CAP3121 RESPONSE TO CONSULTATION

July 2025

MAG

Chapter 1 - The Design of licence modifications to implement the Airspace Design Service

Summary of the November 2024 Consultation

We agree with the CAP3121 November 2024 consultation summary whereby NATS (En Route) plc (NERL) would be the provider of the Airspace Design Service. CAP3121 sets out the structure behind the CAA's proposed modifications of NERL's licence to enable the delivery of the UK Airspace Design Service (UKADS). The CAA further explain that the changes are a requirement to allow NERL to fulfil airspace design activities, administer the Airspace Design Support Fund, whilst remaining transparent and fair, adhering to regulatory expectations and providing a balance between regulatory oversight and operational flexibility. CAP3121 provides an enhanced proposal set by the CAA following stakeholder feedback, defining how the final model aligns with the statutory responsibilities that NERL will acquire to deliver UKADS as a regulated air traffic service. CAP3121 also outlines a statutory consultation on the licence modification and preparation for UKADS to be fully operation by the end of 2025.

Manchester Airports Group (MAG) agrees with these points, supporting the introduction of accountable obligations for NERL, the integration of UKADS into the regulatory framework and the CAA's transparency for the process for implementation. Accountability, impartiality and transparency are key principles and obligations that NERL must discharge.

It is important to note that for all our responses throughout this document MAG and other airport operators are more than stakeholders, but as partners, key users of services. The process and outcomes must reflect the impact on airports' assets of change.

Responses to the November 2024 Consultation

The responses to the November 2024 consultation further clarify the scope, legal basis and delivery framework for the integration of UKADS into NERL's licence. The CAA refer to the modification of the licence to introduce high-level obligations that stipulate requirements for NERL to provide UKADS and administer the Airspace Design Support Fund which ensures UKADS is deliverable and aligned with public interest objectives. The concerns relating to enforcement risks and tailoring of the Airspace Design Service, along with the concerns regarding the timescales were raised. It was understood that UKADS act as a design and coordination service and not a regulator. *MAG agrees with*

the separation of duties recognising the maintenance of trust, impartiality and regulatory integrity of the airspace change process.

Our views

Section 1.12 to 1.25 outlines the CAA's reasoning for amending NERL's licence to deliver UKADS. The CAA emphasise the obligations are broad to allow NERL to adapt the delivery of UKADS towards ever changing demand, whilst remaining consistent with accountability standards. The CAA outline that risk of underperformance or bias by NERL will be mitigated through transparency and stakeholder engagement. The Airspace Design Support Fund ensures that airports and sponsors who are not part of the UKADS rollout can still access airspace design services, providing a balanced framework for the implementation of UKADS.

MAG supports these key points. It will be important for the intention to provide transparency and stakeholder engagement to be visibly delivered to ensure that UKADS can maintain the confidence of the wider aviation community. Guidance in this respect will be essential.

Chapter 2 – Licence modifications to implement the creation of the Airspace Design Service

Chapter 2 confirms the plan of the Airspace Design Service and highlights key factors such as the combination of relevant airspace change proposals to provide a single design and airspace change with importance towards safety standards and network optimisation.

This section explains that the initial focus of UKADS will be on the London airspace cluster covering the complex congested areas involving, Stansted, Heathrow, Gatwick, Luton and London City. This area has the greatest need for coordinated design due to overlapping flight paths and high traffic volumes. The CAA explain their rationale for focussing on the LTMA but also confirm that UKADS is intended to be a national service with scope that may expand over time to cover airspace change beyond the LTMA. This position was challenged by stakeholders, such as IATA, who were concerned by the limiting NERL's "holistic national approach". MAG supports the phased rollout that is planned, we understand and agree with the rationale for focussing initially on the London cluster, whilst also embracing the future extension of UKADS access nationally.

A mechanism for geographic scope in the licence modifications have been proposed by the CAA with 4 options presented.

MAG highlights concern to the four options presented:

Option 1 - Setting the Geographic Scope on the face of the Licence - option 1 presents a large number of variables that will all have negative time implications to the programme if contested. No other Airports can contest except London Airports.

This option is inflexible as regulatory intervention would be implicit and seems more likely to result in dissatisfaction with the only stakeholder recourse as judicial review, making judicial review more likely.

Option 2 - Creating a "self-modification" process as contemplated by section 7(6A) TA00 – This option also provides a risk impacting the timing of the programme and seems like a very complex self-modification matrix to create in the first instance.

