

**Core Strategy Review Hearing Statement for Matter 10  
On behalf of London Ashford Airport**

Representor No. 588507



# **MATTER 10 – ECONOMIC AND RETAIL GROWTH AND THE STRATEGY FOR PRIORITY CENTRES OF ACTIVITY**

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**ISSUE: WHETHER THE CORE STRATEGY REVIEW HAS BEEN POSITIVELY PREPARED AND WHETHER IT IS JUSTIFIED, EFFECTIVE AND CONSISTENT WITH NATIONAL POLICY IN RELATION TO ECONOMIC AND RETAIL GROWTH AND THE STRATEGY FOR PRIORITY CENTRES OF ACTIVITY.**

## **RELEVANT POLICIES – SS2 AND SS4**

The below representations should be read in parallel with the representations submitted in relation to Matter 4 and 6.

### **Introduction**

- 1) We write on behalf of, London Ashford Airport (LAA), in support of representations made to the Examination of the Folkestone and Hythe District Council (FHDC) emerging Core Strategy Review (CSR).
- 2) LAA is located in Romney Marsh and is otherwise known as Lydd Airport. The Airport is ultimately majority owned by FAL Holdings Arabia Limited (FAL), a Saudi Arabian based multi-national business. A minority interest continues to be held by South East Airports Limited, a UK based company.
- 3) The Airport is a major investor, employer and business in Romney Marsh. It is acknowledged by FHDC that Romney Marsh is in need of regeneration. Despite this, LAA is not allocated within the emerging Core Strategy Review. The Council have recognised the site within Policy SS1 and indicated that an Action Area Plan (AAP) could be prepared if development comes forward at LAA in the future. However, we do not agree that this is an effective approach to guiding and supporting future investment in LAA.
- 4) By way of background, LAA was opened in 1956 and was a very successful car ferry (by air) airport. By the early 1960s, the Airport carried more passengers than London Gatwick Airport. In the 1970s increased competition from hovercraft and roll on/roll off ferries led to the decline of the air ferry service, although other passenger and freight operations continued. In 2001, FAL took over a majority ownership and have since invested substantially in the Airport. At present, the Airport has a successful mix of general aviation (GA), flight training schools, corporate and business jets and air taxis, cargo and freight flights, as well as aircraft maintenance and hangarage services
- 5) The Airport has continued to grow and expand in recent years. The relevant recent history of the Airport and its permissions has been set out in Appendix 1. Planning permission for a new terminal building and runway extension was granted in April 2013. The Secretary of States' decision and the Inspector's report has been

provided in Appendix 2. Since permission was granted, the runway extension consent has been implemented.

- 6) Since the implementation of the consent, LAA have been negotiating with adjacent owners to purchase land around the new runway. It is hoped that the land can be purchased by negotiation, but if it cannot, the Airport can use its Compulsory Purchase powers to acquire it. It is likely that the runway extension will be opened in the next five years.
- 7) Given the economic uncertainty caused by the COVID-19 pandemic and Brexit, the Airport needs to be able to manage itself through testing times and requires flexibility to be able to respond to changes to the aviation industry. To this end, LAA requires support through planning policy to thrive as a major local employment provider and key transport hub for the District to the end of the plan period and beyond.

### **Previous representations to the CSR**

- 8) On behalf of LAA, we previously made representations on the emerging CSR, during the Regulation 18 and Regulation 19 consultations. During these consultations, we had meetings with FHDC officers to discuss the Local Plan process.
- 9) Our Regulation 18 representations (Appendix 3) highlighted that the CSR was not consistent with national policy and without a specific policy in place to protect and support LAA, the CSR was not effective as a development plan document over the plan period.
- 10) Our Regulation 19 representations (Appendix 4) highlighted that the submission draft version of the CSR does not go far enough in supporting the Airport's potential need for additional infrastructure over the plan period.
- 11) FHDC has attempted to remedy the issues through the inclusion of references to an Action Area Plan for LAA. This approach is ineffective and will be a barrier to further investment.
- 12) We have consistently requested that the CSR acknowledges the long-term aspirations of LAA (which will benefit Romney Marsh, local employment and infrastructure requirements) beyond its current planning consents and recognises its potential over the entire plan period.
- 13) The previous Local Plan contained a policy that addressed the future of LAA. It recognised the importance and potential of the Airport to help regenerate Romney Marsh. It is difficult to understand why FHDC considers that a policy dealing with the Airport is no longer necessary. Without policy support for continued investment in the Airport, there is a real prospect that the Airport will decline which will have dire consequences for the regeneration of Romney Marsh and particularly so given the projected closure of Dungeness Power Station, the only other notable Romney Marsh employer, in 2028.

## RESPONSE TO INSPECTOR'S QUESTIONS

### “1) What is the evidence in relation to jobs growth and the need for employment land/floorspace in the District over the plan period? What does it show?”

- 14) The Shepway Employment Land Review (SELR) (2017) assessed the need for employment land within the District and assessed the current employment stock. The SELR highlights that there has been a loss of employment space within the District and raises concerns regarding the Permitted Development Rights (PDR) in the market converting office uses to residential (paragraph 8.45). Furthermore, the SELR highlights concerns regarding existing and historic undeveloped employment allocations within the District.
- 15) The SELR acknowledges that LAA represents an important economic asset within the Romney Marsh sub-region<sup>1</sup>. However, this is not reflected within Policy SS2 (or any other policy).
- 16) At paragraph 5.54 it states that:
- “Planning permission has been granted for a 294m extension of the existing runway and a new terminal building which will facilitate a significant expansion of the airport, with projections suggesting that the airport will be able to accommodate 500,000 people a year. **There may be associated employment development such as airport-related uses (e.g. maintenance and repair) and logistics/warehousing units if air freight volumes increased. However, this appears unlikely to require a large scale employment designation.**”* (Our emphasis).
- 17) It is not clear why airport related uses “*appears unlikely to require a large scale employment designation*”. There is no further explanation. Given the need for employment and investment at Romney Marsh, this is confusing. LAA is key employment provider for the District and should be recognised as such. It has acknowledged in the evidence base that it has the potential to attract airport related uses (which would be outside the scope of the existing consents).
- 18) Paragraph 5.73 acknowledges that many existing employment sites support ageing premises and infrastructure, therefore, the CSR should allow for employment sites to improve, enhance and expand their businesses. This recommendation is not reflected in the Plan.
- 19) Furthermore, paragraph 5.73 goes on to highlight that LAA represents 137ha of employment land of the 356ha of the employment land that was assessed as part of the SELR. This is almost a third of the employment land within the District (the largest in the District). In short, it is clearly an important employment generating site and should be protected and encouraged to expand.
- 20) It is illogical that the value of LAA as a major employer is recognised in the CSR's evidence base, but its value is not recognised in the CSR. Indeed, if the Airport was

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<sup>1</sup> See paragraph 2.4 of the SELR

allocated as a Major Employment Site (MES), expansion would be supported by the CRS.

- 21) It is interesting that the closure of the other key employer on Romney Marsh, Dungeness Power Station, is not addressed in the SELR. The Power Station is due to close in 2028 in the middle of the CSR plan period. It is surprising that the SELR does not address the implications of the closure for employment on Romney Marsh.
- 22) Other, more recent factors also have created more economic uncertainty for the District and nationally. Understandably, these are not reflected in the SELR. It is well documented that the Covid-19 pandemic has had significant and far reaching impacts on industries and businesses. Brexit will also have an impact on the UK's businesses and the aviation industry.
- 23) As explained in the Response to Matter 6, notwithstanding these challenges, the future prospect of LAA remains bright because it has important geographical advantages which mean that it will continue to have great potential for expansion, enhancement and diversification. However, there is a need for flexibility and policy support to react to changes in the aviation industry in the coming years so that LAA can continue to act as a major employment provider in Romney Marsh.
- 24) Given LAA's economic importance within the District and the evidence base concerns regarding the failure of existing, historic employment allocations to be delivered, LAA should be recognised as an employment generating use. Reference to LAA could be included within Policy SS2 as the Airport continues to provide major employment opportunities to local people and nationally, and will continue to provide much needed employment for Romney Marsh once the Power Station closes.

**“2) Is the scale of proposed employment growth and housing growth across the District balanced? What implications would it have for commuting?”**

- 25) The scale of proposed employment growth is not balanced. A key aim of the spatial strategy is the regeneration of Romney Marsh. However, Policies SS2 and SS4 do not really support economic growth or the regeneration of Romney Marsh. The only way to support further development in Romney Marsh, is to support development at the Airport.
- 26) By not supporting businesses in Romney Marsh, the Plan encourages commuting and unsustainable travel patterns. Post COVID-19, commuting will not just be unsustainable but unwanted as people will increasingly seek to work from or near home. Building more homes will mean that future national planning policies may need to take account of this and require locations for new homes to be close to local economic activity.

**“3) How does existing supply compare to this need?”**

- 27) No comments

**“4) What is the basis for the provision of employment land at the New Garden Settlement and how does this relate to overall District needs?”**

- 28) No comments

**“5) Does Policy SS4 set out a justified and effective approach to employment development and sites?”**

- 29) Policy SS4 is not justified and does not set out an effective approach to employment generating development and sites. The Policy directs employment generating activities to allocated Major Employment Sites (MES). It fails in that it does not recognise that there are major employment generating sites that are not designated MES, such as LAA. The SELR confirms that the LAA represents an *“important economic asset”* (paragraph 2.4). To be effective, Policy SS4 should allow for LAA to have the ability to accommodate employment generating activities to expand and enhance the Airport’s employment offers.
- 30) LAA’s owners are in talks with aerospace businesses about locating at the Airport. If an aircraft maintenance business wanted to locate at LAA, it could be prevented from doing so because of a conflict with Policy SS4. In short, Policy SS4 as drafted will discourage investment in LAA to be detriment of the District and Romney Marsh. LAA already finds itself at a significant disadvantage as it seeks to compete with Government backed Enterprise Zones and other local and central government incentives, none of which are available on Romney Marsh.
- 31) Indeed, paragraph 82 of the NPPF states that planning policies *“should recognise and address the specific locational requirements of different sectors”*. Policy SS4 does not do this. Given that LAA is a major employment site and employer in the District, it is an omission which makes this policy unsound. The Policy should recognise the specific locational requirements of the aerospace industry.
- 32) Paragraph 11(a) of the NPPF states that plan-making should positively seek opportunities to meet the development needs of their area and be *“sufficiently flexible to adapt to rapid change”*. Furthermore, paragraph 80 of the NPPF requires *“significant weight to be places on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”*.
- 33) As worded, Policy SS4 is not positive or flexible. The Policy should be flexible enough to allow for developers/stakeholders/landowners to be proactive. This is particularly relevant given the impact of the Covid-19 pandemic (and Brexit) which has increased economic uncertainty. The wording is completely contrary to the aim of the NPPF and the desire to build a strong competitive economy, particularly paragraphs 80, 81 and 82. Businesses must be able to react quickly and efficiently without having a stringent planning system delaying development. Policy SS4 as currently worded, does not allow for that.

**“6) What is the evidence in relation to retail floorspace needs over the plan period and what does it show?”**

34) No comments

**“7) How and where will these needs be met?”**

35) No comments

**“8) Does Policy SS4 set out a justified and effective approach to retail and other main town centre uses which is consistent with national policy?”**

36) No comments

**“9) What is the basis for the network of Priority Centres of Activity (Table 4.5), are they appropriately defined and is the hierarchy justified?”**

37) Table 4.5, which relates to Priority Centres of Activity Network is too restricted and not well defined. The reference to ‘industrial’ premises and the reference to the Use Classes should be replaced by a more flexible term such as “commercial” premises. The table defines the development purpose of Major Employment Sites (MES) to protect existing and provide further industrial (B-class and similar sui generis uses) premises suitable to the needs of the district’s businesses and inward investors.

38) Reference should be made in Table 4.5 to LAA as a major employment site, and a major employer. This would reflect the findings of the CSR’s evidence base, the SELR.

39) Since the hierarchy does not recognise LAA as an alternative major employment site, the hierarchy is not justified.

**“10) Overall, has the Core Strategy Review been positively prepared in terms of identifying and meeting needs for economic and retail growth?”**

40) For the reasons set out above, the Core Strategy Review has not been positively prepared. It has not recognised LAA as a major employer. It pays lip service to supporting the economic regeneration of Romney Marsh, but does nothing to encourage investment.

41) The CSR conflicts directly with paragraphs 80, 81 and 82 of the NPPF. As drafted, it will inhibit business investment and expansion. It will reduce business flexibility. Brexit and Covid-19 will create challenges and opportunities for business that will require flexible supportive policies so that businesses can adapt easily to changing circumstances and compete with other central and local government incentive driven locations.

**“11) Are any main modifications to Policies SS2 and SS4 necessary for soundness?”**

42) Policies SS2 and SS4 need to be focused on creating conditions in which businesses can invest, expand and adapt. Significant weight should be placed on supporting economic growth, building on the District’s strengths (including LAA) and addressing weaknesses.

43) The second paragraph of Policy SS2 should also refer to LAA as an area where jobs will be facilitated through supporting employment opportunities.

44) Policy SS2 refers to employment uses as being those within Use Class B. However, there are many other employment generating uses which support the economy and their importance should be recognised within Policy SS2.

45) Policy SS4 and Table 4.5, need to be updated to refer to LAA as an area where jobs will be facilitated through supporting employment opportunities.







Department for  
Communities and  
Local Government



Department  
for Transport

[REDACTED]  
Indigo Planning Limited  
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Worple Road  
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SW19 4JS

Our Ref: [REDACTED]

Your Ref: 05860007

10 April 2013

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATIONS BY LONDON ASHFORD AIRPORT LTD  
AT LONDON ASHFORD AIRPORT, LYDD  
APPLICATION REFERENCES Y06/1648/SH & Y06/1647/SH**

1. We are directed by the Secretary of State for Communities and Local Government and the Secretary of State for Transport to say that consideration has been given to the report of the Inspector, K D Barton BA(Hons) DipArch DipArb RIBA FCI Arb, who held a public local inquiry which sat for 42 days between 15 February and 16 September 2011 into your client's two applications set out below at London Ashford Airport, Lydd, both of which are dated 15 December 2006:

**Application A** – “the construction of a runway extension and a 'starter extension' to the north/ south runway” in accordance with application reference Y06/1648/SH;

**Application B** - “the erection of a passenger terminal together with a car park on the existing Bravo apron comprising a car park” in accordance with application reference Y06/1647/SH.

2. On 22 June 2010, the Secretary of State for Communities and Local Government directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that the applications be referred to him instead of being dealt with by the relevant

Department for Communities and Local Government

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76 Marsham Street  
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planning authority, Shepway District Council (the Council) because the proposals may conflict with national policies on important matters.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be granted for both applications subject to conditions. For the reasons given below, the Secretaries of State agree with the Inspector's conclusions except where otherwise stated and agree with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural Matters**

4. In reaching this position the Secretaries of State have, like the Inspector (IR1.3), taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 along with comments made by consultees, supplementary information supplied during the course of the applications, and during the course of the inquiry. In their assessment of the environmental impacts of these applications they have also taken into account the Inspector's comments at IR14.2.1-14.2.12 as well as the post inquiry correspondence referred to at paragraphs 5 - 7 below. In short, the Secretaries of State have taken into account the environmental information, as defined in regulation 2 of the EIA Regulations, before taking their decision. Overall, the Secretaries of State are content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for them to assess the environmental impact of the applications.

