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Your Ref: TR020001

Dear Jo Dowling

## **London Luton Airport Expansion Project**

### **Response to Deadline 11 of the Examination – Additional Submissions**

#### **1. Submissions made at Deadline 11**

As discussed in the Deadline 11 cover letter submitted by Luton Rising (the Applicant) on the 8 February 2024, there are a number of additional documents that the Applicant would like to submit to the Examining Authority (ExA) before the close of the Examination. The Applicant notes that these documents do not comprise substantive “new” information, and requests that the ExA exercises its discretion to accept them.

Please see Appendix A (Table 1) for a list of updated documents in clean and tracked change versions submitted by the Applicant as late submissions at Deadline 11.

#### **2. Statements of Common Ground (SoCG)**

The following SoCGs have been signed by the Applicant and the Interested Party:

- Hertfordshire County Council [TR020001/APP/8.15];
- North Hertfordshire District Council [TR020001/APP/8.16];
- Dacorum Borough Council [TR020001/APP/8.17];
- Buckinghamshire Council [TR020001/APP/8.18]; and
- National Highways [TR020001/APP/8.11].

An updated **Statement of Commonality** [TR020001/APP/8.22] has been provided which reflects the position as of the 9 February 2024 with the remaining SoCGs signed.

The Applicant is aware that it is at the ExA’s discretion whether to accept any updated Statement of Commonality after the close of Deadline 11. The Applicant believes that the updated statement is simply a factual update of the final position with regards the

outstanding agreements and that no 'materially new' information is being introduced which requires a response from Interested Parties.

### **3. Section 106 agreement**

The section 106 agreement submitted at Deadline 11 **[TR020001/APP/8.167]** has now been signed by all parties. The Applicant has provided the ExA with a signed copy.

### **4. Section 135 Crown land – request from Rule 17 dated 31 January**

At the time of writing, the Applicant is still in discussion regarding the obtaining of consent from the Crown for its land interests within the Order limits, but it is now evident that this will unfortunately not be obtained before the end of the examination.

The Applicant will continue to seek the required consent. There has been no suggestion of any impediment and the Applicant remains confident consent will be obtained. Noting the imminent closure of the Examination, the Applicant will update the Secretary of State directly, via the Planning Inspectorate case team, prior to the conclusion of the recommendation phase of the DCO process.

### **5. Draft Development Consent Order**

#### ***Updated Draft DCO***

In its covering letter at Deadline 11, the Applicant explained that since submission of the validated draft DCO at Deadline 10, it had identified or agreed to a small number of drafting changes that it wishes to implement. It requested that the ExA incorporate these changes, during the recommendation stage of the process, into the validated Word copy of the DCO that was submitted at Deadline 10.

To assist the ExA in this regard, the Applicant has taken the view that it should provide, before the Examination closes, an updated clean and tracked change version of the **draft DCO [TR020001/APP/2.01]**. This now incorporates the amendments listed in the Applicant's Deadline 11 cover letter, namely:

- amendments to correct errors identified in Schedule 7 (for the avoidance of doubt, this correction simply aligns Schedule 7 with the existing information in Schedule 1 to the DCO, and in the Works Plans and Land Plans);
- amendments to Schedule 8, Part 5, to reflect matters which have been agreed with National Highways since Deadline 10;
- amendments to Schedule 8, Part 6, to reflect one further matter which has been agreed with the Local Highway Authorities since Deadline 10; and
- amendments to Schedule 9, to ensure that the revisions numbers are up-to-date following submissions made at Deadline 11.

For good order, the Applicant has also provided an updated **Summary of Changes to the Draft Development Consent Order [TR020001/APP/8.54]** so that the basis for these latest changes is recorded and understood. The Applicant trusts that the ExA finds this update of assistance, and requests that the ExA exercise its discretion to accept these changes, and to incorporate these changes into the validated Word copy of the DCO that was submitted at Deadline 10.

The Applicant confirms that the changes do not require any change to the Explanatory Memorandum, and that no further DCO Validation Report is being resubmitted.

