocation expert in the ESG will be funded by the airport operator. This will include time and / or professional fees and travel to and from ESG meetings, subject to prior agreement with the airport operator.
- A2.6.2 The airport operator will provide any reasonably necessary secretarial, administrative and accounting resources for the ESG.
- A2.6.3 The reasonable costs of the involvement of the local authority representatives in the ESG will be funded by the Applicant. This will include time and / or professional fees and travel to and from ESG meetings. These costs will be payable in accordance with the funding arrangements set out in a separate legal agreement.
- A2.6.4 Meeting agendas and papers will be issued by the airport operator no later than five days prior to the meeting. Requests for agenda items from the members must be received by the chair no later than 10 days prior to an ESG meeting.

A2.6.5 Where items for discussion at a meeting are to be held in private, these must be indicated as such on the meeting agenda circulated by the airport operator.

A2.6.6 Meeting agendas and details of how members of the public can observe meetings of the ESG will be published on the airport operator's website no later than five days prior to the meeting.

A2.6.7 There is no requirement for meetings of the ESG to be held in person, and meetings can be held virtually using appropriate software (e.g. Microsoft Teams) or as a 'blended' in-person / virtual meeting, provided that these meetings can be observed by members of the public as per Paragraph A2.1.6.

~~A2.6.7~~A2.6.8 Minutes will be produced by the airport operator no more than seven days following each meeting and the members must provide comments on the minutes in writing within seven days of receipt of the draft minutes. The chair must provide approval of the minutes in writing within 14 days of receipt of the draft minutes or within seven days of receipt of any comments from members.

## A2.7 Participation Principles

A2.7.1 All persons participating in the business of the ESG shall do so in accordance with the following participation principles:

- a. work in a solution focused manner;
- b. read relevant documents and other materials in advance of meetings;
- c. declare any conflicts or potential conflicts of interest in relation to a matter to be considered at a meeting or otherwise and abide by any restrictions imposed by the chairperson, which may include excluding themselves from any discussion or recommendation concerning the relevant matter<sup>1,2</sup>.
- d. use reasonable endeavours to complete any actions resulting from ESG meetings within the time period provided, ensuring that deadlines for capacity declarations are met; and
- e. engage with each other in a respectful manner at all times.

<sup>1</sup> Where the chairperson themselves is the conflicted member or they can reasonably be regarded as having a conflict of interest in relation to the decision as to whether or not to impose restrictions on a conflicted member, any decision as to whether or not to restrict the conflicted member shall be taken by majority vote of the members present at such meeting, excluding the chairperson.

<sup>2</sup> For the avoidance of doubt, Luton Borough Council, notwithstanding its ownership of Luton Airport, may act as a member of the ESG and participate in the business of the Technical Panels without any further authorisation or restrictions under this clause.

### A3 Functions

#### A3.1 Overview

A3.1.1 The prime objective of the ESG is to fulfil the oversight and approval role in accordance with Part 3 of Schedule 2 to the Order.

A3.1.2 The specific functions of the ESG are as follows, to be carried out in accordance with these Terms of Reference and the Requirements of the Development Consent Order:

- a. providing written commentary on periodic Monitoring Reports produced by the airport operator following reviews by the relevant Technical Panels;
- b. approving or refusing Level 2 Plans or Mitigation Plans put forward as required by the airport operator if any GCG impact has exceeded a Level 2 Threshold or Limit respectively;
- c. where the airport operator can demonstrate that this is the case, certifying that an exceedance of a Level 2 Threshold or Limit is due to circumstances beyond the airport operator’s control;
- d. forum for consideration of statutory enforcement representations;
- e. mutually agreeing to modifications to these Terms of Reference and Monitoring Plans included at Appendices C to F of the GCG Framework; and
- f. approving or refusing applications by the airport operator to modify timescales within the GCG process, or Level 1 Thresholds, Level 2 Thresholds or Limits.

A3.1.3 The ESG will be supported by several Technical Panels which cover Greenhouse Gas Emissions, Air Quality, Aircraft Noise and Surface Access. Each Technical Panel reports to the ESG and is intended to provide technical advice and support to ESG to facilitate the discharge of its functions in relation to the topic area concerned.