Option 3 - Providing for the Secretary of State or CAA to modify the scope by a direction. This option would need more information on what the exact implications to consultation would look like and how any concerns might be mitigated. Again, the requirement for a Secretary of State intervention is inflexible and would require action becoming a priority unless a programme for this was established and delivered. The option seems more likely to result in dissatisfaction with the only stakeholder recourse as judicial review, making judicial review more likely.

Option 4 - Providing for NERL to deliver the Airspace Design Service for the whole of the UK, but in doing so, requiring it to deliver strategic objectives set by the CAA or Secretary of State which could prioritise sponsoring airspace change proposals in particular geographic areas, such as LTMA region. This option seems preferable, but this could further strengthen NERL's monopoly, highlighting the need for transparent governance and stakeholder engagement. It would be very important that stakeholder needs and expectations flowed through into delivery.

Nature of the obligation

When analysing the nature of the obligation heading, MAG agrees with the generalised licence obligations whereby the CAA will impose a high-level outcome focussed obligation that is intended to provide a fair, transparent and efficient airspace change mechanism. One of the main concerns raised at this point was:

With regard to addressing resource capacity at NERL, NERL needs to consider how long consulting modifications should take by setting a no later than date for plans. This will

allow a consistent approach and give a better transparency of when tasks should be completed within the airspace change.

It will also be important to understand the guidance that will be given as to priorities, etc., that NERL must follow.

Matters NERL would need to take into account

As part of this section, the CAA confirmed that NERL considered it helpful to provide guidance given by the CAA or Secretary of State informing prioritisation would be effective after a formal consultation process. Heathrow Airport Limited (HAL) highlighted that NERL should be under specified obligation to consult previously sponsored airspace change proposals and explain how NERL has accounted for local aspects of designs,

MAG wish to ensure Design Principles were still included, as these had been informed by stakeholder engagement and so, for many, represented significant measures of success. Furthermore, there may be an expectation among stakeholders that their input to date will be taken into account in the ensuing process. Not doing so may enhance the risk of legal challenge.

Our views

Although this section highlights that NERL should take into account the mentioned stakeholder concerns to allow for effective working processes, MAG wishes to reinforce the following:

MAG does not believe the solution adequately reflects the concerns raised above. The CAA are effectively overlooking views/measures of success already established with local stakeholders. Whilst NERL may start airspace design afresh, the previous work and expectations of stakeholders arising from it, may flow through into an enhanced challenge risk if not properly addressed.

Governance, the Advisory Board and reporting

Stakeholder views highlighted the importance of governance arrangements. The CAA note support from NERL for the establishment of an Advisory Board. There was broad stakeholder agreement that this board could provide increased accountability and play an important role in the wider governance process. MAG wishes to reinforce the views we have previously submitted by noting that:

MAG's concerns about Governance have not been properly acknowledged. We remain concerned, particularly given one of the NERL shareholders is a major potential beneficiary of the programme, that there remains a risk of bias or perceived bias.

We note that the 'Our views' section provided by the CAA, makes no specific commitment to the participation of airports in the proposed Advisory Board.

To ensure transparency and stakeholder engagement, the proposed Advisory Board must allow for the direct participation of airports. Whilst they have a role to play, industry groups and trade associations alone would be insufficient.

Relationships with stakeholders

Stakeholders' views

In this section, NERL's response suggests that they should be given accountability and funding to allow them to work closely with airports when delivering consultation and engagement activities. In their response HAL suggest that they remain an active participant for an activity that they currently sponsor. HAL ask that the role of airports is clearly defined, suggesting that they should act as a 'delivery-sponsor' for consultation and engagement activities.

For clarity, MAG has developed deep stakeholder relationships in the areas surrounding our airports. We engage and consult stakeholders periodically on a range of topics. We contrast this position with NERL. NERL has limited experience of undertaking public consultation and has little to no specific knowledge of the stakeholders surrounding our airports.

Leveraging the local relationships we have already built, MAG and other airports with similar stakeholder networks who wish to do so should retain the lead role in engaging and consulting local stakeholders. Other airports are likely to hold the same view. Airports whose airspace interacts with change proposals will also need to be given suitable prominence in such engagements/consultations.

Relationships with stakeholders

Our views

It is apparent from their consultation responses that NERL wish to adopt the role of a 'guiding mind' within a geographic area where multiple major airports are clustered and would wish to manage the trade-offs and the differing views of airports and wider stakeholders.

MAG agrees that UKADS need to create their own relationships with stakeholders, but as a partnership and supported by airports who already have established relationships.

MAG anticipates more details being provided in the forthcoming CAP1616 consultation; however, the approach that is emerging appears heavily weighted toward empowering UKADS. In doing so, there is a risk that partners' (existing LTMA airports) input is reduced to the detriment of the process and the outcome. MAG should retain an active role, particularly for setting objectives, stakeholder engagement and consultation. NERL should also expect to work collaboratively on all aspects, including design and environmental assessment.