### ***Other DCO Matters***

At Deadline 11, the Host Authorities submitted a proposed new DCO provision relating to financial penalties. Noting the late submission of this proposal, and the importance of its implications for the Applicant, the Applicant feels it is essential it responds. By way of background, the Applicant has explained in **Applicant's Position Paper on Financial Penalties [REP9-058]** why the proposed penalty:

- is unnecessary and wholly unjustified in light of the robust and comprehensive GCG Framework the Applicant has put forward, which includes an implicit financial cost for failing to meet Limits through the direct linkage that GCG creates between environmental performance and ongoing growth until the breach had been resolved, irrespective of how many years this took to address the root cause;
- is inappropriate given the existing enforcement mechanism endorsed by Parliament in the context of breaches of the DCO;
- does not meet the planning policy tests and does not meet the specific tests which are relevant to the imposition of conditions;
- is being proposed without a clear legal basis;
- is unprecedented;
- is being sought to be justified by reference to precedents which are wholly irrelevant;
- assumes a function for the Department for Transport which it has hitherto not accepted or been consulted upon; and
- is not appropriate in the context of a single decision on a DCO application.

In response to the Host Authorities submissions at Deadline 10, the Applicant submitted a further response at Deadline 11 in the **Applicant's Response to Deadline 10 Submissions [TR020001/APP/8.192]**. That later submission made clear that the "rebuttal" of the Applicant's position was inadequate, and provided no sound basis for the Examining Authority or Secretary of State to recommend or include a financial penalty provision.

The Applicant wishes to emphasise that there is – still – no further substantiation nor argument for why financial penalties should be imposed in the Host Authorities' Deadline 11 submission. The submission merely presupposes there is a case for such a requirement. The Applicant therefore restates its case, as set out in the aforementioned documents, in full.

Notwithstanding the Host Authorities have failed to address the substantive position of the Applicant, the Applicant would highlight that the specific drafting now proposed also fails to meet the relevant planning tests. The Applicant does not repeat its previous submissions which explain why the principle of the provision is unnecessary, inappropriate and disproportionate, but notes in particular the glaring admission of imprecision in subparagraph (7) which includes a blank space in relation to the maximum quantum. Subparagraph (5) assumes the Secretary of State would take on a function which has not been subject to agreement. The attempt to define the "relevant factors" to be taken into account in determining an undetermined and undefined quantum provides no concrete

contextualisation of considerations which would be relevant. The provision therefore remains imprecise.

The Applicant also notes there are clear practical and procedural issues with the Host Authorities' proposal. In particular, the Terms of Reference for the ESG contain no provision in relation to an application to the Secretary of State in connection with the financial penalties (and nor is there any agreed funding mechanism in place for the making of such an application). The provision is therefore undeliverable.

The provision proposed by the Host Authorities has been subject to no consultation, nor engagement with the Applicant or other Interested Parties. The Applicant reiterates that hastily proposing such a severe measure with only one working day of the examination remaining is not appropriate.

Since initially proposing the financial penalty, the Host Authorities at Deadline 11 appear to acknowledge that the initial suggestion of a financial penalty being paid because of 12 months of an exceedance is inappropriate. The Host Authorities have sought to add an entirely new process, and set out other factors. This change in the Host Authorities' position underlines why attempting to propose a hitherto unprecedented financial penalty regime in the context of a single DCO application, at the very end of the examination, is wholly inappropriate even leaving aside the position there is no national, regional, nor local policy support or precedent for such an action.

It is also noted that in the Host Authorities' Statement at Deadline 11 on DCO Matters, that the Host Authorities have raised concerns with respect to deemed consent provisions in the DCO. The Applicant would restate the position set out in response to the ExA's comments on paragraphs 22(7) and 22(8) of the draft DCO as part of the Applicant's Response to the **Examining Authority's Commentary on the Draft DCO [REP8-036]**. The timescales and processes for GCG have been developed to ensure that they align with the established worldwide process for the declaration of available slots. This happens once a year on defined timescales for each of the summer and winter seasons.

If the ESG cannot make a decision on a Mitigation Plan in the timescales set out in the GCG process, there is the risk that a Mitigation Plan identifies that mitigation through the slot allocation process is needed, but that the plan is not approved in time and the mitigation not approved meaning it cannot be taken forward. The opportunity to mitigate the breach would then be lost for that period, until the deadline for declaring the next season's capacity is reached.

From the perspective of the Applicant, there is also a risk that because the GCG process has been designed to apply automatic controls on growth in the event that a Level 2 Threshold or Limit is exceeded, even if the airport operator is able to produce a plan that shows that some amount of additional growth is appropriate and would not result in a Limit being breached, then because the plan is not approved within the required timescales, the deadline for declaring this additional capacity could be missed. The result would be that the controls on growth stay in place, and legitimate growth is lost for that period, with both commercial implications for the airport and also for the community funding that comes from airport growth.