### **Matters arising after the close of the inquiry**

5. Following the close of the inquiry the Secretaries of State received two letters from Lydd Airport Action Group (LAAG) dated 2 April 2012 and a report entitled 'Review of the Byrne model for aircraft crash probability in relation with the planned expansion of London Ashford Airport at Lydd' by Dr Roberto Trotta. Furthermore, the Government published the National Planning Policy Framework (March 2012) (the NPPF) after the close of the inquiry. This document replaces the national planning policy documents identified in Annex 3 of the NPPF.
6. On 24 April 2012 the Secretaries of State wrote to Rule 6 parties, the Office for Nuclear Regulation (ONR) and other parties identified in their letter inviting comments on the representations received from LAAG that are referred to at paragraph 5 and also on the relevance, if any, of the NPPF to the case presented at the inquiry. On 31 May 2012, the Secretaries of State circulated the responses to their letter, inviting further comments. Responses to the letters of the Secretaries of State on these matters are listed at Annex A i) and ii) below.
7. On 12 September 2012 the Secretaries of State wrote to Rule 6 parties, the Office for Nuclear Regulation (ONR) and other parties identified in their letter, inviting comments on the following submissions made to the Secretaries of State by Ms Trudy Auty: two emails dated 25 June 2012 entitled 'Original Submission

to the Nuclear Consultation (email 3 of 4) and Original Submission to the Nuclear Consultation Part 2 (email 4 of 4) together with documents attached to each email; an email dated 11 July 2012 entitled 'Failure to Consider Nuclear Evidence Submitted in April 2012' and two associated reports; and an email dated 30 August 2012 entitled 'Dungeness C A Material Consideration in the Determination of Lydd Airport Plans and an enclosed report'. On 1 November 2012, the Secretaries of State circulated the responses from parties to their letter, inviting further comments. Responses to the letters of the Secretaries of State on these matters are listed at Annex A iii) and iv) below.

8. The Secretaries of State have carefully considered all of these representations in their determination of these applications. Their conclusions regarding the matter of nuclear safety are set out at paragraphs 24 - 28 below. They consider that, for the most part, the issues raised in relation to the NPPF cover those already rehearsed at the inquiry. In considering these further representations the Secretaries of State wish to make clear that they have not revisited issues which are carried forward in the NPPF or development plan documents, and which have therefore already been addressed in the IR, unless the approach in the NPPF leads them to give different weight.
9. The Secretaries of State have also received a large amount of other correspondence since the close of the inquiry, including in the form of standard letters. They have carefully considered this correspondence but they do not consider that it raises any new issues which would either affect their decision, or require them to refer back to parties prior to reaching their decision.
10. Copies of all representations referred to in paragraphs 5 to 9 above are not attached to this letter but may be obtained on written request to the DCLG contact details at the foot of the first page of this letter.
11. The Aviation Policy Framework (APF) was published on 22 March 2013 and sets out that it will fully replace the 2003 Air Transport White Paper (ATWP) as Government's policy on aviation, alongside any decisions Government makes following the recommendations of the independent Airports Commission. Accordingly, the Secretaries of State attach no weight to the policies within the ATWP in reaching their decision.
12. The APF was not before the inquiry but, as a statement of Government policy, the Secretaries of State have taken it into account in their determination of these applications. They have also carefully considered whether or not there should be consultation of parties on the implications of this change to the cases they made to the inquiry. The Secretaries of State have decided that further consultation is not necessary. This is because, while they consider there to be a change in emphasis in aspects of policy relevant to these applications, that change is not significant where London Ashford Airport is concerned. In particular, the APF makes no recommendations either in favour of or against development in the case of any of the existing airports in the UK, including with respect to London Ashford Airport. It expresses the Government's general support for growth in the aviation sector, but is neutral as to the question of where and when such development should take place. In the circumstances, the Secretaries of State are of the view that it is appropriate to determine the

planning applications addressed by the Inspector in his report on their merits in the normal way, taking into account all material considerations. Members of the public have had ample opportunity to comment and express their views on those applications, however, both during the course of the Inquiry and subsequently. Accordingly, in the view of the Secretaries of State, there is nothing that could be achieved by consulting on the application at this stage, and nor is consultation necessary in the interests of fairness.

13. Following the close of the inquiry the Regional Strategy for the South East (Revocation) Order 2013 came into force on 25 March 2013 and has partially revoked the South East Plan (the RS). In considering these applications, the Secretaries of State attach no weight to those policies of the RS that have been revoked. They consider that RS policy NRM6 which remains extant is not relevant to their decision. Given the basis on which the Secretaries have made their decision as set out in the remainder of this letter they do not consider that the partial revocation of the RS raises any matters that would require them to refer back to parties for further representations prior to reaching their decision.

### **Policy considerations**

14. In deciding the applications, the Secretaries of State have had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
15. In this case, the development plan comprises saved policies of 2006 Shepway District Local Plan Review (LP). The Secretaries of State consider that the development plan policies most relevant to the appeal are those set out by the Inspector at IR4.3-4.5.
16. Regarding the Council's emerging Core Strategy, the Secretaries of State have had regard to the Inspector's comments at IR4.6 and IR14.12.20 and to paragraph 216 of the NPPF. They are also aware that the Shepway Core Strategy has now been submitted for examination with a hearing on proposed modifications being held in March 2013. On balance the Secretaries of State attach limited weight to the emerging Core Strategy.
17. Other material considerations which the Secretaries of State have taken into account include: the NPPF; the Technical Guidance to the NPPF; Circular 11/95: The Use of Conditions in Planning Permission; Circular 06/2005: *Biodiversity and Geographical Conservation – Statutory Obligations and their Impact within the Planning System*, the Community Infrastructure Levy (CIL) Regulations 2010 and 2011; the Written Ministerial Statement by Baroness Hanham CBE – Abolition of Regional Strategies (25 July 2012); the Ministerial Statement by Rt Hon Eric Pickles MP – Housing and Growth (6 September 2012), the Aviation Policy Framework (APF), the Climate Change Act 2008, the 2009 Report of the Committee on Climate Change 'Meeting the UK Aviation Target' and the 2011 Government's Response to the Committee on Climate Change.

## **Main issues**

### **Basis for Assessment**

18. The Secretaries of State agree with the Inspector's reasoning and conclusions regarding the basis of assessment under the EIA and Habitats Regulations at IR14.2.1-14.2.12 and IR15.1.1. They agree that the Environmental Statement has been prepared and need for an appropriate assessment (AA) considered on an appropriate and lawful basis of 500,000 passengers per annum (ppa). (IR14.2.12).

### **Airport operations**

19. The Secretaries of State have carefully considered the Inspector's comments on the current operations, operations with development, movements and flightpaths, and fallback (IR14.3.1-14.3.25 and IR15.1.2). They see no reason to disagree with the Inspector's conclusion that if the flight paths of concern to LAAG were not practical, the Civil Aviation Authority would not licence them, the airport would not be able to operate and no harm would arise (IR15.1.2). The Secretaries of State note that the Inspector's conclusions do not rely on any fallback situation (IR15.1.2) and they have proceeded on the same basis in the determination of these planning applications.

### ***Need***

20. The Secretaries of State agree with the Inspector's reasoning and conclusions regarding need at IR14.3.26-14.3.32 and IR15.1.3. Like the Inspector, they consider that claims that the proposal would not be viable at 500,000 ppa are irrelevant if the proposals are acceptable in all other respects (IR15.1.3).

### **Ecology**

21. The Secretaries of State agree with the Inspector's reasoning and conclusions regarding ecology at IR14.4.1-14.4.10 and IR15.1.4. They have taken into account the fact that, with the exception of birds, it is common ground that, subject to conditions and a Section 106 Agreement, all species of concern would be fully protected and there would be no significant effects or impacts on the Dungeness Special Area of Conservation (SAC) and other designations (IR15.1.4).

### **Air Quality**

22. For the reasons given by the Inspector at IR14.5.1-14.5.4 the Secretaries of State agree with his conclusions at IR15.1.5 that measures contained in the conditions and section 106 Agreement would ensure that nitrogen deposition would be within acceptable levels and would not affect the integrity of the SAC or substantially damage the interest features of the Site of Special Scientific Interest. Furthermore, the Secretaries of State agree with the Inspector that concentrations of pollutants, including at roadsides, would remain well within the

standards in the UK's *Air Quality Strategy* and there would be no material impact on the health of local residents (IR15.1.5).

### Ornithology

23. The Secretaries of State agree with the Inspector's reasoning and conclusions on ornithology at IR14.6.1-14.6.57 and IR15.1.9-15.1.13. They have carefully considered the formal advice of the NE and the case made by the RSPB to the Inquiry, but the Secretaries of State share the Inspector's conclusion (IR15.1.13) that there is little evidence that there would be any, never mind a significant, decline in size, distribution, structure or function of the population such as to require an appropriate assessment (AA). Overall, having regard to the requirements on them as the competent authority in respect of the Conservation (Natural Habitats) Regulations 2010, the Secretaries of State are satisfied that they can proceed to grant permission for the applications before them without first being required to carry out an AA.

### Nuclear Safety

24. The Secretaries of State have carefully considered the Inspector's analysis on nuclear safety at IR14.7.1- 14.7.22 and IR15.1.14, and the post inquiry representations received on the matter, including those of LAAG and those of Ms Trudy Auty. These representations raised matters that include the appropriateness of the Bynre model, the intention of the ONR to convene a Technical Advisory Panel (TAP) to provide independent advice on developments in methodologies in this area, the size of the target area used in assessments, bird strike, and the status of Dungeness C. The Secretaries of State are satisfied that the ONR, in addition to the Rule 6 parties to the inquiry, has been given all necessary opportunity to consider and comment on the matters raised and the evidence submitted in this respect. Taking into account the ONR's responsibilities as the UK's independent regulator of the nuclear sector, they attach significant weight to its ongoing regulatory position of not objecting to the planning applications, notwithstanding its convening of a TAP. Regarding the status of Dungeness C, the Secretaries of State have had regard to the ONR's view in its representation of 24 October 2012 that the site is currently not on the list of identified sites for future new nuclear build and they consider that the status of Dungeness C merits little weight.

25. Overall the Secretaries of State see no reason to disagree with the Inspector's assessment that there would be some increase in overall risk, but that the ONR has maintained its position of no objection and there is little evidence that would suggest its view should be overturned (IR14.7.15). In reaching this view, the Secretaries of State have taken into account the Inspector's comment that although British Energy has objected to the proposals on the grounds that it is duty bound to resist any increase in risk, however small, it acknowledges that the increase in risk would be very small and would not compromise current or future activities (IR14.7.7).

### *Terrorist Threat*

26. The Secretaries of State see no reason to disagree with the Inspector's reasoning and conclusions regarding the threat of terrorism at IR14.7.23-14.7.24 and

IR15.1.15. Like the Inspector they consider that the proposals would have no effect on the ability of the terrorists to carry out an attack (IR15.1.15).

### *Demographics*

27. On the matter of demographics, the Secretaries of State have carefully considered the Inspector's analysis at IR14.7.25-14.7.28 and IR15.1.15, and also the post inquiry representations on this issue. They note that the Inspector reports that calculations put forward by LAAG to the inquiry for 500,000 ppa show that the population would be not more than 27% of the 'remote' site classification (IR15.1.15).

28. In overall conclusion, the Secretaries of State agree with the Inspector that, the proposals would not have any significant effect on nuclear safety (IR15.1.15).

### Socio-Economic Matters

29. The Secretaries of State agree with the Inspector's analysis at IR14.8.1-14.8.9 and IR15.1.16 of socio-economic matters. Like the Inspector (IR15.1.16), they consider that in an area where the prospects of significant regeneration remain precarious, the proposals would have a positive effect.

### Climate change and flood risk

#### *Carbon Emissions*

30. The Secretaries of State agree with the Inspector's reasoning and conclusions in respect of carbon emissions at IR14.9.1-14.9.5 and IR15.1.17. They agree with the Inspector that the *Government's response to the Committee on Climate Change* and a decision by the Secretaries of State relating to Farnborough Airport, indicate that emissions from aircraft in the air are best dealt with by the EU Emissions Trading Scheme (IR15.1.17). The Secretaries of State have also taken into account that the terminal building would meet a 10% renewable energy target and be constructed to BREEAM 'Very Good' level, and furthermore that the carbon footprint when assessed using the *Guidance Manual: Airport Greenhouse Gas Emissions Management* indicates a potential reduction of 6,000 tonnes of CO<sub>2</sub> per annum (IR15.1.17).

#### *Sea Level Rise and Flooding*

31. The Secretaries of State have had regard to the Inspector's comments at IR14.9.6-14.9.13 and IR15.1.18 on sea level rise and flooding, and the NPPF and its Technical Guidance in this respect. They have taken into account that the Environment Agency was consulted on the proposals and had no objection subject to the imposition of appropriate conditions (IR14.9.8) and that the Flood Risk Assessment submitted by the applicant includes a Flood Warning and Evacuation Plan, notwithstanding that the Airport is safe from flooding to 2112 having regard to the Strategic Flood Risk Assessment (IR14.9.9). Overall, they are satisfied that the proposals comply with national planning policy in respect of flood risk and coastal change set out in the NPPF and with its Technical Guidance in respect of flood risk. For the reasons given by the Inspector (IR14.9.13) the Secretaries of State agree with his conclusion that a contribution

towards coastal defences would not meet the tests in CIL Regulation 122 (IR15.1.18).

#### Landscape, Tranquillity and Noise (Quality of Life)

32. For the reasons given by the Inspector at IR14.10.1-14.10.28 and IR15.1.19-15.1.22 the Secretaries of State agree with his conclusion at IR14.10.29 that, given the limited harm to the wider population and the lack of significant harm to Greatstone School in terms of noise, there is no reason to refuse planning permission in terms of landscape and visual assessment, cultural heritage, noise or any combination of factors that contributes towards the concept of tranquillity and the quality of life. They also agree that there is little evidence that there would be any significant effect on the visitor experience along the western boundary of the RSPB Reserve (IR15.1.22).

#### Transportation

33. The Secretaries of State agree with the Inspector's reasoning and conclusions on transportation at IR14.11.1-14.11.6 and IR15.1.23-15.1.24. Like the Inspector, they are satisfied that the proposals would not have any significant effect on highway safety and would accord with the aims of saved LP Policies TR5, TR6, TR8, TR11, TR12 and TR13 (IR14.11.6).