As drafted, this response does not adequately explain the respective roles of partner airports and NERL or clearly explain how NERL would act as a 'guiding mind'. Importantly, MAG and other airport operators are more than stakeholders, but as partners, key users of services. The process and outcomes have to reflect the impact of change on airports assets.

MAG believes that the CAA has yet to adequately respond to the concerns we have previously raised.

Administration of the Airspace Design Support Fund

Our views

This section discusses the establishment of the fund alongside the establishment of the Airspace Design Service. The section also mentions the approach airports would need to follow to gain reimbursement of airspace change costs and will be supplemented by a further paper, which will set out the proposed operation of the new fund. MAG agree in principle with the proposal of the support fund but raised concern about the time taken to establish the fund and the risk of delaying progress.

MAG supports the proposal that NERL manage the administration of the Airspace Design Support Fund. It is vital this fund is set up quickly so that the momentum that has been built in clusters including the MTMA is not lost or hindered. As we have seen in practice, a relatively short initial delay can have a material impact on the planned date of implementation delaying and reducing the benefits associated with the programme.

The Role and Scope of ACOG

Our views

MAG agree that it is sensible for one entity to cover the whole of the LTMA with ACOG being subsumed into UKADS. NERL are best placed to coordinate the LTMA plan, however, MAG need to understand how this will work in practice. For the MTMA specifically it will be important to understand how a future transition might work and how the requirements for a cluster-wide masterplan will be interpreted and the required plan delivered.

In the MTMA NERL are both a change sponsor, alongside four airports and, once a transition from ACOG to NERL is completed, the cluster-wide coordinator of the programme. It will be important therefore that NERL's coordination role is balanced, and that the needs and priorities of the airport sponsors continue to be given proper consideration.

Chapter 3 – Consequential modifications to the Licence

This chapter sets out the CAA's statutory duties and reasoning for the proposed licence modifications to enable NATS (En Route) plc (NERL) to deliver UKADS. This section highlights the possible changes made to the licence which have informed proposals from the CAA. We have provided views on condition 5 and condition 8 below:

Condition 5 (Availability of resources and financial ringfencing)

MAG expressed concern at the lack of specialist resource and the risk that 'subcontractors' supplementing NERL's resources should not compromise quality.

Concern was also expressed that prioritising the resources available to UKADS to focus on the LTMA could restrict the progress in other clusters, including the MTMA.

These concerns have not been reflected or acknowledged.

Our views

MAG agrees that safety should remain the top priority. The resources available to NERL should be balanced to ensure that support for the LTMA does not compromise other clusters, including the MTMA. Early progress in other clusters could provide valuable experience and learning that could inform the subsequent work in the LTMA.

Condition 8 (Requirements for mandated independent directors and corporate governance

Stakeholders' views

MAG's concerns about Governance have not been recognised and acknowledged. There is a risk that NERL might show bias or perceived bias and this risk is increased as one of NERL's shareholders is a major potential beneficiary. MAG believes transparent and open governance arrangements with visible involvement of stakeholders will be important to address this risk.

This will be important in the formulation of proposals as well as in decision making. We consider this will need to be addressed in guidance and the ways of working that NERL adopts.

Chapter 4 – Costs of new airspace design services

The CAA confirm that costs of UKADS will be funded via the new Airspace Design Charge, levied on airspace change sponsors who directly benefit from the service (LTMA during the initial phase). Airspace Design Support Fund will be used to subsidise or fully fund services for sponsors outside the initial cluster, in time allowing access to UKADS across the sector. UKADS costs are separate from NERL's existing regulated services and a funding mechanism is proposed.

MAG supports the funding approach that is proposed.

It is paramount that the Airspace Design Support Fund is established and available for non-LTMA airports to access quickly, to ensure progress is not hampered.

Chapter 5 – Form of control, other regulatory mechanisms and illustrative changes

This Chapter clarifies that UKADS will not be subject to traditional price control regulation due to the operation being external to NERL's core regulated business. Instead cost recovery will be managed with Airspace Design Charges which will be handled via two options which are:

- Short initial control (N23)
- Longer initial control (N28)

The CAA have considered several ways that the charge could be consulted and agreed upon. The risks posed by each option are explored along with possible mitigation. With the multiple options provided such as, 'opex only', 'opex with margin', 'RAB-based', a high-level assessment has been collated for the differing approaches.

MAG broadly agrees with the analysis of differing options, agreeing a high-level, outcome based high regulatory oversight. We support a cost pass-through approach.