A3.1.4 The table below sets out a delineation of the functions of the ESG, and each Technical Panel:

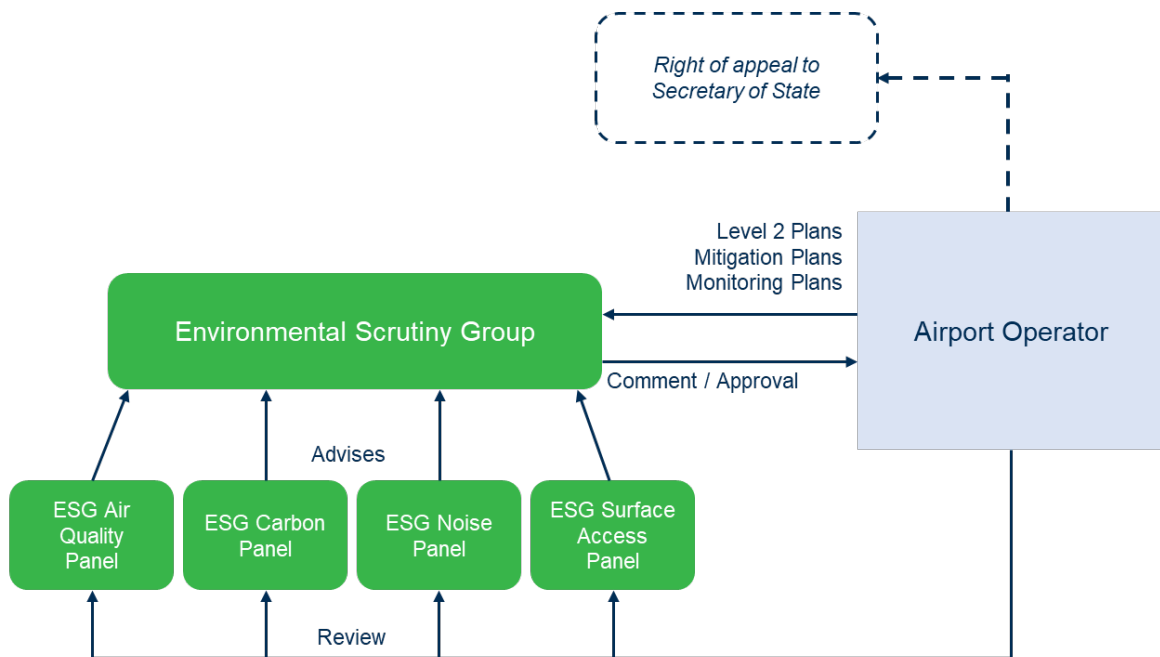
Table 3.1: ESG Delineation and Functions

| Function                                   | ESG   | ESG Technical Panel                   |
|--|---|---------------------------------------|
| Reviewing Monitoring Results               | No  | Yes                                   |
| Providing commentary on Monitoring Reports | Yes, having regard to advice from Technical Panel | Provide advice to ESG where necessary |
| Approving Level 2 Plans                    | Yes, having regard to advice from Technical Panel | Provide recommendation to ESG         |

| Function  | ESG   | ESG Technical Panel                  |
|---|---|--------------------------------------|
| Approving Mitigation Plans  | Yes, having regard to advice from Technical Panel | Provide recommendation to ESG        |
| Forum for consideration of statutory enforcement representations                              | Yes   | No                                   |
| Agreeing proposals to amend Monitoring Plans or Terms of Reference                            | Yes   | Provide advice to ESG when requested |
| Approving proposals to amend GCG timeframes, Level 1 Thresholds, Level 2 Thresholds or Limits | Yes   | Provide advice to ESG when requested |

A3.1.5 The relationship between the ESG, the ESG Technical Panels and other bodies is shown diagrammatically in **Figure 3.1** below.

Figure 3.1: Proposed governance arrangements within GCG Framework



**A3.2 Relevant Considerations in Discharging Functions**

A3.2.1 Members of the ESG must have due regard to the following in discharging their functions:

- a. The need to ensure that the Limits identified as part of the GCG Framework are not exceeded.

b. The need to ensure the safe and efficient commercial operation of the airport.