#### National Policy

34. The Secretaries of State have carefully considered the Inspector's analysis of national policy documents at IR14.12.1-14.12.9 and IR15.1.25. As they have stated at paragraph 11 and in relation to this decision, they attach no weight to the policies contained within the ATWP. In respect of the APF they have taken account of the statement in the Foreword that the Government believes that aviation needs to grow, delivering the benefits essential to our economic wellbeing, whilst respecting the environment and protecting quality of life. They have also had regard to the fact that the APF sets out that the Government's strategy in the short term is based on a suite of measures which include making best use of existing capacity to improve performance, resilience and the passenger experience, and also supporting airports outside the South East to grow and develop new routes. The Secretaries of State take the view that the Government's strategy in this respect neither supports nor resists expansion of London Ashford Airport. Overall they consider that the APF is neutral in terms of the planning balance for the applications before them.

35. The Secretaries of State have had regard to the NPPF and parties' representations in this respect following their letter of 24 April 2012. They agree with the Appellant in its letter of 17 May 2012 that the core planning principle set out at NPPF paragraph 17 for planning to proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs is of particular relevance. Having had regard to NPPF paragraph 19 and to their conclusions on socio-economic factors at paragraph 29 above, they also consider that this is a case where significant weight should be placed on the need to support economic growth through the planning system. The Secretaries of State have carefully considered NE's letter of 22 June 2012 which sets out concerns



that if permission was to be granted for the applications, a number of areas of NPPF policy largely concerned with the conserving and enhancing of the natural environment would not be satisfied. The Secretaries of State have set out their conclusions in respect of ecology and ornithology at paragraphs 21-23 above and are satisfied that the applications are in general compliance with the NPPF in this respect.

### Development Plan Policy

36. The Secretaries of State have taken account of the Inspector's analysis of development plan policy at IR14.12.10-14.12.20 and IR15.1.26-15.1.27. As indicated at paragraph 13, they attach no weight to the revoked policies of the RS. Like the Inspector the Secretaries of State consider that saved LP policy TR15 supports development at the airport, provided there would be no significant impact on internationally important wildlife communities, and also that there would be no material conflict with saved LP policies SD1 and CO1 (IR15.1.27). They agree with the Inspector that the development plan support for London Ashford Airport has been consistent for many years (IR15.1.26).

### 1992 Decision

37. For the reasons given by the Inspector at IR14.12.21-14.12.27 the Secretaries of State agree with his conclusion in respect of the 1992 decision at IR15.1.28 that operational changes have increased the safety situation and many constraints would be tighter than in 1992 with fewer flights over the Reserve. Like the Inspector (IR15.1.28) they consider that the 1992 decision is still relevant.

### Other Matters

#### *Localism*

38. The Secretaries of State have carefully considered the Inspector's comments on localism at IR14.13.1-14.13.3 and IR15.1.29. They note that the proposals have divided local opinion and although most representations at application and Inquiry stage have objected to the proposals, the local MP and Councillors have supported the applications (IR15.1.29). The Secretaries of State have determined these applications in accordance with their duty in section 38(6) of the Planning and Compulsory Purchase Act 2004 which is to determine applications in accordance with the development plan unless material considerations indicate otherwise.

#### *The Council's Handling of the Applications, Security Fencing and Mitigation*

39. The Secretaries of State see no reason to disagree with the Inspector's reasoning and conclusions on those matters considered at IR14.13.4-14.13.8.

### Conditions

40. The Secretaries of State have considered the proposed conditions set out at Appendices 4 and 5 of the IR, the Inspector's comments at IR14.14.1-14.14.5 and IR15.1.30 and national policy as set out in Circular 11/95 and the NPPF.

They are satisfied that the conditions attached at Annexes B and C of this letter meet the tests set out in Circular 11/95 and at paragraph 206 of the NPPF.

### Obligation

41. The Secretaries of State have considered the planning obligation, the Inspector's comments at IR14.10.23, IR14.14.6-14.14.18 and IR15.1.30, national policy as set out in the NPPF and the CIL Regulations. For the reasons given by the Inspector at IR14.10.23, the Secretaries of State agree with him that the requirement for payments to Greatstone School would not meet the tests in CIL Regulation 122 and so can be given no weight (IR14.14.13). They also agree with the Inspector (IR14.14.16) that while the Jobs and Business Strategy might be a laudable aim, it would not be necessary to make any proposal acceptable in planning terms and attracts no weight. Setting aside these matters, the Secretaries of State agree with the Inspector (IR14.14.18) that the measures in the Agreement would meet the tests in CIL Regulation 122.

### Overall Conclusions

42. The Secretaries of the State have found that there is development plan support for the proposals from LP policy TR15 and that, in an area where the prospects of significant regeneration remain precarious, the proposals would have a positive effect. In line with NPPF paragraph 19, they attach significant weight to the need to support economic growth through the planning system. After careful consideration, they are satisfied that there would be no likely significant effects on any designated conversation sites and also that the proposals would not have a significant effect on nuclear safety, landscape or tranquillity. The Secretaries of State conclude that the airport would be safe from flooding to 2115 and that the proposals would not have any significant effect on highway safety. Whilst they have identified limited harm to the wider population in respect of noise, there would not be significant harm at Greatstone School. Overall, the Secretaries of State conclude that there are no material considerations of sufficient weight which count against the proposal to determine the application other than in accordance with the development plan.

### Formal Decision

43. Accordingly, for the reasons given above, the Secretaries of State agree with the Inspector's recommendation. They hereby grant planning permission for:

**Application A:** "the construction of a runway extension and a 'starter extension' to the north/ south runway" at London Ashford Airport, Lydd in accordance with application reference Y06/1648/SH dated 15 December 2006 subject to the conditions set out at Annex B;


**Application B:** "the erection of a passenger terminal together with a car park on the existing Bravo apron comprising a car park" at London Ashford Airport, Lydd in accordance with application reference Y06/1647/SH dated 15 December 2006 subject to the conditions set out at Annex C;


44. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
45. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
46. This letter serves as the statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

**Right to challenge the decision**

47. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
48. A copy of this letter has been sent to Shepway District Council, Natural England, the RSPB, the Lydd Airport Action Group, Protect Kent (CPRE) and the Kent Wildlife Trust. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

  
Authorised by the Secretary  
of State for CLG to sign  
in that behalf

  
Authorised by the Secretary  
of State for Transport to sign  
in that behalf

## Annex A

### i) Correspondence received following the letter of the Secretaries of State of 24 April 2012

Name / Organisation	Date
[REDACTED]	26 April
[REDACTED]	3 May
[REDACTED]	5 May
[REDACTED]	6 May
[REDACTED]	8 May
Office for Nuclear Regulation	9 May
Shepway District Council	14 May
Lydd Airport Action Group	14 May
Indigo Planning	17 May

### ii) Correspondence received following the letter of the Secretaries of State of 31 May 2012

Name / Organisation	Date
Indigo planning	14 June
FLAG	Received 20 June
Natural England	22 June
LAAG	25 June
[REDACTED]	22 June
[REDACTED]	Post marked 22 June
[REDACTED]	25 June

### iii) Correspondence received following the letter of the Secretaries of State of 12 September 2012

Name / Organisation	Date
Wendy Nevard	2 October 2012
Indigo Planning	4 October 2012
Office for Nuclear Regulation	24 October 2012
LAAG	24 October 2012
[REDACTED]	[REDACTED] 2012

**iv) Correspondence received following the letter of the Secretaries of State of 1 November 2012**

<b>Name / Organisation</b>	<b>Date</b>
LAAG	21 November 2012
[REDACTED]	22 November 2012

## SCHEDULE OF CONDITIONS - APPLICATION A

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

### Drawings

a) FSB92590A/204 — Existing Runway, prepared by Parsons Brinckerhoff, December 2006;

b) FSB92590A/205 — Site of Proposed Runway Extension, prepared by Parsons Brinckerhoff, December 2006;

c) FSB92590A/206 — Existing Runway with Proposed Extension, prepared by Parsons Brinckerhoff, December 2006;

d) FSB92590A/207 — Proposed Runway Extension General Arrangement, prepared by Parsons Brinckerhoff, December 2006; and

e) FSB92590A/PL0018 Rev B — Site Plan, prepared by Parsons Brinckerhoff, December 2006.

### Documents

a) Revised Outline Travel Plan, prepared by Steer Davies Gleave, August 2008;

b) Schedule of Mitigation Measures prepared by Indigo Planning, March 2010;

c) Planning Control Measures, prepared by Indigo Planning, February 2010;

d) Draft Construction Environmental Management Plan;

e) Draft Airfield Biodiversity Action Plan;

f) Landscape Strategy;

g) Lighting Impact Assessment;

h) Surface Water Drainage Strategy; and

i) Bird Control Management Plan

together with the description of development contained in the application and any other plans, drawings, documents, details, schemes or strategies when approved by the Local Planning Authority pursuant to the conditions to this permission.

3) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority after consultation with Natural England. The CEMP shall include the measures set out in the Draft Construction Environmental Management Plan submitted in support of the application, the measures set out in the construction management strategy contained in Annex 1 to CD17.24 and shall also include the following details:

a) Monitoring of, and measures to control, the environmental impact of the development during the construction phase including control of contamination, water-resource protection and control of noise, vibration and dust emissions from plant and machinery and construction traffic, including wheel washing;

b) A dust-ecology inspection strategy for specific areas of ecological sensitivity, such areas to be agreed as part of the submission process for the CEMP, covering:

- i) Construction programme optimisation with regard to reducing seasonal impact on specific areas of ecological sensitivity;
- ii) Ambient weather conditions under which visual inspection frequency is increased;
- iii) Dust particle monitoring;
- iv) The implementation of an active alarm threshold for the dust particle monitoring; and
- v) Remedial mitigation measures.

c) A habitat management plan to protect important flora and fauna habitats during the construction phase;

d) A Solid Waste Management Plan; and

e) Construction method statements including details of how any soil and ground arising will be managed and re-distributed.

The development shall be carried out in accordance with the approved CEMP.

4) No development shall be commenced until a scheme of geological monitoring and recording, and a programme of archaeological work, has been submitted to, and approved in writing by, the Local Planning Authority after consultation with Kent County Council and Natural England. Such scheme and programme shall include the identity of the appointed contractor, the methodology for the geological monitoring and archaeological work, a timetable and reporting requirements for such monitoring and work, including the completion of a geomorphological survey below the proposed runway extension footprint plus a 10m offset surrounding it, and a watching brief where any additional groundworks or permanent hardstands are required. The scheme and programme shall also include:

- a) A methodology setting out details of the survey to be completed in order to document the topography and sedimentology of the buried gravel and the overlying marsh sediments;
- b) A methodology for dating and for laboratory analyses which are to be undertaken as part of documenting the nature of the overlying marsh sediments should Holocene marsh sediments of significance to the SSSI designation be found (such as dateable peat beds and/or bracketing sands above and below the gravel);
- c) Details of how a site archive is to be delivered that will include all records, reports and photographs produced from the scheme of geological monitoring and recording and a programme of archaeological work; and
- d) The format of the monitoring and recording.

The scheme of geological monitoring and recording and programme of archaeological work shall be carried out in accordance with the approved details.

- 5) The hours of construction at the Airport site shall be 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays and there shall be no work outside these hours.
- 6) The runway extension shall not come into operation until an Environmental Management System (EMS) has been submitted to, and approved in writing by, the Local Planning Authority. This system shall include details of solid waste management and details of procedures to prevent spill and risk control measures to avoid any potential contaminants entering watercourses. The development shall be carried out and operated in accordance with the approved EMS and an Environmental Management System Manager shall be assigned prior to the runway extension coming into operation and shall manage, monitor and review the EMS and its operation in cooperation with the Local Planning Authority and relevant stakeholders.
- 7) No development shall be commenced until written details of the surface water drainage system, including means of pollution control for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to, and approved in writing by, the Local Planning Authority after consultation with the Environment Agency, the Internal Drainage Board and Natural England. The system shall include details of how the scheme shall be maintained and managed after completion and how site drainage is operated during emergencies. The system shall subsequently be implemented in accordance with the approved details before the development hereby permitted is brought into use.
- 8) No development shall be commenced until:
  - a) A ground water quality monitoring programme to be undertaken within the footprint of the runway extension has been submitted to, and approved in writing by, the Local Planning Authority after consultation with the Environment Agency;
  - b) The programme approved under a) has been undertaken and all of the protective measures identified at any stage of that programme have been submitted to, and



approved in writing by, the Local Planning Authority after consultation with the Environment Agency; and

c) The protective measures approved under b) have been carried out, and approved in writing by, the Local Planning Authority.

9) No development shall be commenced until details of the facilities required for any storage of oils, fuels, or chemicals, including means of spillage control and a spillage response plan, in connection with the development have been submitted to, and approved in writing by, the Local Planning Authority after consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.

10) No works related to the infill of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of water vole has been undertaken of all the water bodies within the Airport site, including of the full ditch length within the Airport site and not just the parts directly proposed to be under the runway extension footprint, such survey to be undertaken during the month of May. The survey shall be in accordance with the methodology used in the environmental statement surveys submitted in support of the application with the methods recommended in *The Water Vole Conservation Handbook 2<sup>nd</sup> Edition* (Strachan and Moorhouse) adopted as the minimum standards of survey.

11) No works related to the infill of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of grass snake has been undertaken of all the water bodies within the Airport site, including of the full ditch length within the Airport site and not just the parts directly proposed to be under the runway extension footprint, such survey to be undertaken during the month of May. The survey shall be in accordance with the methodology used in the environmental statement surveys submitted in support of the application and undertaken at the appropriate time of year following the most recent up to date good practice guidelines published by Natural England at the time of the survey and shall include:

a) Identification and mapping of potential refugia;

b) Identification of basking sites; and

c) Placement of reptile refugia to attract basking and sheltering grass snake. Refugia will be corrugated metal sheets with dimensions of 0.5 by 0.5 metre. In addition, roofing felt refugia with dimensions of 1 metre by 0.5 or 1 metre will be placed. The refugia will be held down by small stones.

12) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of common lizard has been undertaken within the Airport site, such survey to include:

a) Placing squares of roofing felt 0.5 by 0.5 metres in favourable basking areas with southern or predominantly south-facing aspects on sloping ground and on terraced

areas, the squares of roofing felt to be folded over from one corner with the fold being held down with a small stone; and,

b) Binocular viewing from a distance beyond that likely to cause disturbance followed by a final survey approach without binoculars.

The survey shall be in accordance with the methodology used in the environmental statement surveys submitted in support of the application with the methods recommended in the Herpetofauna Groups of Britain and Ireland advisory note (1998) – Evaluation local mitigation/translocation programmes: maintaining best practice and lawful standards adopted as the minimum standards of survey and the survey shall be undertaken at the appropriate time of year following the most recent up to date good practice guidelines for reptiles published by Natural England at the time of the survey.

13) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of medicinal leech and a survey for the presence of nesting birds has been undertaken of all the water bodies within the Airport site, including of the full ditch length within the Airport site and not just the parts directly proposed to be under the runway extension footprint, such surveys to be undertaken in accordance with the methodology used in the environmental statement surveys submitted in support of the application and include survey maps and a minimum of two surveys to be conducted between June and July using standard splash sampling technique, using pond netting to aid capture, and searching for water bird nests during daylight hours.

14) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until:

a) An updated survey of the aquatic emergent and bank vegetation of the ditches within the Airport site has been conducted with identification of higher plants, macrophytes and including the duckweed *Wolffia arrhiza*. The amounts and distribution of each plant species shall be assessed using the DAFOR system and % cover, estimate of constancy of occurrence, and density including height of plant growth. The methodology for the survey required under this condition shall follow the NVC survey requirements. No such survey shall be carried out until the methodology has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Natural England.

b) An aquatic habitat chemical analyses of the ditches and water bodies within the Airport site has been conducted to determine water pH, BOD (Biological Oxygen Demand), turbidity, and chemical analysis to determine nitrogen, potassium, phosphate, calcium, and other soluble element contents such as magnesium and sodium as part of a wide chemical spectrum analysis including particulate and dissolved organic matter. No such survey shall be carried out until the methodology for the analyses required under this condition, together with a plan identifying all the water bodies to be analysed, has been agreed, and approved in writing by, the Local Planning Authority in consultation with Natural England.

15) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until surveys of aquatic and

amphibious invertebrates to species level have been conducted at water bodies and along ditch lengths divided into sections of 100 metres within the Airport site to enable comparisons to be made with the invertebrate survey results submitted in support of the application and subsequent monitoring results. No such surveys shall be carried out until the number of replicated sections for each ditch and the methodology for such surveys has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Natural England.

16) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until a construction species protection plan for each of water vole, grass snake, common lizard, medicinal leech, and duckweed *Wolffia arrhiza* has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England, such construction species protection plans to be informed by the results of the surveys carried out pursuant to Conditions 10 to 15 inclusive the results of which shall be submitted to the Local Planning Authority with the construction species protection plans. The construction species protection plans shall include the provision to control ditch water levels, modify habitats and/or design translocation as appropriate depending on the species and the results of the surveys carried out pursuant to Conditions 10 to 13 inclusive and in respect of:

- a) The construction species protection plan for water vole, the plan shall include the details set out in Annex 4 to CD17.24;
- b) The construction species protection plan for grass snake, the plan shall include the details set out in Annex 5 to CD17.24; and
- c) The construction species protection plan for common lizard, the plan shall include the details set out in Annex 6 CD17.24.

The ditch construction works shall be carried out in accordance with the approved details.

17) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until a ditch construction method statement has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England, such ditch construction method statement to be informed by and reference the construction species protection plans required pursuant to Condition 16. The ditch construction method statement shall specify that the ditch construction works shall only be carried out during the autumn and winter and shall include the details set out in Annex 7 to CD17.24. The ditch construction works shall be carried out in accordance with the approved details.

18) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until full design details of the 1300m replacement ditch length required as a result of the development hereby approved have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. Such details are to incorporate the design presented in the Surface Water Drainage Strategy as refined by Appendix 5 of LAA/9/E and the details set out in Annex 8 to CD17.24. The 1300m replacement ditch length shall be carried out in accordance with the approved details.

19) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until the following details, which may be submitted as part of the wider ABAP, have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England:

a) Full details of the proposed mitigation (as proposed in Annex 4 to CD17.24) for water vole;

b) Full details of the proposed mitigation (as proposed in Annex 5 to CD17.24) for grass snake;

c) Full details of the proposed mitigation (as proposed in Annex 6 to CD17.24) for common lizard;

d) Full details of the proposed mitigation (as proposed CD4.12) for medicinal leech;

Such mitigation to include the methodology of any proposed translocation, capacity of the receptor site, any exclusion measures for the development site and a plan for the ongoing positive management for the 1300m replacement ditch length, receptor sites and water bodies both new and proposed pursuant to this condition. The mitigation shall be carried out in accordance with the details approved pursuant to this condition.

20) During the month of May immediately following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, water vole relative population estimate monitoring of the 1300m replacement ditch length and any receptor site for water vole shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 10. The population estimate monitoring shall be carried out annually during the month of May for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and during the month of May every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 10 and submitted to the Local Planning Authority.

21) In the event that the results of any of the monitoring carried out pursuant to Condition 20 show that the population of water vole is not at least to the level of the results of the survey carried out pursuant to Condition 10, an assessment for habitat suitability for water vole within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

22) Following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, grass snake relative population estimate monitoring of the 1300m replacement ditch length and any receptor site for grass

snake shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 11 and undertaken at the appropriate time of year following the most recent up to date good practice guidelines published by Natural England at the time of the survey. The population estimate monitoring shall be carried out annually for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 11 and submitted to the Local Planning Authority.

23) In the event that the results of any of the monitoring carried out pursuant to Condition 22 show that the population of grass snake is not at least to the level of the results of the survey carried out pursuant to Condition 11, an assessment for habitat suitability for grass snake within the Airport site, an assessment for management remedial measures, and a timetable for their implementation, shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

24) Following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, common lizard relative population estimate monitoring of the 1300m replacement ditch length and any receptor site for common lizard shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 12 and undertaken at the appropriate time of year following the most recent up to date good practice guidelines for reptiles published by Natural England at the time of the survey. The population estimate monitoring shall be carried out annually for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 12 and submitted to the Local Planning Authority.

25) In the event that the results of any of the monitoring carried out pursuant to Condition 24 show that the population of common lizard is not at least to the level of the results of the survey carried out pursuant to Condition 12, an assessment for habitat suitability for common lizard within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

26) During the months of June and July immediately following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, medicinal leech population estimate monitoring of both new water bodies and of existing water bodies within the Airport site, including a chemical analysis of Pond A,

shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 13. The assessment of the monitoring results is to include consideration of spatial distribution of populations as well as total population numbers. The survey monitoring shall be carried out annually during the months of June and July for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and during the months of June and July every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 13 and submitted to the Local Planning Authority. The monitoring shall be carried out in accordance with the details approved pursuant to this condition.

27) In the event that the results of any of the monitoring carried out pursuant to Condition 26 show that the population of medicinal leech is not at least to the level of the results of the survey carried out pursuant to Condition 13, an assessment for habitat suitability for medicinal leech within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

28) In the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19:

a) Surveys of the aquatic emergent and bank ditch vegetation of the ditches within the Airport site shall be conducted with identification of higher plants, macrophytes and including stonewort algae to species level, the methodology of such surveys to be the same as under Condition 14 a). The surveys shall be conducted annually for a period of eight years starting in the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19. The results of each survey carried out pursuant to this condition shall be compared against the results of the surveys carried out pursuant to Condition 14 a) and submitted to the Local Planning Authority.

b) Aquatic habitat chemical analyses of the retained water bodies, ditch sections and new ditches and water bodies within the Airport site shall be conducted for the same chemical and physical conditions and using the same methods as specified in Condition 14 b). Such analyses shall be conducted annually for a period of eight years starting in the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19. The results of each analysis carried out pursuant to this condition shall be compared against the results of the analysis carried out pursuant to Condition 14 b) and submitted to the Local Planning Authority. The monitoring shall be carried out in accordance with the details approved pursuant to this condition.

29) The surveys and analyses carried out pursuant to Condition 28 shall record any changes in habitat since the surveys and analyses carried out pursuant to Condition 14 that could affect the invertebrate fauna of the water bodies and ditches. These shall include any clear signs of water quality deterioration,

exceptionally high turbidity, the recent occurrence of dredging and bank vegetation cutting, shading by woody vegetation, and excessive numbers of water birds or other wildlife including large fish, American mink and other noteworthy fauna. A photographic record of each water body and 100 metre ditch section will be made for each survey undertaken pursuant to Condition 28.

30) In the event that the results of any of the survey monitoring carried out pursuant to Condition 28 show that the population of any of the species (including the duckweed *Wolffia arrhiza*) surveyed are in decline, an assessment for habitat suitability for such species within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the survey monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

31) Following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, surveys of aquatic and amphibious invertebrates to species level shall be conducted at water bodies and along ditches delineated into 100 metre sections within the Airport site. The methodology of such surveys and the number of replicated sections to be the same as approved under Condition 15. The surveys shall be conducted annually for a period of eight years starting in the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and shall be carried out at the same times of the year as the surveys carried out under Condition 15 to enable valid comparisons of results between years to be made for the detection of changes in species assemblages. The results of each annual survey shall be compared against the results of the surveys carried out pursuant to Condition 15 and submitted to the Local Planning Authority.

32) Samples of invertebrates that cannot be identified during the surveys carried out pursuant to Condition 31 shall be retained for laboratory identification and preserved for the duration of monitoring to be carried out pursuant to Condition 31.

33) In the event that the results of any of the survey monitoring carried out pursuant to Condition 31 show that the population of aquatic and amphibious invertebrates is below a median Species Conservation Status Score value of 1.38 in defined 100 metre ditch sections, an assessment for habitat suitability for aquatic invertebrates within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall within 28 days of completion be submitted to the Local Planning Authority for written approval in consultation with Natural England. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

34) On bringing the 1300m replacement ditch length into use, the remaining ditch lengths that are within the Airport Site and in the SSSI and the new 1300m replacement ditch length shall not be netted.

35) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative

population estimate survey of great crested newts has been undertaken of the water bodies within the Airport site, the area to be used as mitigation, and the terrestrial habitat around drainage ditches to be lost/realigned. The survey shall be in accordance with the methodology use in the environmental statement surveys submitted in support of the application with the methods recommended in the *Great Crested Newt Mitigation Guidelines* (English Nature 2001) for the great crested newt population sizeclass assessment adopted as the minimum standards of survey.

36) No works related to the infill of or creation of ditches and water bodies pursuant to the development hereby approved shall be commenced until the following details, which may be submitted as part of the wider ABAP, have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England:

a) Full details of the location, which shall not be on the SSSI or the SAC, and construction of great crested newt refugia (hibernacula) including size and construction material and including the details set out in Annex 2 to CD17.24;

b) Full details of the mitigation wetland features as detailed in Annex 2 to CD17.24 which may affect any habitat used by great crested newt including design of the water body, proposed access route, proposed machinery type and proposed methods of avoiding disturbance to the nearby SSSI vegetation;

c) Full details of exclusion methods and any amphibian fencing proposed;

d) The timing for carrying out all the details submitted pursuant to a) to c) above; and

e) Full details of the ongoing management proposals for the great crested newt refugia provided pursuant to this condition so as to benefit great crested newts for the long-term, such details to include the proposals set out in Annex 3 to CD17.24. The development shall be carried out in accordance with the approved details.

37) In the spring months immediately following completion of the 1300m replacement ditch length, and the mitigation approved pursuant to Condition 35, great crested newt monitoring, involving relative population estimate surveys of great crested newts, of all water bodies both new and existing within the Airport site shall be carried out to assess the success of the mitigation approved pursuant to Condition 36 and to prevent water quality decline to existing newt breeding sites, such survey monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 35. The monitoring shall be carried out annually during the spring months for the first five years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 36 and every three years thereafter during the spring months. The results of each survey monitoring shall be compared against the results of the survey carried out pursuant to Condition 35 and submitted to the Local Planning Authority.

38) In the event that the results of any of the monitoring carried out pursuant to Condition 37 show that the population of great crested newt is not at least to the level of the results of the survey carried out pursuant to Condition 35, an assessment for habitat suitability for great crested newt within the Airport site and an assessment



for management remedial measures shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

39) No development shall commence until an updated relative population estimate survey of moths has been undertaken within the Airport site, such survey to comprise light-trapping and searching for larvae and to ensure as a minimum that the following moth species are included:

- a) *Cynaeda dentalis*
- b) *Hadena albimacula*
- c) *Coleophora galbulipennella*
- d) *Gelechia muscosella*
- e) *Ethmia bipunctella*
- f) *Ethmia terminella*

The updated relative population estimate survey of moths shall not be carried out until the methodology for the survey has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Kent Wildlife Trust, the Butterfly Conservation and Natural England.

40) Moth survey monitoring shall be carried out annually for a period of ten years commencing in the first year following the commencement of development. The survey monitoring shall be at the same time of year, use the same methodology, and survey the same species, as the survey carried out pursuant to Condition 39. The results of each annual survey monitoring shall be compared against the results of the survey carried out pursuant to Condition 39 and shall include an assessment based on the principles detailed in Annex 9 to CD17.24. The results and assessment shall be submitted to the Local Planning Authority, in consultation with Kent Wildlife Trust, the Butterfly Conservation and Natural England, for written approval.

41) No development shall commence until an updated bat foraging and commuting behaviour survey has been undertaken within the Airport site, such survey to comprise a series of transect walks across the Airport site to ascertain how bats are using the Airport. No survey required under this condition shall be carried out until the methodology for the survey has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Natural England.

42) No development shall commence until the results of the survey carried out pursuant to Condition 41 has been submitted to the Local Planning Authority and, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

43) Any netting of waterbodies within the Airport site must be in accordance with the provisions in Annex 10 to CD17.24.

44) The annual number of aeroplane movements shall not exceed 40,000 movements per annum in any calendar year, excluding the Air Show. In the event that the runway extension comes into operation part way through a calendar year,

the movements shall be reduced proportionately to the period remaining in the calendar year.

45) The annual number of helicopter movements shall not exceed 1,200 movements per annum in any calendar year, excluding the Air Show. In the event that the runway extension comes into operation part way through a calendar year, the movements shall be reduced proportionately to the period remaining in the calendar year.

46) Following the runway extension coming into operation, and until the terminal building is in occupation, passenger numbers using the Airport shall not exceed 300,000ppa in any calendar year. In the event that the runway extension comes into operation part way through a calendar year, the passenger numbers shall be reduced proportionately to the period remaining in that calendar year.

47) There shall be no more than one Air Show, lasting no longer than three days, in any calendar year.

48) No aircraft exceeding 80 tonnes maximum take-off weight shall be permitted to land or take-off at the Airport.

49) There shall be no flight movements, except in relation to emergency and governmental activities, as defined in CD17.24, at the Airport during the period 23:00 to 07:00 hours.

50) The throughput of passengers at the Airport shall not exceed 30,000ppa in any calendar year until details for improvement works to the highway at the junction of the B2075 and A259 (known as Hammonds Corner) have been submitted to, and approved in writing by, the Local Planning Authority, such details to also include supplemental surveys covering:

- a) An updated phase 1 habitat survey to identify any change in habitat since the phase 1 habitat survey for Hammonds Corner that was submitted in support of the application was carried out; and
- b) Species specific surveys, to include as a minimum water vole and bats, to establish whether a protected species is present on any of the land affected, or likely to be affected, by the improvement works under this condition.

Where a protected species is shown to be present, no improvement works to Hammonds Corner shall be begun until a scheme for protection and mitigation measures has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. The improvement works to Hammonds Corner shall be carried out in accordance with the approved scheme.

51) The throughput of passengers at the Airport shall not exceed 30,000ppa in any calendar year until the improvements works to Hammonds Corner as approved under Condition 50 have been carried out.