## **6. Road Safety Audits**

The Applicant notes that the status of the appendices to the **Applicant's Response to Issue Specific Hearing 4 Action 7 – Updates on Road Safety Audits [TR020001/APP/8.118]** is as follows:

- **Appendix D** – The Applicant has updated the Designer’s Response to the RSA1 issues raised for the A1081 New Airport Way / Gipsy Lane and A1081 / London Road (south) junctions, with a revised response provided by the Overseeing Organisation and actions agreed and certified.
- **Appendix C** – The Applicant has not made any changes to the Designer’s Response to the RSA1 issues for the A505 / Upper Tilehouse Street, A505 Upper Tilehouse Street / A602 Park Way and A602 Park Way / A602 Stevenage Road / Hitchin Hill junctions that were submitted in the **Applicant’s Response to Issue Specific Hearing 4, Action 7 – Updates on Road Safety Audits [REP8-028]**. However, the Applicant wishes to highlight that the Overseeing Organisation (Hertfordshire County Council) has not responded to the **[REP8-028]** Designer’s Response and the comments from the Overseeing Organisation shown in **[REP8-028]** and in this submission pre-date the Designer’s Response, which seeks to address those comments. The Overseeing Organisation comments shown in **[REP8-028]** and in this submission are the latest received from Hertfordshire County Council.

## 7. Late Deadline 10 submissions from Interested Parties

The Applicant is aware that the ExA exercised its discretion in accepting three late Deadline 10 submissions on 8 February. The Applicant has reviewed the late submissions and does not feel it necessary to submit any further comments in response as these issues have already been responded to by the Applicant at previous deadlines.

## 8. Correction to Closing Submissions [TR020001/APP/8.191]

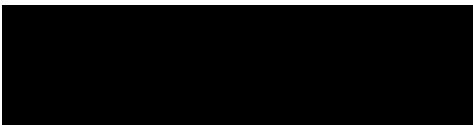
Table 9-2 of the Applicant’s Closing Submissions, submitted at Deadline 11, notes (on page 181) the following:

*“The Host Authorities take the position that the following additional noise controls should be included: .... an annual 24-hour ATM movement cap (this additional control is sought by all Host Authorities except for Luton Borough Council)”*

The Applicant notes that the reference to Luton Borough Council (LBC) is not correct – LBC is in agreement with the other Host Authorities regarding the need for an annual 24-hour ATM movement cap, as confirmed by matter LBC92 of the LBC SoCG **[TR020001/APP/8.13]**.

Please do not hesitate to get in touch should you have any further comments or questions.

Yours sincerely,



Antony Aldridge  
Head of DCO Programme

## APPENDIX A – ADDITIONAL DEADLINE 11 LUTON RISING DOCUMENTS SUBMITTED

**Table 1: List of updated documents submitted by the Applicant following Deadline 11**

<b>Document Title</b>	<b>Document Number</b>
<b>Volume 1</b>	
Application Document Tracker	TR020001/APP/1.06
<b>Volume 2</b>	
Draft Development Consent Order Draft Development Consent Order (Tracked Change Version)	TR020001/APP/2.01
<b>Volume 8</b>	
Statement of Common Ground between London Luton Airport Limited and National Highways Statement of Common Ground between London Luton Airport Limited and National Highways (Tracked Change Version)	TR020001/APP/8.11
Statement of Common Ground between London Luton Airport Limited and Hertfordshire County Council Statement of Common Ground between London Luton Airport Limited and Hertfordshire County Council (Tracked Change Version)	TR020001/APP/8.15
Statement of Common Ground between London Luton Airport Limited and North Hertfordshire District Council Statement of Common Ground between London Luton Airport Limited and North Hertfordshire District Council (Tracked Change Version)	TR020001/APP/8.16
Statement of Common Ground between London Luton Airport Limited and Dacorum Borough Council Statement of Common Ground between London Luton Airport Limited and Dacorum Borough Council (Tracked Change Version)	TR020001/APP/8.17
Statement of Common Ground between London Luton Airport Limited and Buckinghamshire Council Statement of Common Ground between London Luton Airport Limited and Buckinghamshire Council (Tracked Change Version)	TR020001/APP/8.18
Statement of Commonality for Statements of Common Ground Statement of Commonality for Statements of Common Ground (Tracked Change Version)	TR020001/APP/8.22
Summary of Changes to the Draft Development Consent Order	TR020001/APP/8.54
Applicant's Response to Issue Specific Hearing 4, Action 7 - Updates on Road Safety Audits Applicant's Response to Issue Specific Hearing 4, Action 7 - Updates on Road Safety Audits (Tracked Change Version)	TR020001/APP/8.118
Section 106 Agreement	TR020001/APP/8.167