- A3.2.2 The ESG must accept the principle of the growth consented at the airport under the DCO and their functions shall be limited to considering how such growth aligns with the Limits.
- A3.2.3 Members of the ESG must act independently and reasonably in performing their functions. Members' involvement in the ESG is to be in a non-political and professional capacity. Members of the ESG must not unreasonably withhold or delay approvals, agreement or certification required as per these Terms of Reference.
- A3.2.4 The members of the ESG must have due regard to the advice provided by the Technical Panels and give substantial weight to the views of the independent chair, independent aviation specialist and independent slot allocation expert when considering matters before them.

## **A4 ESG Operating Procedures**

### **A4.1 Time Periods**

A4.1.1 The airport operator, ESG and Technical Panels will comply with the time periods associated with procedures in these Terms of Reference unless another time period is agreed between the airport operator and ESG.

### **A4.2 Procedure for Reporting of Annual Monitoring**

A4.2.1 The airport operator must submit the first Monitoring Report in accordance with paragraph 20 in Schedule 2 to the DCO.

A4.2.2 The ESG must meet no more than 14 days following the date of submission of the first Monitoring Report under paragraph 20 of Schedule 2 to the DCO in order to review the first Monitoring Report.

A4.2.3 Subsequent annual Monitoring Reports shall be produced in line with the approved Monitoring Plan (including any subsequent amendments) and submitted by the airport operator to the ESG annually in accordance with paragraph 20 of Schedule 2 to the DCO. The ESG may provide written commentary on the annual Monitoring Reports but a meeting of the ESG is at the discretion of the chairperson of the ESG. Where a meeting is to be held, this should be held no more than 14 days following the date of submission of the Monitoring Report.

A4.2.4 If no Monitoring Report is submitted by 31st July in a given year, unless otherwise agreed between the airport operator and ESG, this will be a breach of the GCG Framework and enforcement action may be commenced.

A4.2.5 When the Monitoring Report is not produced in accordance with a Monitoring Plan (including any subsequent amendments), this may be a breach of the GCG Framework and enforcement action may be commenced, though endeavours should be made to resolve any disagreement directly between the airport operator and ESG before escalating to formal enforcement action.

A4.2.6 Where a request is made by the airport operator or the ESG to amend the Monitoring Plan, the ESG may seek advice from the Technical Panels. Any amendment to the Monitoring Plan may only be made with the mutual agreement of the ESG and airport operator.

A4.2.7 The airport operator should make underlying monitoring data available to the ESG on a confidential basis at their reasonable request as part of their review of a Monitoring Report. Provision of this data will be subject to the Document Management requirements set out in Section A4.14.

### **A4.3 Procedure for Level 2 Plans**

A4.3.1 A 'Level 2 Plan' is a plan which sets out:

- a. details of any proposed actions which are designed to avoid or prevent exceedances of a Limit; and

b. the proposed programme for the implementation of those actions.

A4.3.2 Where a Level 2 Plan is required in accordance with paragraph 22 of Schedule 2 to the DCO, the airport operator must submit a draft Level 2 Plan to the ESG and the relevant Technical Panel no more than 21 days following submission of the Monitoring Report (the Level 2 Plan may also be submitted alongside a Monitoring Report showing exceedance of a Level 2 Threshold).

A4.3.3 Within 14 days of receipt of a draft Level 2 Plan, the relevant Technical Panel must provide a written report and recommendation for ESG to:

- a. approve draft Level 2 Plan; or
- b. request changes to draft Level 2 Plan.

The report must include the reasons for the recommendation. The airport operator must also be sent a copy of the report.

A4.3.4 Within 14 days of receipt of the recommendations from the relevant Technical Panel, ESG must provide written comments on the draft Level 2 Plan to the airport operator.

A4.3.5 Within 14 days of receipt of the comments from the ESG on the draft Level 2 Plan, the airport operator must submit to the ESG and relevant Technical Panel a final Level 2 Plan, including a written statement setting out how the ESG comments have been considered.

A4.3.6 Within seven days of receipt of a final Level 2 Plan, the relevant Technical Panel must provide a written report and recommendation for ESG to:

- a. approve Level 2 Plan; or
- b. refuse Level 2 Plan.

The report must include the reasons for the recommendation. The airport operator must also be sent a copy of the report.