52) The runway extension shall not come into operation until a lighting scheme for the car park areas and associated roads has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. The

lighting scheme shall be in accordance with the Lighting Impact Assessment submitted in support of the application and shall include:

- a) Details of how the external and internal lighting will be minimized during the period 23:00 to 07:00 hours;
- b) Details of how any security lighting will be linked to movement sensors, dimmed to their minimum intensity and hooded to prevent light spillage;
- c) Details as to how the lighting scheme proposed takes into account the Airport's existing lighting; and
- d) Details of the runway extension lighting.

The development shall be carried out in accordance with the approved details.

53) Aeroplane engine power checks shall not take place within the Airport site except within the areas known as "Hold B" and "Hold C" as shown marked "B" and "C" on the plan in Annex 2 of CD17.25.

54) No aeroplane or other aircraft shall be permitted to land on Runways 21 or 03, or depart on Runway 21, whenever a train is in transit between the nuclear flask loading bay at Halfway Bush and Lydd Town Station.

55) Departing aeroplanes from Runway 21 that have a take off weight of 5,700kg or more shall turn right upon departure and follow flight path 12.

56) Records shall be kept of movements and passenger numbers such that compliance with Conditions 44, 45, 46, 49, 50, and 51 above can be demonstrated for audit by the Local Planning Authority.

## SCHEDULE OF CONDITIONS - APPLICATION B

1) The development hereby permitted shall begin not later than ten years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

### Drawings

- a) FSB92590A/001 Rev B – Location Plan, prepared by Parsons Brinckerhoff, December 2006;
- b) FSB92590A/002 Rev D – Proposed Site Plan, prepared by Parsons Brinckerhoff, August 2008;
- c) FSB92590A/003 Rev C – Proposed Site Plan, prepared by Parsons Brinckerhoff, August 2008;
- d) FSB92590A/004 Rev C – Proposed Ground Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- e) FSB92590A/005 Rev C – Proposed Part Ground Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- f) FSB92590A/006 Rev C – Proposed Part Ground Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- g) FSB92590A/007 Rev C – Proposed First Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- h) FSB92590A/008 Rev C – Proposed Part First Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- i) FSB92590A/009 Rev C – Proposed Part First Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- j) FSB92590A/010 Rev C – Proposed Part Plant Level Plan, prepared by Parsons Brinckerhoff, August 2008;
- k) FSB92590A/011 Rev C – Proposed Roof Level Plan, prepared by Parsons Brinckerhoff, August 2008;
- l) FSB92590A/012 Rev C – Existing Site Sections, prepared by Parsons Brinckerhoff, August 2008;
- m) FSB92590A/013 Rev C – Proposed Site Sections, prepared by Parsons Brinckerhoff, August 2008;
- n) FSB92590A/014 Rev C – Proposed Elevations, prepared by Parsons Brinckerhoff, August 2008;
- o) FSB92590A/015 Rev C – Proposed Elevations, prepared by Parsons Brinckerhoff, August 2008;
- p) FSB92590A/016 Rev C – Proposed Elevations, prepared by Parsons Brinckerhoff, August 2008;
- q) FSB92590A/017 Rev B – Site Location Plan, prepared by Parsons Brinckerhoff, December 2006; and
- r) FSB92590A/018 Rev B – Site Plan, prepared by Parsons Brinckerhoff, December 2006.

### Documents

- a) Revised Outline Travel Plan, prepared by Steer Davies Gleave, August 2008;
- b) Schedule of Mitigation Measures, prepared by Indigo Planning, March 2009;
- c) Planning Control Measures, prepared by Indigo Planning, February 2010;
- d) Draft Construction Environmental Management Plan;
- e) Landscape Strategy;
- f) Revised Design and Access Statement, 2008;
- g) Lighting Impact Assessment; and
- h) Proposed Foul Water Sewerage Solutions, prepared by Parsons Brinckerhoff, March 2009

together with the description of development contained in the application and any other plans, drawings, documents, details, schemes or strategies when approved by the Local Planning Authority pursuant to the conditions to this permission.

3) No development shall be commenced until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details.

4) No development shall be commenced until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the local planning authority in consultation with Natural England. The CEMP shall include the measures set out in the Draft Construction Environmental Management Plan submitted in support of the application, the measures set out in the construction management strategy contained in Annex 1 to CD17.25 and shall also include the following details:

a) Monitoring of, and measures to control, the environmental impact of the development during the construction phase, including control of contamination, water-resource protection and control of noise, vibration and dust emissions from plant and machinery and construction traffic (including wheel washing);

b) A dust-ecology inspection strategy for specific areas of ecological sensitivity (such areas to be agreed as part of the submission process for the CEMP) covering:

- i) Construction programme optimisation with regard to reducing seasonal impact on specific areas of ecological sensitivity;
- ii) Ambient weather conditions under which visual inspection frequency is increased;
- iii) Dust particle monitoring;
- iv) The implementation of an active alarm threshold for the dust particle monitoring; and
- v) Remedial mitigation measures

c) A habitat management plan to protect important flora and fauna habitats during the construction phase;

d) A Solid Waste Management Plan;

e) Construction method statements including details of how any soil and ground arising will be managed and re-distributed; and

f) Demolition of the existing terminal building.

The development shall be carried out in accordance with the approved CEMP.

5) No development shall be commenced until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the Local Planning Authority.

6) No development shall be commenced until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to, and approved in writing by, the Local Planning Authority:

a) A preliminary risk assessment which has identified:

i) All previous uses;

ii) Potential contaminants associated with those uses;

iii) A conceptual model of the site indicating sources, pathways and receptors; and

iv) Potentially unacceptable risks arising from contamination at the site.

b) A site investigation scheme, based on 6(a), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;

c) The site investigation results and the detailed risk assessment carried out pursuant to the site investigation scheme referred to in 6(b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; and

d) A verification plan providing details of the data that will be collected in order to demonstrate that the remediation measures set out in 6(c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to the approved scheme shall require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

7) No development shall be commenced until a verification report demonstrating completion of the works set out in the remediation strategy approved pursuant to Condition 6 of this planning permission and the effectiveness of the remediation has been submitted to, and approved in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the verification plan approved pursuant to Condition 6 of this planning permission to demonstrate that the site remediation criteria have been met. It shall also include a "long-term monitoring and maintenance plan" for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

8) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy approved pursuant to Condition 6 of this planning permission detailing how this unsuspected contamination will be dealt with.

9) The hours of construction at the Airport site shall be 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.

10) The terminal building shall not be occupied until an Environmental Management System (EMS) has been submitted to, and approved in writing by, the Local Planning Authority. This system shall include details of solid waste management and details of procedures to prevent spill and risk control measures to avoid any potential contaminants entering watercourses. The development shall be carried out and occupied in accordance with the approved EMS and an Environmental Management System Manager shall be assigned prior to occupation of the terminal building and shall manage, monitor and review the EMS and its operation in cooperation with the Local Planning Authority and relevant stakeholders.

11) No development shall be commenced until a scheme for the disposal of foul water to the main sewerage system has been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.

12) The throughput of passengers at the Airport shall not exceed 300,000ppa until the scheme for the disposal of foul water approved under Condition 11 has been carried out and completed.

13) Before any new permanent surface drainage infrastructure is installed in connection with the development a Drainage Management Plan, including means of pollution control, shall be submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.

14) No development shall be commenced until:

a) A ground water quality monitoring programme to be undertaken within the footprint of the runway extension has been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency;

b) The programme approved under a) has been undertaken and all of the protective measures identified at any stage of that programme have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency; and

c) The remedial measures approved under b) have been carried out and approved in writing by the Local Planning Authority.

15) No development shall be commenced until details of the facilities required for any storage of oils, fuels, or chemicals (including means of spillage control and a spillage response plan) in connection with the development have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.

16) The terminal building shall be designed to minimise carbon emissions and energy demand in accordance with the objectives of the Design and Access Statement. No development shall be carried out until details demonstrating that

sufficient renewable or low carbon energy generating equipment will be included in, on, or directly adjoining, the terminal building that will achieve at least 10% of the terminal building's total energy requirements from renewable or low carbon sources have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.

17) No development shall be commenced until a certificate issued by, or on behalf of, the Building Research Establishment has been submitted to, and approved in writing by, the Local Planning Authority demonstrating that the design of the Terminal Building will achieve a BREEAM 2006 "Very Good" or "Excellent" rating. The development shall be carried out in accordance with the certified design.

18) No development shall be commenced until details of all hard and soft landscape works have been submitted to, and approved in writing by, the Local Planning Authority. These details, which shall be in accordance with the draft Landscape Strategy submitted in support of the application, shall include:

- a) The location and species of all trees and other vegetation to be retained;
- b) Proposed planting, including species, size and provenance (provenance must be local and native to England), in respect of a soil source compatible to that on the site, of stock and planting densities;
- c) The size, type and appearance of all paving or other hard surfaces, including a sample of the materials to be used;
- d) Management arrangements, particularly for retained and/or created ecological habitats; and
- e) Any seating and litter bins.

The hard and soft landscaping works shall be carried out in accordance with the approved details prior to the occupation of the terminal building.

19) The number of aeroplane movements shall not exceed 40,000 per annum in any calendar year excluding the Air Show.

20) The number of helicopter movements shall not exceed 1,200 per annum in any calendar year excluding the Air Show.

21) Following occupation of the terminal building, passenger numbers using the Airport shall not exceed 500,000ppa in any calendar year.

22) There shall be no more than one Air Show, lasting no longer than three days, in any calendar year.

23) No aircraft exceeding 80 tonnes maximum take-off weight shall be permitted to land or take-off at the Airport.

24) There shall be no flight movements, except in relation to emergency and governmental activities as defined in CD17.25, at the Airport during the period 23:00 to 07:00 hours.

25) No development shall be carried out until a lighting scheme for the terminal building and car park areas and associated roads has been submitted to, and



approved in writing by, the Local Planning Authority in consultation with Natural England. The lighting scheme shall be in accordance with the Lighting Impact Assessment submitted in support of the application and shall include:

- a) Details of how the external and internal lighting will be minimised during the period 23:00 to 07:00 hours;
- b) Details of how any security lighting will be linked to movement sensors, dimmed to their minimum intensity and hooded to prevent light spillage; and,
- c) Details of how the proposed lighting scheme takes account of the Airport's existing lighting.

The development shall be carried out in accordance with the approved details.

26) Aeroplane engine power checks shall not take place within the Airport site except within the areas known as "Hold B" and "Hold C" as shown marked "B" and "C" on the plan in Annex 2 of CD17.25.

27) No aeroplane or other aircraft shall be permitted to land on Runways 21 or 03, or depart on Runway 21, whenever a train is in transit between the nuclear flask loading bay at Halfway Bush and Lydd Town Station.

28) Departing aeroplanes from Runway 21 that have a take off weight of 5,700kg or more shall turn right upon departure and follow flight path 12.

29) Records shall be kept of movements and passenger numbers such that compliance with Conditions 19, 20, 12 and 24 above can be demonstrated for audit by the Local Planning Authority.



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# **Report to the Secretary of State for Communities and Local Government and the Secretary of State for Transport**

by K D Barton BA(Hons) DipArch DipArb RIBA FCI Arb

an Inspector appointed by the Secretary of State for Communities and Local Government and the  
Secretary of State for Transport

Date: 9 March 2012

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATIONS BY LONDON ASHFORD AIRPORT LIMITED**

**TO**

**SHEPWAY DISTRICT COUNCIL**

Inquiry opened on 15 February 2011

London Ashford Airport, Lydd, Kent

File Refs: APP/L2250/V/10/2131934 and 2131936

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**Application A: APP/L2250/V/10/2131934**

**Application B: APP/L2250/V/10/2131936**

**London Ashford Airport, Lydd**

- The applications were called in for decision by the Secretaries of State (SoS) by a direction made, under section 77 of the *Town and Country Planning Act 1990*, on 22 June 2010.
- The applications are made by London Ashford Airport (LAA) to Shepway District Council (SDC).
- **Application A**, SDC Ref Y06/1648/SH, and **Application B**, SDC Ref Y06/1647/SH, are both dated 15 December 2006.
- The development proposed in **Application A** is “the construction of a runway extension and a ‘starter extension’ to the north/south runway”.
- The development proposed in **Application B** is “the erection of a passenger terminal together with a car park on the existing Bravo apron comprising a car park”.
- The reason given for making the direction was that the proposals may conflict with national policies on important matters.
- On the information available at the time of making the direction, the following were the matters on which the SoS particularly wished to be informed for the purpose of his consideration of the application:
  - a) The extent to which the proposed development is consistent with the development plan for the area, having regard in particular to the Shepway District Local Plan Review (LP) (adopted 16 March 2006)(saved policies);
  - b) The extent to which the proposed development is consistent with any emerging Development Plan Documents (DPD), including consideration of the weight to be attached to them;
  - c) The extent to which the proposed development would be consistent with Government policies in *Planning Policy Statement 9: Nature Conservation* (PPS9) with particular regard to:
    - The extent to which the proposed development is likely to have an impact on the local flora and fauna and any designated sites;
    - The importance that the Government attaches to the Special Area of Conservation (SAC), Special Protection Area (SPA), Site of Special Scientific Interest (SSSI), proposed Ramsar site (pRamsar) and proposed extension and additions to the SPA (pSPA);
    - Whether or not there is likely to be any impact on a European protected species listed in the *Habitat Directive*;
    - Whether there is likely to be any impact on a species protected under the *Wildlife and Countryside Act 1981* or any other legislation.
  - d) Whether there are any other material planning considerations relevant to the SoS's consideration;
  - e) Whether any permissions granted for the proposed development should be subject to any conditions and, if so, the form these should take; and,
  - f) Whether any planning permissions granted should be accompanied by any planning obligations under Section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

**Summary of Recommendations: The applications both be allowed and planning permission granted subject to the conditions set out in Appendices 4 (Application A) and 5 (Application B).**

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## **1.0 Introduction and Preliminary Matters**

- 1.1. A Pre-Inquiry Meeting (PIM) was held on 28 October 2010 to set out the administrative arrangements for the Inquiry and to discuss a programme. The Inquiry sat for 42 days between 15 February and 16 September 2011.

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In addition, a number of accompanied and unaccompanied site visits were undertaken as listed in Appendix 3.<sup>1</sup>

- 1.2. Lydd Airport Action Group (LAAG) intended to present evidence at the Inquiry on SDCs handling of the applications, with particular reference to amendment of an Appropriate Assessment (AA). The topic also features in the proofs of evidence of witnesses for LAA and SDC. A Ruling was issued indicating that oral evidence and cross-examination on this topic would not be permitted in accordance with Rule 15(6). Whether the Council acted properly, or not, is not a matter for this Inquiry and has little relevance to the merits of the proposals. The Inquiry heard extensive expert evidence that was not available to Members at the time they made their decision. The recommendation in this report is based on that expert evidence. No-one has been disadvantaged as the evidence on the handling of the applications was accepted in writing and is summarised in this report.<sup>2</sup>
- 1.3. I have taken the Environmental Statement (ES), submitted in accordance with the *Town and Country Planning (Environmental Impact) Regulations 1999*, into account along with comments made by consultees, supplementary information supplied during the course of the applications, and the proofs of evidence and other material that has been produced during the course of this Inquiry. LAA submitted a note indicating how the statutory requirements relating to the ES have been met.<sup>3</sup>
- 1.4. This report includes a description of the site and its surroundings, a summary of the planning history and planning policy background, the gist of representations made at the Inquiry, and in writing, and my conclusions and recommendations. Lists of appearances, documents and site visits undertaken, schedules of conditions for each proposal that should be attached should the SoS be minded to grant planning permission, and a glossary of abbreviations are attached as appendices.