A4.3.7 At the meeting of the ESG, to consider the final Level 2 Plan and the report of the Technical Panel (to be held within 14 days of submission of the final Level 2 Plan), the ESG may approve the Level 2 Plan or refuse the Level 2 Plan. The ESG may, however, only refuse the Level 2 Plan where it reasonably concludes that:

- a. the proposed actions will not avoid or prevent exceedances of a Limit; and / or
- b. that the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit.

A4.3.8 Within seven days of its meeting to consider the Level 2 Plan, the ESG must issue a written decision notice to the airport operator that includes reasons for the decision.

A4.3.9 Where the ESG does not issue a decision on the Level 2 Plan in the timescales outlined in this section, it will be deemed that the Level 2 Plan has been approved.

A4.3.10 Where the ESG has approved the Level 2 Plan, the airport operator must implement that plan in accordance with its terms and, subject to those terms, is not prevented from increasing the throughput of the airport. Failure to implement the approved Level 2 Plan will be a breach of the GCG Framework and enforcement action may be commenced.

A4.3.11 An approved Level 2 Plan may apply for a period greater than one year. In these circumstances, it will not be required to be updated until the end of the approved period, unless the level of future growth considered in the Level 2 Plan had been achieved, or passenger throughput reaches the point at which the Thresholds and Limits change between Phases.

#### **A4.4 Procedure for Mitigation Plans**

A4.4.1 A 'Mitigation Plan' is a plan which sets out:

- a. details of the proposed mitigation and actions which are designed to remove exceedances of a Limit as soon as reasonably practicable; and
- b. the proposed programme for the implementation of that mitigation and those actions.

A4.4.2 When a Mitigation Plan is required in accordance with paragraph 23 of Schedule 2 to the DCO, the airport operator must submit a draft Mitigation Plan to the ESG and the relevant Technical Panel no more than 21 days following submission of the Monitoring Report (the Mitigation Plan may also be submitted alongside a Monitoring Report showing exceedance of a Limit).

A4.4.3 Within 14 days of receipt of the draft Mitigation Plan, the relevant Technical Panel must provide a written report and written recommendation for ESG to:

- a. approve draft Mitigation Plan; or
- b. request changes to draft Mitigation Plan.

A4.4.4 The report must include the reasons for the recommendation. The airport operator should also be sent a copy of the report.

A4.4.5 Within 14 days of receipt of the recommendations from the relevant Technical Panel, ESG must provide written comments on the draft Mitigation Plan to the airport operator.

A4.4.6 Within 14 days of receipt of the comments from the ESG on the draft Mitigation Plan, the airport operator must submit to the ESG and relevant Technical Panel a final Mitigation Plan, including a written statement setting out how the ESG comments have been considered.

A4.4.7 Within seven days of receipt of the final Mitigation Plan, the relevant Technical Panel must provide a report and written recommendation for ESG to:

- a. Approve Mitigation Plan; or
- b. Refuse Mitigation Plan.

A4.4.8 The report must include the reasons for the recommendation.



- A4.4.9 At the meeting of the ESG to consider the final Mitigation Plan and the report of the Technical Panel (to be held within 14 days of submission of the Mitigation Plan), the ESG may approve the Mitigation Plan or refuse the Mitigation Plan. The ESG may, however, only refuse the Mitigation Plan where it reasonably concludes that (a) the proposed mitigation and actions in the Mitigation Plan will not avoid or prevent exceedances of the Limit as soon as reasonably practicable, and/or (b) that the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit as soon as reasonably practicable.
- A4.4.10 Within seven days of its meeting, the ESG must issue a written decision notice to the airport operator that includes reasons for the decision.
- A4.4.11 When the ESG does not issue a decision on the Mitigation Plan in the timescales outlined in this section, it will be deemed that the Mitigation Plan has been approved.
- A4.4.12 When the ESG has approved the Mitigation Plan, the airport operator must implement that plan in accordance with its terms. Failure to implement a Mitigation Plan will be a breach of the GCG Framework and enforcement action may be commenced.
- A4.4.13 When the airport operator submits an updated Mitigation Plan, the review and approval process shall be the same as the process set out in A4.13.3-A4.13.7 above.