## **2.0 The Site and Its Surroundings<sup>4</sup>**

- 2.1. The existing Airport, which covers around 132 hectares, has been operational since the 1950s and has a runway that can be approached from both southerly and northerly directions, designated 03 and 21 respectively. A terminal building, dating from 1954, accommodated over 250,000 passengers a year in the 1960s, and has a capacity to process up to 300,000 passengers a year. There are also car parking, maintenance hangers, an Air Traffic Control (ATC) tower, fire fighting services, and a fuel store.
- 2.2. The site lies approximately 2 kilometres (km) to the east of Lydd with New Romney some 2km to the north and Rye around 16km to the west. The coastal settlements of St Mary's Bay, Littlestone-on-Sea, and Greatstone-on-Sea are some 6, 3 and 1km to the north-east respectively, whilst Lydd-on-Sea is about 2km to the south-east. The Airport is some 25km from Junction 10 of the M20 and approximately 28km from Ashford. The Airport

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<sup>1</sup> ID/1, ID/3

<sup>2</sup> ID/6, LAAG/12A, LAA/14A, SDC/2A

<sup>3</sup> LAA/116

<sup>4</sup> CD4.1 Sect 2, CD4.3 Sect 2, CD4.4 Para 2.2, CD4.6 Sect 2

access road is reached via the B2075 Romney Road and the A259 near Brenzett. The A259 connects the Airport to Hastings and Rye in the west and Hythe, Folkestone and Dover in the east.

- 2.3. Dungeness Nuclear Power Stations A and B lie some 5km to the south of the Airport. Dungeness A was closed in December 2006 and is being decommissioned whilst Dungeness B is scheduled to begin decommissioning in 2018. A restricted flying area, extending to a height of 2,000 feet (ft), restricts all aerial activities for a 2 nautical mile (nm) radius around the power stations. Traffic arriving and departing from the Airport has an exemption reducing the restricted area to a 1.5nm radius. In addition, Lydd military firing range danger area is located approximately 2.3km to the west, extending to a height of 4,000ft, and the Hythe military firing range danger area lies some 10km to the north, extending to a height of 3,200ft.
- 2.4. The Dungeness SAC lies to the east of the existing runway and the paved area of the proposed runway extension would include 0.23 hectare, some 0.007%, of the overall SAC. The Dungeness to Pett Level SPA is located approximately 750m east and 500m south of the existing runway. An extension to the SPA is proposed which would result in the boundary of the SPA being closer to the Airport but the proposals would not use any land within the SPA or the pSPA. Natural England (NE) is consulting on a proposed Ramsar site but again the applications would not use any land within the pRamsar. The Dungeness SSSI lies to the east of the existing runway and the proposed runway extension would include 1.62 hectares, around 0.018%, of the whole SSSI. The Dungeness National Nature Reserve (NNR), including an RSPB Reserve that falls within the SPA, pSPA (in part), SAC, pRamsar, SSSI and NNR, lies around 2m from the south-eastern boundary of the Airport. The RSPB Reserve is in the region of 320m from the existing runway at its nearest point.
- 2.5. In addition, the Dungeness Special Landscape Area (SLA) abuts the Airport to the south east and the Romney Marsh Local Landscape Area (LLA) abuts the Airport to the south, west and north.<sup>5</sup>

### **3.0 Planning History**

- 3.1. On 24 September 1992 the SoS granted planning permission, subject to conditions, for a 296m x 37m concrete extension to the existing runway at the Airport, extending it in a north-easterly direction. The dimensions and direction are similar to those proposed in the current applications. The permission introduced a cap of 56,000 movements per annum, compared to a suggested 40,000 in the current cases. It also introduced a cap of 600 helicopter movements and limited the hours of take-off and landing to between 06:30 and 23:00 hours except for winter Sundays and Bank Holidays when the hours were altered to between 08:00 and 22:30 hours. This compares with a proposed night time restriction on the current applications between the hours of 23:00 and 07:00 hours.<sup>6</sup>

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<sup>5</sup> CPRE/1A Para 4.35

<sup>6</sup> CD4.1 Sect 3 & App 2

## 4.0 Planning Policy

- 4.1. LAA and SDC originally agreed that the statutory development plan consists solely of the saved LP policies, however, this predated the CALA Homes case. LAA now agrees with SDC, NE, Royal Society for the Protection of Birds (RSPB) and Kent Wildlife Trust (KWT) that the development plan includes the *South East Plan* May 2009 (RSS) and the saved LP Policies.<sup>7</sup>
- 4.2. RSS Policy T9 does not specifically refer to Lydd but paragraph 8.30 of the supporting text indicates that other smaller airports could play a valuable role, subject to environmental considerations.
- 4.3. Saved LP Policy SD1 requires account to be taken of the broad aim of sustainable development and sets out a number of criteria to be respected. A high standard of layout, design and choice of materials is required by Policy BE1. LP Policy BE16 requires development to retain important existing landscape features and to make appropriate provision for new planting. Policy U6 relates to flood risk whilst Policy U15 seeks to control light pollution.
- 4.4. In terms of transport, saved LP Policy TR15 provides for expansion of facilities at LAA, provided there would be no significant impact on the internationally important wildlife communities in the Lydd/Dungeness area. Provision for cyclists and pedestrians are required by LP Policies TR5 and TR6. Policy TR8 relates to improvements along the A259 whilst TR11 would allow intensified use of an existing access provided, amongst other matters, that it would not increase the risk of accidents or create delays. Policy TR12 relates to parking provision which should generally be in accordance with current parking standards. Where development proposals are likely to have significant transport implications a travel plan is required by LP Policy TR13.
- 4.5. LP Policy CO1 seeks to protect the countryside for its own sake but would permit development, subject to a number of criteria and other plan policies. LP Policies CO4 and CO5 seek to protect or enhance SLAs and LLAs respectively. Sites of international, national and local wildlife importance are protected by LP Policies CO8 to CO11, whilst Policy CO13 relates to the protection of the freshwater environment and CO14 to the long term protection of Dungeness. Policy CO12 indicates that conditions and obligations will be considered to ensure that proposals protect and enhance important nature conservation resources.
- 4.6. Whilst SDC is preparing its *Local Development Framework* (LDF), at the time of the Inquiry it was anticipated that the *Core Strategy* would be submitted to the SoS in Autumn 2011. LAA and SDC agree that the *Core Strategy* has not yet reached a stage whereby its policies are a material consideration.

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<sup>7</sup> CD4.1 Sect 7, CD4.3 Sect 7, CD4.6 Sect 7, CD4.7 Paras 2.5-2.10



## 5.0 The Case for London Ashford Airport

### 5.1. Introduction

5.1.1. The Airport is licensed by the Civil Aviation Authority (CAA) and has maintained the capability to provide scheduled and private services 24 hours a day, 7 days a week. The applicant is a Statutory Undertaker and the Airport benefits from permitted development rights under Part 18 of the *Town and Country Planning Act*. In addition to aircraft movements, there have been in the order of 1,200 helicopter movements a year. The existing terminal building restricts the Airport's capacity, and without an extension to the runway an aircraft the size of a Boeing 737 cannot take off with a full payload.<sup>8</sup>

### 5.2. Basis for Assessment

5.2.1. 'Environmental information', to be taken into consideration by decision makers, is defined in the *Town and Country Planning (Environmental Impact) Regulations 1999* and includes oral evidence given during the Inquiry. ES means a statement that includes such information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile but that includes at least the information referred to in Part II of Schedule 4.<sup>9</sup>

5.2.2. If the SoS or Inspector considers that a statement should contain additional information in order to be an ES then the applicant should be requested to provide it under Regulation 19. RSPB contends that the lack of a Regulation 19 request does not mean that the ES is adequate. However, an ES provides environmental information in order to assess the environmental effects and a decision on the planning merits has to have regard to the environmental information. If the ES's are deficient, a decision cannot be made as there is no lawful ES to take into account. The procedural remedy is a request for further information. No such request has been made and the only conclusion is that the ES's are satisfactory within the meaning of the 1999 *Regulations*.<sup>10</sup>

5.2.3. LAAG, but none of the legally represented parties, considers that the ES's are deficient as they fail to assess a throughput of 2 million passengers per annum (mppa). The assertion that the true intention is a throughput of 2mppa is misleading. The documents referred to do not reflect the applications. The Masterplan is a long term aspiration and forms no part of the applications. Indeed, it recognises that any increase above 500,000 passengers per annum (ppa) would require a phase 2, which would only be feasible if phase 1 were a commercial success. Mention is made of a Stakeholder Consultation Strategy, marketing literature, and presentations but these all predate the applications.<sup>11</sup>

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<sup>8</sup> CD4.1 Paras 2.7, 2.9 & 2.10, CD4.3 Paras 2.7, 2.9, 2.11 & 2.12, CD4.6 Paras 2.7, 2.9, 2.11 & 2.12

<sup>9</sup> LAA/119 Paras 2.1, 2.3, CD5.18

<sup>10</sup> LAA/119 Paras 2.2, 2.4-2.5, 2.8-2.12, 13.25, NE/01 Paras 6.17-6.20

<sup>11</sup> LAA/17/A, LAAG/11A, LAA/119 Paras 2.6-2.7

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- 5.2.4. The current applications, and a possible expansion to 2mppa, are not a single project. The Masterplan has no status and dates from 2003 since when the aviation industry has been transformed. There is no basis for assessing a planning application for one form of development on the basis of future aspirations contained in a Masterplan that forms no part of that development. The proposals have been subject to an ES and any further expansion would also be subject to ES. The situation is not one of 'salami slicing' as the environmental implications would be considered at the stage they were promoted. This is the approach adopted at Coventry, and Bristol Airport's development proposal for expansion capped to 10mppa was assessed on that basis, despite a Masterplan aspiration for 12.5mppa. The Council for the Protection of Rural England – Protect Kent (CPRE) claims that the absence of an up to date Masterplan results in conflict with RSS Policy T9, but this only refers to taking account of Masterplans produced in accordance with the Air Transport White Paper (ATWP). There was no requirement for Lydd to produce such a Masterplan.<sup>12</sup>
- 5.2.5. The request to SDC for a scoping opinion was made on the basis of a two phased development of 500,000ppa and 2mppa. Subsequently the proposals were refined and the 2mppa scenario was not pursued. The rest of the development was scoped in accordance with the opinion. It would be nonsense to comply with those parts only required by a 2mppa scenario that is no longer proposed. SDC consulted on the applications between 2006 and March 2010 and the proposals have been subject to further scrutiny at this Inquiry so the public have not been prejudiced.<sup>13</sup>
- 5.2.6. A legal opinion for LAAG maintains that the Masterplan should be subject to AA under the *Habitat Regulations*. However, it is not a 'plan or project'. It is a unilaterally produced document that has not been subject to any statutory procedure and there is no basis for treating it as a material consideration.<sup>14</sup>
- 5.2.7. LAAG compares the floor area of the existing and proposed terminal buildings to assess capacity. Whilst the existing terminal could handle a B737 and a smaller aircraft simultaneously, it could not do it to modern standards. The proposed terminal would be able to handle two B737s simultaneously to sustain 500,000ppa as well as provide expected retail and catering facilities. It would not be able to handle 900,000ppa, and in any event capacity could be limited by condition. Reference has been made to growth at other airports, but they have had to make planning applications and have regard to environmental impacts. If there is, at a future date, an application for infrastructure to permit 2mppa, then the environmental effects of such a proposal would be considered at that stage.<sup>15</sup>

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<sup>12</sup> LAA/4D Paras 3.14-3.15, LAA/17A, LAA/119 Paras 2.7 & 5.68, LAAG/11A

<sup>13</sup> LAA/17/A, LAAG/11A, LAA/119 Para 2.7

<sup>14</sup> LAA/17/A, LAAG/11A, LAA/119 Para 2.7

<sup>15</sup> LAA/4/K, LAAG/11D, LAA/119 Para 2.7

### 5.3. Airport Operations

#### Current Operations

- 5.3.1. LAA began operating in 1954 and is part of the cultural history of the Romney Marshes area. Activity has fluctuated over time but LAA still operates a scheduled passenger service to Le Touquet, although passenger numbers have dropped from 4,000 in 2003-2004 to 588 in 2009. It continues to host general aviation (GA) activity with a flying school. It operates as a business jet airport providing aircraft charter and fixed base operator (FBO) handling services, along with engineering services and other business aviation activity. This activity results in approximately 22,000 aircraft movements although the bulk of these are GA.<sup>16</sup>
- 5.3.2. The principal constraints at LAA are the runway length and the 1954 terminal building. Runways 03 and 21, with landing distance available (LDA) of 1470m, can handle regional aircraft types for commercial passenger services and corporate jets, but are not suitable for widespread passenger use by B737s or A320s. Whilst these aircraft can operate into, and out of, Lydd empty or with light fuel loads, for private business or maintenance operations, they cannot be operated for commercial passenger services. The extended runway would maximise the availability of routes and aircraft choice for operators. Similarly, the terminal was designed to handle smaller numbers of disembarking passengers at any one time than from a B737. In its current configuration, it could only handle 200,000ppa of smaller aircraft, although internal reconfiguration would permit approximately 300,000ppa from larger aircraft. There would still be constraints and it would not be able to handle passengers from two B737s' simultaneously so affecting scheduling requirements.<sup>17</sup>
- 5.3.3. The proposals are needed to allow passenger services to operate at LAA. As a result there has been no focus on attracting further freighter cargo services or maintenance activity, particularly as those services could conflict with what is proposed in terms of no night flights. A cargo/freighter operation that works principally at night has commenced at LAA and is proposing to increase its operations. It would not require any physical works to the airport, and only staffing issues need to be resolved. Whilst the national statistics for 2009 and 2010 demonstrate that business aviation has declined during the recession, LAA has seen growth, albeit starting from a low base, and it has all the facilities in place for that growth to continue. LAA has distinguished between what can physically operate from the Airport and what operations there is a market for in terms of commercial passenger services.<sup>18</sup>
- 5.3.4. LAA's previous marketing efforts targeted passenger operations that were not sustainable with the current facilities and were affected by other factors. When Flybe went to Manston, LAA had no instrument landing system (ILS). Flybe would also have been considering operating with an upscaled fleet that would mitigate against LAA's restricted runway length. LAAG's