#### **A4.5 Circumstances beyond the Operator's Control**

- A4.5.1 When the airport operator submits a Monitoring Report showing an exceedance of a Level 2 Threshold or Limit, they will have the ability to put forward a case that this exceedance has been caused by factors beyond their control.
- A4.5.2 Generally, when the airport operator puts forward a case that the exceedance of a Threshold or breach of a Limit is due to circumstances beyond their control, they will be expected to demonstrate that the circumstances were:
- a. not permanent in nature;
  - b. outside of the control or influence of the airport operator; and
  - c. directly related to the measured exceedance of a Threshold or breach of a Limit.

Indicative examples of circumstances where these criteria could apply are listed in Paragraph A4.5.4.

- A4.5.3 When the airport operator can demonstrate to the ESG that the exceedance of a Level 2 Threshold or breach of Limit is due to circumstances beyond the operator's control (having regard to Paragraph A4.5.2) the ESG, acting reasonably, should certify that the exceedance of a Level 2 Threshold or breach of a Limit is due to circumstances beyond the operator's control. When the ESG has provided this certification, no Level 2 Plan or Mitigation Plan (as appropriate) will be required for that exceedance or breach and the ESG

should treat the relevant environmental topic as if no exceedance or breach had occurred.

A4.5.4 Indicatively, examples of circumstances when these criteria could apply include:

- a. Delayed aircraft which are likely to lead to serious congestion at the aerodrome or serious hardship or suffering to passengers or animals.
- b. Delayed aircraft resulting from widespread and prolonged disruption of air traffic.
- c. Movements for reasons classified as emergencies consisting of an immediate danger to life or health, whether human or animal.
- ~~d. Any other reason as specified by the Secretary of State from time to time under section 78(4) or 78(5)(f) of the Civil Aviation Act 1982 or set out in guidance published by the Secretary of State in connection with those provisions. Flights involving VIPs (royal family, heads of state, senior government officials – not sports people or celebrities).~~
- ~~d.~~
- ~~e. Emergency relief flights.~~
- ~~f. Other emergencies.~~
- ~~g. Military aircraft during hostilities.~~
- ~~h. Exceptional circumstances (such as the Icelandic Volcanic Ash Crisis).~~
- ~~i. Government mandated changes to airspace (for example to accommodate Royal flypasts).~~
- ~~j. Abnormal disruption (for example, due to fire or hijacking; the dispensations are explicit that this does not cover strike action by baggage handlers as this is within the control of the airport operator).~~
- ~~k.e.~~ Pandemics or epidemics such as Covid-19.
- ~~l.f.~~ Grounding of specific aircraft (e.g., B737MAX) impacting noise performance.
- ~~m.g.~~ Strikes by public transport operators, or significant engineering work / other disruption to public transport services leading to more car use, in turn leading to impacts on air quality, greenhouse gases or surface access.
- ~~n.h.~~ Significantly abnormal weather conditions leading to restricted ability to generate solar power impacting greenhouse gases, or leading to dust storms / ash clouds impacting on air quality.
- ~~o.i.~~ Road works or other construction activity (except where this is work carried out by the airport operator or another organisation working on their behalf) leading to additional delay or diversions on the highway network, impacting on air quality.

A4.5.5 The ESG may request input from the Technical Panels where the airport operator puts forward a case that the exceedance of a Threshold or breach of

a Limit is due to circumstances beyond their control, specifying the timescales in which the Technical Panel should respond.

#### **A4.6 Procedure for Taking Account of Public Feedback**

- A4.6.1 For each environmental topic in scope of GCG, the airport operator will organise a public meeting to be held no later than 30<sup>th</sup> June each year. There is no requirement for members of the ESG to attend this meeting, although each meeting will be chaired by the independent chair of the relevant Technical Panel.
- A4.6.2 A written summary of the topics and issues raised at these meetings will be prepared by each Technical Panel within seven days of the meeting and will form part of the Monitoring Report subsequently submitted to the ESG by the airport operator.
- A4.6.3 Where possible, finalised monitoring results should be used at these meetings. However, it is acknowledged that timescales will not always allow for this and as such provisional monitoring results, with appropriate caveats, can also be used for the purpose of these meetings.
- A4.6.4 Where the ESG is providing comments on a draft Level 2 Plan (pursuant to Paragraph A4.3.4) or draft Mitigation Plan (pursuant to Paragraph A4.4.5), these comments must be in writing and include detail on how public feedback on the relevant Monitoring Report that shows an exceedance of a Level 2 Threshold or breach of a Limit has been taken into account insofar as this is relevant to the Plan on which it is commenting.

#### **A4.7 Procedure for Responding to Requests to Modify Aspects of GCG**

- A4.7.1 Where the ESG receives an application by the airport operator under paragraph 24(2) of Schedule 2 to the DCO to modify the specified time periods in the DCO, the ESG must reasonably approve or refuse the application no later than 56 days starting from the date of submission, unless another time period is agreed by the airport operator and the ESG.
- A4.7.2 When deciding an application under paragraph A4.7.1, the ESG must consider the requirement for the timings and processes established through the GCG Framework to be completed to inform the airport's capacity declaration for the following summer season.
- A4.7.3 Where the ESG receives an application by the airport operator under paragraph 24(3) of Schedule 2 to the DCO to modify the definition of a Level 1 Threshold, Level 2 Threshold or Limit (as defined in the DCO), the ESG must reasonably approve or refuse the application no later than 56 days starting from the date of submission, unless another time period is agreed by the airport operator and the ESG. The ESG may request input from the relevant Technical Panel in determining the application, specifying the timescales in which the Technical Panel should respond.
- A4.7.4 When deciding an application under paragraph A4.7.3, the ESG must consider the matters set out in section 2.3 of the **GCG Framework**

**[TR020001/APP/7.08]**. There will be no ability to change any of the Level 1 Thresholds, Level 2 Thresholds or Limits to permit materially worse environmental effects than those identified in the **Environmental Statement [TR020001/APP/2.01]**.

#### **A4.8 Procedure for Amending a Monitoring Plan**

- A4.8.1 Where the ESG receives an application by the airport operator under paragraph 20(4) or paragraph 24(3) of Schedule 2 to the DCO to amend a Monitoring Plan, the ESG must reasonably approve or refuse the application no later than 56 days starting from the date of submission, unless another time period is agreed by the airport operator and the ESG.
- A4.8.2 The ESG may request input from the relevant Technical Panel in determining the application.

#### **A4.9 Procedure for Noise Limit Reviews**

- A4.9.1 Section 3.3 of the **GCG Framework [TR020001/APP/7.08]** sets out the circumstances in which a Noise Limit Review will be triggered by publication of a new International Civil Aviation Organization (ICAO) chapter or approval of a proposal for airspace change.
- A4.9.2 Within six months of publication of a new ICAO chapter or approval of a proposal for airspace change, or, in accordance with the GCG Framework, as part of the first review required under paragraph 24 of Schedule to the DCO if publication of the ICAO chapter or proposal for airspace change occurs before that review (whichever is later), the airport operator must prepare and submit to the Noise Technical Panel a Noise Limit Review that will set out proposals to reduce the GCG Limits and Thresholds for Aircraft Noise (or demonstrate that no reduction is possible).
- A4.9.3 The Noise Limit Review must:
- a. Permit the airport growth granted by the DCO;
  - b. Reduce the Aircraft Noise Limits if reasonably practicable;
  - c. Where (b) identifies opportunities to reduce Aircraft Noise Limits, to do so in order that they are below the '2019 cap'<sup>3</sup> as quickly as is reasonably practicable;
  - d. Identify whether changes to the forecast shape of the 54dBLeq,16h and 48dBLeq,8h noise contours have occurred, such that noise impacts are experienced by different local authorities from those originally identified and included as part of the Noise Technical Panel; and
  - e. Where (d) identifies changes to the forecast shape of the 54dBLeq,16h and 48dBLeq,8h noise contours, set out any necessary amendments to the local authorities included as part of the Noise Technical Panel.

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<sup>3</sup> The short term day and night noise contour area limits set by condition 10 to the planning permission 15/00950/VARCON dated 13 October 2017 as calculated using the 'DCO noise model'

- A4.9.4 The Noise Technical Panel will complete a review of the Noise Limit Review and respond to the airport operator in writing within one month.
- A4.9.5 Within two months, the airport operator will then update the Noise Limits Review in response to the Noise Technical Panel review and formally submit it to ESG for determination. The airport operator will provide a note documenting its response to the Noise Technical Panel's review on the draft Noise Limits Review and this note is submitted to ESG in support of the application for ESG to approve the final Noise Limits Review.
- A4.9.6 The ESG must determine the airport operator's request for approval within 56 days, or the application is deemed to have been approved.
- A4.9.7 The decision of the ESG to accept or reject the Noise Limits Review will be published on the airport operator's website.
- A4.9.8 Following the determination of the first Noise Limits Review, the airport operator must prepare a Noise Limits Review and submit for ESG approval every five years following the same steps set out above always taking account of the latest information available.