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<sup>16</sup> CD4.6, LAA/4A Paras 4.2-4.5, LAA/119 Paras 5.27-5.31, Mr Levinson XX by LAA Day 26

<sup>17</sup> LAA/119 Paras 5.33-5.35 & 13.1

<sup>18</sup> LAA/4A Para 4.18, LAA/4B App B, LAA/119 Para 5.36-5.39, Ms Congdon IC Day 14, XX by RSPB Day 15

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contention that LAA could handle operations up to 300,000ppa without the developments is flawed in terms of other airports relied on. London City has a very different market, and Southampton has a significantly longer runway and serves its own conurbation. The other smaller airports are in relatively remote areas of the UK handling far fewer passengers than 300,000ppa and providing feeder links to London and elsewhere. Other small airports' attempts to run services with short runways have been unsuccessful.<sup>19</sup>

### **Operations With Development**

- 5.3.5. Lower and Higher Growth analyses have been built up of the types and numbers of movements and when they would occur, based on the Airport's circumstances and the state of the aviation market. The demand forecasts are based on CAA survey data for the catchment, with some 2.5 million passengers in the area, with approximately 1.3 million travelling to the top 40 destinations in volumes that would make LAA's proposed commercial passenger operations viable. These have then been considered against the Department for Transport's (DfT) latest growth rates, using a sensitivity test, to reflect the impact of the recession on national demand growth. Some stimulation to the local market has been introduced and a conservative estimate made of how much of the market LAA would attract on any given route having regard to the existence of Manston. This shows that both airports could grow in parallel.<sup>20</sup>
- 5.3.6. The derivation of the market capture assumptions made for the districts within the catchment have been given, applying less than the 60% ceiling assumed for the inner catchment area. The 60% market capture rate for lower growth is based on experiences at Exeter competing with Bristol and Birmingham. These demonstrate that the 60% market capture rate is conservative, and that regional airports are able to capture more than this.<sup>21</sup>
- 5.3.7. The realistic forecast demonstrates modest growth of services incrementally over time. In the Lower Growth scenario, 300,000ppa would not be reached until 2023 with 500,000ppa by 2028. In the Higher Growth scenario this would be 2021 and 2024 respectively. The modelling is conservative, underpinned by proper data and research, and represents the only expert analysis of what would happen.<sup>22</sup>

### **Aircraft Movements and Flightpaths**

- 5.3.8. LAAG is the only party to question the ability of the Airport to operate commercially in the manner proposed with the runway extended. However, LAAG's evidence was given by a flying instructor of light aircraft who is not qualified to fly commercial passenger aircraft, does not have an air transport licence or any ATC qualifications and who is not permitted to fly in the airways system. He produces simplified procedure guides for light aircraft pilots on behalf of gCAP but the entry for LAA excludes any reference to the restricted airspace relating to the Lydd Ranges and the Dungeness Nuclear Power Station. In contrast, LAA's evidence is from the senior ATC Officer,

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<sup>19</sup> LAA4D Paras 4.5-4.11, LAA/119 Paras 5.45-5.46, LAAG/10E Para 11.61

<sup>20</sup> LAA/4A App D, LAA/119 Paras 5.57-5.58

<sup>21</sup> LAA/4I Paras 28-29, 32-33 & Tables 5-7, LAA/119 Para 5.59

<sup>22</sup> LAA/119 Paras 5.60-5.61

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who in conjunction with the CAA formulated the flight paths, and from a former RAF pilot, Red Arrows team member, test pilot and commercial pilot of the Airbus 320, 321 and 330.<sup>23</sup>

5.3.9. The latter flew the aircraft in question for many years and runways of the proposed length and width already exist and are used for precisely the types of planes at similar ranges, or longer, than those contemplated in places such as Belfast City, Aberdeen, Coventry, Jersey, Gibraltar, Derry (pre-extension) and the Greek Islands. Moreover, the operating conditions at many of these, where rainfall and temperatures are higher, would have made the operations more difficult than at LAA.<sup>24</sup>

5.3.10. The key points raised by LAAG are:

- i) Commercial airliners would be unable to take off from LAA on runway 21 when the Lydd Range was active because the radius of turn required on flightpath (FP)12 is not achievable by an adequate safety margin and the radius of turn would require a bank angle that is unlikely to be achievable under European air safety rules;
- ii) Commercial airliners could not land safely on runway 21 because of the danger of infringing the Lydd Ranges restricted area in the event of an aborted landing, and aircraft like the 737-800 would not be able to land safely on runway 21 with a full payload if there was a tailwind; and,
- iii) FP1 would not be a viable approach for commercial airliners when the Ranges were active because the distance between the runway threshold and the boundary of the Ranges is insufficient to accommodate the manoeuvre safely.<sup>25</sup>

5.3.11. If those FPs are impracticable, no airlines would be attracted and either the proposals would not be implemented, or they would not be used by commercial airliners. The harm that LAAG and others maintain would flow from a commercial airport would not occur. Moreover, if the CAA considered that the FPs, utilising the ILS as proposed, were unsafe, they would not licence them and the Airport would not be able to operate.<sup>26</sup> Ultimately airlines would decide whether a particular runway and airspace configuration would be suitable for the operation they wished to run.<sup>27</sup>

5.3.12. LAAG's witness has failed to acknowledge a Statement of Common Ground (SCG) agreed between LAA and LAAG. He confirmed that the design of the FPs required expert assessment by a person qualified in ATC, and that the CAA had already approved the airspace and flight procedures at LAA, a form of regulatory approval outside the planning process. Although it was asserted that Group 2 aircraft would not be able to land on runway 03 using FP1 when the Range was active, the SCG agrees that Group 2 can operate commercially from the airport as existing. They can, and do, land on

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<sup>23</sup> LAA/119 Paras 13.2-13.3 & 13.11, LAAG/10A Para 1.5, Mr Spaven XX by LAA Day 13/14

<sup>24</sup> LAA/4D Sect 3 & Paras 4.11-4.12, LAA/4D Sect 3, LAA/4H updated by LAA/4I Paras 24-27 & Table 3, LAA/119 Para 5.62, LAAG/10A

<sup>25</sup> LAA/119 Paras 13.4-13.4.4

<sup>26</sup> LAA/119 Paras 13.7-13.8

<sup>27</sup> LAA/119 Para 13.10

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runway 03 using FP1 with the existing length and configuration of the runway.<sup>28</sup>

- 5.3.13. The suggestion that larger Group 1 aircraft could not take off and follow FP 12 without breaching the restricted airspace when the Range is active is also wrong. The profile for a B737-800 departing runway 21 on a flight of up to 1,000nm indicates it would be airborne around 1400m from start of roll (SOR) and achieve a height of 500ft some 1800m from SOR before passing the upwind end of the runway and turning west. Even assuming no head wind, a B737-800 could achieve a sufficient radius of turn on FP12 to avoid the Range. This is demonstrated by departure flight paths from Hobart and Cairns.<sup>29</sup>
- 5.3.14. LAAG suggests that FP12 could not be flown because the angle of bank would be too great. However, it also proposes that FP6 could be flown by all aircraft types on runway 03 departures but this would involve an angle of bank at least as great as FP12. One LAAG witness considers that a baseline of 300,000ppa is untenable as current passenger levels fall well short of that whilst another considers 300,000ppa the correct baseline as that is what the existing terminal capacity is.<sup>30</sup>
- 5.3.15. Notwithstanding the agreed directional split of 70/30 in favour of the use of runway 21, LAAG's witness maintained that the usage would be more in favour of runway 21 because aircraft could not land safely on runway 03 when the Range was active. This assertion was based on a safety consideration that aircraft might fly into the Range restricted area. However, there are already clear procedures that allow ATC at LAA to call for a cease fire in the event of any emergency, with a hotline directly between ATC and the Range. There is no suggestion from either the Airport's ATC or the Ministry of Defence (MoD) that this compromises safety and the MoD has not objected to the continued use of this procedure or to the applications.<sup>31</sup>
- 5.3.16. Another objection is that Group 1 aircraft would be unable to land on runway 21 in certain conditions, with a tailwind. The probability of all the assumptions that would be required to lead to a diversion of the aircraft, Ranges active, tailwind component exceeding 10 knots, wet runway, Group 1 aircraft fully laden with fuel, passengers and luggage, is remote. In numerical terms, Group 1 tailwind landings would be a maximum of 1% of the total movements, but even then in practice the aircraft would be configured prior to departure for LAA in such a way that it could land safely.<sup>32</sup>
- 5.3.17. This is achieved by ensuring, by calculation, the necessary landing weight. These practical points are second nature to airline operators. Aircraft such as the B737-800 and A319 do not normally need to be operated at their maximum weights, and short haul operations within Europe do not require this. The types of aircraft operated will vary, and whilst the B737-800 was

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<sup>28</sup> CD1.41a & b App 16.4, CD4.4 Paras 3.19-3.20 & 4.8, LAA/3D Para 3.1, LAA/3F Sect 2, LAA/119 Para 13.16-13.17

<sup>29</sup> LAA/3F Sect 1, LAA/5E, LAA/119 Paras 13.18 & 13.29, LAAG/10A App 17&18

<sup>30</sup> LAAG/8A Sect 4 & Table 1, LAAG/10A Paras 3.3 & 3.43, LAA/119 Paras 13.19-13.20

<sup>31</sup> LAA/119 Para 13.22

<sup>32</sup> LAA/3D Paras 2.6 & 2.8, LAA/16D, LAA/119 Para 13.23

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assessed there are many other aircraft where LAAG's points would not arise, such as the A319, and B737-700, which is of similar weight and range to the A319.<sup>33</sup>

- 5.3.18. Turning to other points, the fact that there was no FP shown using the non-directional beacon (NDB) on the approach to runway 21 was criticised but commercial passenger aircraft such as the B737 or the A319 would not use the NDB. In any event, LAAG accepts that "The ILS approach is likely to continue to be the procedure of choice in the foreseeable future due to its greater precision".<sup>34</sup>
- 5.3.19. A number of incorrect points were raised about the ILS. The International Civil Aviation Organisation (ICAO) makes recommendations on reference datum, and localiser/glidepath intercept, heights but at LAA a commercial aircraft must fly the landing visually from higher than CAT1 minima. A small deviation from the recommended intercept height, or the recommended reference datum height band of 50-60ft, by a maximum of 5ft is insignificant. Firstly a CAT1 ILS glidepath is only required to have an accuracy of +/-7.5%. At 180ft this is +/-13.5ft. At this stage the pilot is no longer following guidance from ILS. Secondly, in relation to precision approach path indicator lights (PAPIs), the tolerance can be increased to +/-15' of arc or +/-8.3% of the nominal approach angle. At 180ft this would be +/-15ft. The consequence of the small deviation would be well within tolerances in CAP 168.<sup>35</sup>
- 5.3.20. If LAAG's arguments were correct, the extended Airport would not be used. The argument that LAAG's assumptions may lead to changes in assumed traffic levels using different flight paths does not stand scrutiny. The ES assumptions are that when the Range is active Group 1 aircraft would only be able to land on runway 21. No evidence is brought to indicate that it would have any material effect on conclusions in respect of noise.<sup>36</sup>

### **Fallback**

- 5.3.21. Account should be taken of what would happen if planning permission were refused. This 'fallback' has long been a basic principle of planning as in *Smaller Pressure Castings Ltd v Sec of State for Environment* (1973) 22 EG 1099 and more recently *Hargreaves*. The only factor to determine is whether there is a reasonable likelihood of the fallback situation occurring.<sup>37</sup>
- 5.3.22. If planning permission were to be refused LAA would be unlikely to attract any significant growth in commercial passenger services with the existing runway restrictions and would face a stark choice. If it were not to close, or mothball parts of its operations, it would have to maximise its general and business aviation and cargo/freighter business that could operate 24 hours a day. The resulting movements would be up to 38,451 compared with the development scenario with its cap at 40,000. The aircraft would be operated by the existing types of business, namely GA, business and

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<sup>33</sup> LAA/16D Paras 2.12, 3.3-3.4 & 3.7-3.12, LAA/119 Paras 13.23-13.23.2

<sup>34</sup> LAA/3E App 3 letter from LAAG p2, LAAG/10A Para 3.47, LAA/119 Para 13.24

<sup>35</sup> CD3.6 Letter dated 14 January 2010 pp 2-3, LAA/3F, LAA/119 Para 13.26-13.28

<sup>36</sup> LAA/119 Para 13.21, Mr Spaven XX by LAA Day 13/14

<sup>37</sup> LAA/118, LAA/119 Paras 4.1-4.3

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maintenance, repair and overhaul (MRO). However, LAA would not be subject to any limitations on growth beyond 38,451.<sup>38</sup>

- 5.3.23. LAA identified the fallback, and subsequently updated it based on expert advice on the level of future activities without any new development. The update includes high and low forecasts with detailed reasoning and explanations for the assumptions made. LAA's business would continue to be predominantly cargo, business aviation and GA. The time period for the increase to 40,000 movements per annum (pa) was scaled back from 2013 to 2030.<sup>39</sup>
- 5.3.24. The original ES and updated fallback positions are not significantly different in terms of aircraft movements. There would not be a market for passenger aviation with the existing runway length and the Airport's natural growth would occur principally through more business jet and other such aviation activity. Moreover, the fallback situation in relation to bird control has not materially changed. No expert evidence is adduced to challenge that professional assessment although NE obtained its own expert advice, which it has not revealed.<sup>40</sup>
- 5.3.25. The number and types of daily movements likely to arise from the proposals at their peaks are set out in the SCG between LAA and SDC. With 300,000ppa, the summer average would be 39 movements by larger jet aircraft per day, and with 500,000 ppa it would be 47 movements per day. These assumptions include 23 and 25 movements per day by business aviation using LAA's existing facilities, without the need for any further development.<sup>41</sup>
- 5.3.26. The movement breakdown was revised to reflect use of Code C aircraft. The revised forecasts show 39 and 45 movements per day in the summer average at 300,000 and 500,000 ppa respectively, of which 22 and 23 movements respectively would be business aviation not dependent upon the proposals. The assessments assume that the business aviation movements would be reached by 2030, but there are no constraints on them being achieved more quickly. The same number of business jet movements are assumed with or without the proposals, but without the development three additional larger aircraft movements should be included to reflect additional night freighter and maintenance operations giving a conservative total of 26 movements a day by larger aircraft in the fallback situation as compared with up to 44 with the developments. No account has been taken of training flights that might be undertaken by larger jet aircraft in the fallback, and the assumed level of helicopter usage is common to both scenarios<sup>42</sup>.
- 5.3.27. The assumed increase in business jet activity is based on studies of business aviation in Europe and EUROCONTROL's expectations for growth rates. Based on CAA data LAA has bucked the trend in business aviation by attracting growth in the recession where other airports have experienced contraction. Using the EUROCONTROL data and the CAA survey statistics,

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<sup>38</sup> LAA/4A Paras 5.47-5.50 & Table 5.7, LAA/119 Paras 5.47-5.48, Ms Congdon XX by RSPB Day 15