#### **A4.10 Procedure for Air Quality Limit Reviews**

- A4.10.1 Within six months of any change to UK legal limits for concentrations of NO<sub>2</sub>, PM<sub>10</sub> or PM<sub>2.5</sub>, or, in accordance with the GCG Framework, as part of the first review required under paragraph 24 of Schedule 2 to the DCO if a change to the legal limits occurs before that review (whichever is later), the airport operator will prepare and submit to the ESG and Air Quality Technical Panel an Air Quality Limit Review that will consider the potential for the Air Quality Limits and Thresholds to be changed to reflect the new legal limits, and whether any shortlisted air quality monitoring locations should be brought into or out of scope of the GCG Framework.
- A4.10.2 The ESG will respond to the airport operator in writing within one month. The ESG may ask the Air Quality Technical Panel for input at its discretion, specifying the timescales in which the Air Quality Technical Panel should respond.
- A4.10.3 Where the Air Quality Limit Review identifies that Limits or Thresholds should be changed, this will be taken forward using the process outlined in Section A4.7.

#### **A4.11 Procedure for Greenhouse Gases Limit Reviews**

- A4.11.1 Within three months of the UK government clarifying the scope and pathway to achieving the policy ambition set out in the Jet Zero Strategy of achieving zero emissions airport operations by 2040, or, in accordance with the GCG Framework, as part of the first review required under paragraph 24 of Schedule to the DCO the government clarification occurs before that review (whichever is later), the airport operator will prepare and submit to the ESG a Greenhouse Gases Limit Review that will consider how to align the

Greenhouse Gases Limits and Thresholds with this policy objective. This may include changes to the definition of 'Airport Operations'.

A4.11.2 The ESG will respond to the airport operator in writing within one month. The ESG may ask the Greenhouse Gases Technical Panel for input at its discretion, specifying the timescales in which the Greenhouse Gases Technical Panel should respond.

A4.11.3 Where the Greenhouse Gases Limit Review identifies that Limits or Thresholds should be changed, this will be taken forward using the process outlined in Section A4.7.

#### **A4.12 Procedure for Surface Access Limit Reviews**

A4.12.1 The airport operator may review the definitions of the surface access mode share Limits and apply to the ESG to update them where necessary.

A4.12.2 The ESG will respond to the airport operator in writing within one month. The ESG may ask the Surface Access Technical Panel for input at its discretion, specifying the timescales in which the Surface Access Technical Panel should respond.

A4.12.3 Where the Surface Access Limit Review identifies that the definition of Limits should be changed, this will be taken forward using the process outlined in Section A4.7.

#### **A4.13 Procedure for Making Representations on Statutory Enforcement by Luton Borough Council**

A4.13.1 Luton Borough Council (LBC) will have the lead role in taking any formal enforcement action as the local authority for the land in which the largest part of the development is located. However, other planning authorities may also be able to take enforcement action when appropriate. The ESG's role in assuring compliance with the GCG Framework supplements, rather than replaces, the statutory enforcement regime under the Planning Act 2008.

A4.13.2 Where there has been a potential breach of the GCG procedures in the DCO, the ESG shall notify the airport operator as soon as it is reasonably practicable and in the first instance seek to resolve the breach directly with the airport operator.

A4.13.3 If the potential breach of the GCG procedures in the DCO has not been resolved within 28 days of the airport operator being notified by the ESG (unless a longer time period is agreed by the airport operator and ESG), the ESG shall prepare a written report for LBC. The report shall include as a minimum:

- a. details of the potential breach including any supporting evidence;
- b. the steps taken to resolve the matter with the airport operator and any actions taken by the airport operator;
- c. recommendations as to actions needed to resolve the breach and timeframes for taking such actions; and

d. recommendations for any enforcement actions to be taken by LBC.

A4.13.4 LBC shall publish the ESG's report on LBC's website as soon as reasonably practicable following the receipt of the report.

A4.13.5 Within 42 days of reviewing the ESG's report, LBC shall respond to the ESG outlining next steps and timescales.

#### **A4.14 Document Management**

A4.14.1 Decisions of the ESG, including the reasons for the decisions, shall be published on the airport operator's website as soon as it is reasonably practicable following the issuing of a decision.

A4.14.2 Level 2 and Mitigation Plans shall be publicly available on request unless clauses A4.14.3 to A4.14.7 apply.

A4.14.3 When commercial information is sensitive, the airport operator shall mark those documents "confidential and commercially sensitive" and the members of the ESG shall ensure that those specified documents are distributed amongst themselves in a safe and secure manner. If there is any doubt as to whether a document or part thereof is confidential and commercially sensitive, the members shall engage with the airport operator to confirm the position.

A4.14.4 Where information is marked as confidential by the airport operator, that information shall be treated as confidential and in accordance with applicable laws, except to the extent that:

- a. disclosure is required by law; or
- b. the information otherwise enters the public domain (except than through unauthorised disclosure).

A4.14.5 If a local authority must disclose confidential information pursuant to subparagraph A4.14.4(a), it shall, to the extent permitted by law, use all reasonable endeavours to give the other members as much notice of this disclosure as possible and take into account the representations raised by the airport operator as to the disclosure.

A4.14.6 Where required in order to protect commercially sensitive information, the airport operator may require that any member or third party who participates in the business of the ESG, including any independent chair, enters into a non-disclosure agreement in a form reasonably acceptable to the airport operator.

A4.14.7 Nothing in these Terms of Reference shall impose an obligation on the airport operator to disclose information that it considers to be confidential and / or commercially sensitive or which it is not legally permitted to disclose.

## Glossary and Abbreviations

| Term              | Definition   |
|-------------------|--|
| 2019 Cap          | The short term day and night noise contour area limits set by condition 10 to the planning permission 15/00950/VARCON dated 13 October 2017 as calculated using the 'DCO noise model'  |
| DCO               | Development Consent Order  |
| EIA               | Environmental Impact Assessment  |
| ESG               | Environmental Scrutiny Group. The ESG will be established through the DCO to independently oversee operation of the GCG Framework. Its membership will include an independent chair, an independent aviation expert, representatives of local authorities and an airline industry body. The ESG will have a range of powers enshrined in its Terms of Reference, that can be utilised at its discretion. |
| GCG Framework     | Green Controlled Growth Framework  |
| <u>LBC</u>        | <u>Luton Borough Council</u>   |
| Level 1 Threshold | A defined level of environmental effect, below the Limit and Level 2 Threshold levels, which triggers additional requirements for the airport operator, to avoid a future exceedance of a Limit.   |
| Level 2 Threshold | A defined level of environmental effect, below the Limit level, which triggers additional requirements for the airport operator, to avoid a future exceedance of a Limit.  |
| LLAL              | London Luton Airport Limited   |
| LLAOL             | London Luton Airport Operations Limited  |
| Mitigation Plan   | A report produced by the airport operator, which is triggered by an environmental effect being demonstrated to be in excess of a Limit. It must set out the airport operator's plan for bringing the environmental effect(s) back below the Limit.   |



| <b>Term</b>       | <b>Definition</b>  |
|-------------------|--|
| Monitoring Plan   | Individual plans secured through the DCO for each of the four environmental topics of the GCG Framework, setting out the monitoring and reporting requirements associated with the relevant Limits of that topic.  |
| Monitoring Report | A report (or reports) produced by the airport operator annually, to set out the monitoring results for each of the GCG Limits, with its content defined by the Monitoring Plans.   |
| mppa              | million passengers per annum   |
| Technical Panel   | Technical Panels will be established through the DCO for each of the four environmental topics within the GCG Framework. They will be staffed by a combination of independent experts and representatives of local authorities, in order to review information submitted by the airport operator (Monitoring Reports, Level 2 Plans, Mitigation Plans) and provide comments and recommendations in writing to the ESG. |
| WASG              | Worldwide Airport Slot Guidelines  |