<sup>39</sup> LAA/119 Paras 4.4-4.5.4, Ms Congdon XX by RSPB Day 15

<sup>40</sup> LAA/119 Para 4.6, Ms Congdon XX by RSPB Day 15

<sup>41</sup> CD4.1 Para 6.6 & Table, LAA/119 Paras 4.13.1-4.13.2

<sup>42</sup> LAA/4A, LAA/119 Para 4.13.3, Ms Congdon XX by RSPB Day 15



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even with slowing of growth in the longer term, a doubling of the number of business flights by 2030 is a realistic estimate, resulting in a total demand for the London area of at least 140,000 movements, an increase of 70,000, by 2030. This assumption is conservative as the level is likely to be reached earlier. If 5% growth is assumed there would be 213,000 movements by 2030. Overall a reasonable growth range figure is 140,000 although the most likely outcome would be 160,000 by 2030.<sup>43</sup>

- 5.3.28. It is conservative to assume that LAA would only capture approximately 8,400 of such movements in the period up to 2030, representing no more than 12% of the total market growth, because of the capacity constraints in the London area and the limited opportunities for business aviation to be accommodated elsewhere. The main locations currently are London City, Luton, Biggin Hill and Farnborough with limited activity at Heathrow, Gatwick and Stansted due to the pressures from commercial passenger jet movements there. It is reasonable to assume that at least half of the existing level of movements would be displaced in and around the London Area by 2030. RSPB suggests that the rates of growth of business aviation are unrealistic, representing 21% growth pa over the period. However, it is not unrealistic as the growth starts at a very low base, and such rates have been experienced at other airports such as Farnborough. It would be wrong to take the EUROCONTROL 5% growth rate in the industry generally and then apply it to LAA's existing movements this year as suggested by NE.<sup>44</sup>
- 5.3.29. At London City, business aviation is likely to be displaced by increased numbers of commercial passenger flights and the DfT Forecast shows this airport at capacity in 2020. Luton airport is already constrained with the continuation of commercial passenger flights displacing business aviation. The same applies to Stansted. Heathrow and Gatwick will be at capacity by 2020, with expected increases on the limited amounts of business aviation that take place there. Farnborough has permission to increase to 50,000 movements pa but would only be in a position to absorb approximately 38% of the projected growth. This would principally be for the area west of London.<sup>45</sup>
- 5.3.30. Biggin Hill currently handles around 50,000 movements pa and is subject to restrictions on its opening hours preventing it attracting early morning arrivals from places like the USA or Europe. Its use for the South East area may be unattractive given potential delay times on the M25. An application to relax these restrictions so that increased numbers could cater for Olympic traffic has been refused. Furthermore, Biggin Hill's access to the airways is dependent upon the London Terminal area and is constrained in terms of operations as illustrated by its objections to the expansion of London City because of airspace restrictions. These do not apply to LAA.<sup>46</sup>
- 5.3.31. Manston can handle some business aviation, although it has been allocated significantly fewer movements than LAA for the Olympic Games. Other smaller airports would only be able to accommodate a limited amount of

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<sup>43</sup> LAA/4G Paras 2.11-2.16 & Table 2.2, LAA/4I Paras 6-10, LAA/199 Paras 4.13.4-4.13.6, Ms Congdon XX by RSPB Day 15

<sup>44</sup> LAA/4I Paras 11-12, 21-22 & Tables 1 & 2, LAA/119 Para 4.13.8, Ms Congdon IC Day 15 XX by NE & RSPB Day 15

<sup>45</sup> LAA/4I Para 13, LAA/119 Para 4.13.8

<sup>46</sup> LAA/4I Paras 13-15 & Annex A, LAA/119 Para 4.13.8, Ms Congdon XX by RSPB Day 15

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growth. LAA's locational characteristics, coupled with its operating conditions, will make it an increasingly attractive Airport for business aviation in the future. The assumptions of business aviation growth at LAA are, therefore, both realistic and cautious, attributing only 8,395 movements out of the 62,000 without a home in the London area. Even if growth were to be at the lower end of the anticipated range, it would still only involve attracting 25% of the overall surplus demand. Moreover, the proposal would constrain business aviation activity by the 40,000 cap, but no such constraint currently exists and LAA would be entitled to take a greater quantity of the surplus demand. This is a further benefit of the proposed constraints.<sup>47</sup>

- 5.3.32. There is little information on the origin of business aviation, but it can be examined by looking at generic patterns. LAA would be attractive as it has a FBO, the ability to fly in without stacking in the London terminal area, saving time and costs, and there are business clusters and homes in the wider catchment area for those that want an airport close by.<sup>48</sup>
- 5.3.33. The GA predictions and fleet mix forecasts were originally set out in the ES. They were checked in light of the prospects for growth based on the existing facilities at LAA and are reliable and reasonable. The fallback analysis assumes no new development of any kind and is based on the existing hangerage and facilities. Cargo/freight operations of the type that take place now and in the future would not be integrator feeders. Those considered before the applications were made were looking for a permanent base.<sup>49</sup>
- 5.3.34. It was suggested that people wanting business aviation in and around LAA would be using it now but the facilities have not been fully marketed in that way, and key operators such as Netjets are unlikely to be aware of LAA's potential. Moreover, this does not deal with the predicted levels of demand or the constraints in the London system. It is erroneous to assume that the growth in demand would principally arise from people in central London. The business aviation market is driven by where the relevant end user in this country is likely to live, and accessibility into London from end users out of the country. It is wrong to assert that the mass of the wealthy population live in London and its suburbs, and in any event the majority of growth predicted in the future is likely to arise in the east where the major development areas are.<sup>50</sup>
- 5.3.35. It is misplaced to rely on past marketing activities at LAA, since the ILS was installed in 2006, as evidence of a lack of potential. LAA never employed a dedicated marketing team, let alone consultants with knowledge and experience of the market. The 2006 Marketing Brochure was misconceived and didn't market LAA in the required way. It promoted routes and airlines without relating them to the catchment area. LAA has not yet marketed its business capabilities properly to operators, although it has experienced

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<sup>47</sup> CD8.22 App B.12.3, LAA/4I Paras 16-20, Ms Congdon XX by RSPB Day 15

<sup>48</sup> LAA/119 Para 4.13.9, Ms Congdon XX by RSPB Day 15

<sup>49</sup> CD1.14, LAA/4I Para 4, LAA/119 Paras 4.13.10-4.13.12, Ms Congdon XX by RSPB & NE Day 15

<sup>50</sup> LAA/119 Para 4.13.13, Congdon XX by RSPB Day 15

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growth in this area. Proper marketing would only accelerate the growth that would occur.<sup>51</sup>

- 5.3.36. It is suggested that the “with development” scenario would generate more movements at dawn and dusk, critical times of day for birds, at certain times of the year. However, LAA’s proposals would be unlikely to attract a based-airline operation and it is unlikely there would be many early morning or late evening flights, in contrast to the existing situation. A typical busy day schedule, based on experience elsewhere, sets out expected flights. Commercial passenger flights would mostly occur at the least sensitive times of day in terms of bird movements, as compared with business aviation movements that currently occur and would continue to increase. The Transport Assessment (TA) does not provide an indication of flights as it took a worst case scenario of modelling traffic at peak hours, as required by the highway authorities.<sup>52</sup>
- 5.3.37. Reference has also been made to a Report by Airport Solutions on the Proposed Bird Control Management which queries aircraft types. The assumptions are based upon Code C aircraft and it is not necessary to be prescriptive about variants. In assessing terminal capacity a B737-800 with 189 seats has been used as a benchmark representing the highest seating capacity and largest potential numbers of passengers on a flight. It cannot be assumed that this would be the only type of aircraft that would operate. Reliance on a B737-300 is out-of-date as they are being phased out and only make up a very small proportion of airline fleets expected to operate. JAT Serbia and Lufthansa, mentioned by Airport Solutions, are unlikely to operate from LAA. Many airports operate substantial commercial passenger services under an Ordinary Use Licence and a Public Use License would not be required<sup>53</sup>
- 5.3.38. Airport Solutions suggests potential delays from the use of a “warn and hold” approach to managing bird risk. Such delays are not anticipated, but would not undermine the reduced flying times from LAA even if they were to occur. In any event, Airport Solutions assumptions on the nature and frequency of operations to Belfast, Dublin, Edinburgh and Glasgow are wrong. They would amount to less than 8 flights per day, 4 arrivals and 4 departures, at the peak of operations. It is not anticipated that LAA would serve the major European city destinations and the whole premise of delays is unfounded.<sup>54</sup>
- 5.3.39. There is no basis for the contention that there is “no real prospect” of the fallback occurring. A freight operator wanted to start operations but matters were not pursued because the 2006 applications, with the proposed cap on night flights, would prevent such operations. The facilities for freight could be provided in any of the existing buildings and no new buildings would be required. There is also the ability to load cargo planes directly from trucks as happened at Coventry. MRO would be on the basis of no new hangerage. The servicing of different types of planes would not constitute a

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<sup>51</sup> LAA/4G Para 2.33-2.35, LAA/119 Para 4.13.14, Ms Congdon IC Day 14

<sup>52</sup> LAA/4G Paras 3.2-3.4 & Tables 3.1-3.4, LAA/119 Para 4.13.15, MS Congdon XX by RSPB Day 15

<sup>53</sup> LAA/4C App C, LAA/4G Paras 4.6-4.7, LAA/119 Paras 4.13.16-4.13.17, NE/1E App 6

<sup>54</sup> LAA/4G Paras 4.8-4.10, LAA/119 Para 4.13.18

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change in MRO business and has occurred in the past as different planes were based at LAA. In the absence of calling its own expert, NE is bound by the answers of LAA's witness.<sup>55</sup>

- 5.3.40. NE/RSPB do not appear to dispute the relevance of the fallback situation in the planning context, only in the context of the *Habitats Regulations*. This would lead to the illogical position that it was considered in assessments of impacts on SSSIs, but not for an SPA. In the context of the *Habitats Regulations* and ornithology, the proposals would satisfy the relevant tests without taking account of the fallback situation but the position if they did not has been considered.<sup>56</sup>
- 5.3.41. It is contended that the fallback could not be assumed as it would amount to a plan or project and require the *Habitats Regulations* to be satisfied. This is inconsistent with NE/RSPB's contention that the growth of business aviation has already been implemented, with the FBO being built and marketing having occurred, although they accept that existing levels of business jet aviation do not have any effect. There is no indication of when natural increases in business would become a "plan or project". If growth had been a "plan or project" requiring an AA, legal action would have been raised or taken. There is no plan for growth only to meet incremental demand year on year and the predicted increases in business aviation are not substantial over a 20 year period. Finally, the analogy with *Akester* is flawed, as that involved a physical intervention with the protected designated site, where continuation of LAA's business does not.<sup>57</sup>
- 5.3.42. If it is right that the fallback cannot be taken into account, because it might engage the *Habitats Regulations*, there is a logical consequence. If growth in permitted activities cannot be implemented without complying with the *Habitats Regulations*, the same is true of the activities for which permission is sought. LAA could not implement the permissions, if granted, without complying with the *Habitats Regulations*. The SoS could lawfully grant planning permission, even if there were residual concerns about SE/AE on the integrity of the designated sites as he would know that the plan or project could not be implemented unless the Airport has complied with its own duties under the *Habitats Regulations*.<sup>58</sup>
- 5.3.43. Objectors seek to assess the benefits of the proposals against the highest theoretical baseline scenario and the environmental effects against a status quo, even though these positions are mutually inconsistent. Little or no weight can be ascribed to such objections. CPRE appears to believe that the development would attract additional training related circuits and night movements. The latter would be controlled by condition, a restriction that does not exist, and no additional training related circuits would be generated by the development. It is only without the development that LAA would be reliant on existing forms of aviation activity including circuits and night flights where possible.<sup>59</sup>

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<sup>55</sup> LAA/119 Paras 4.14-4.15, NE/04 Para 55, Ms Congdon RE Day 16

<sup>56</sup> LAA/119 Paras 4.16-4.17

<sup>57</sup> LAA/119 Para 4.18-4.18.3, Ms Congdon XX by RSPB Day 15

<sup>58</sup> LAA/119 Para 4.19

<sup>59</sup> LAA/119 Paras 5.51-5.52, LAAG /8A Para 4.1, LAAG/10A Para 3.3

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## Need

- 5.3.44. LAAG argues that there is no need for the proposals because of the existence of Manston Airport, the Channel Tunnel and the fact that LAA could already accommodate passenger flights if there was a demand. However, there is a local demand that would be served by what is proposed. The Channel Tunnel would not compete with the potential routes to be served by LAA and comparative journey times by rail illustrate the attractiveness of travel by flight to more distant destinations.<sup>60</sup>
- 5.3.45. LAA and Manston serve different local catchment areas that have been analysed by reference to CAA data. They have different drive time catchment areas with only some overlap of a 1 hour catchment, and a very limited overlap of the 40 minute catchment area. The main competition is Gatwick which is close to capacity. LAA has 2.5 million passenger trips within 1 hour of Lydd compared with 1.8 million for Manston, and the need for a local opportunity to meet that need is greater for LAA than Manston. That Manston has not thrived says nothing about its future as it is likely to be more dependent upon spill from the London airports that have not yet reached their capacity, although projected to do so by 2020. The claimed superior infrastructure at Manston is not likely to be a relevant factor for airlines because the facilities at LAA would meet their needs. The more important factor is the location relative to the existing local demand.<sup>61</sup>
- 5.3.46. LAAG also claims that LAA could not operate profitably at 500,000ppa. The analysis of comparative profitability of other airports that LAAG relies on fails to address the nature of LAA, its ownership, and the portfolio of FAL Aviation UK Ltd, Phoenix Aero Engineering which operates on site and the Lydd Golf Club and Driving Range where a major hotel development is planned. It is the combination of these assets against which LAA's profitability is assessed by the owners, and the comparative position is more akin to airports like Bournemouth and Humberside which have income from ancillary activities. FAL Holdings is a long term investment by a multi-national, multi-sector conglomerate with a consolidated balance sheet. The costs of owning an operational airport at Lydd that can be used by the company along with a smaller fleet of aircraft would need to be included but has been ignored. Each of the Airports relied on in the report have particular circumstances that render comparison inappropriate.<sup>62</sup>
- 5.3.47. If there were an issue of operating viably at the maximum level for which permission is sought then there would be no basis for objection. If it operated unprofitably there would still be the restrictions on operations that would have been imposed. Any future proposal to expand operations would have to be subject to assessment and consent pursuant to an application.<sup>63</sup>

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<sup>60</sup> LAA/4I Paras 36-39, LAA/4D Para 4.3, LAA/119 Paras 5.40 & 5.43, LAAG/6A

<sup>61</sup> LAA/4A Paras 4.12-4.24, 5.40-5.42, LAA/4D Paras 4.2, 4.14-4.19 & Fig 4.1, LAA/119 Paras 5.41-5.42

<sup>62</sup> LAA/4D Para 3.6, LAA/119 Paras 5.63-5.66, LAAG/8A Para 8 & App A, LAAG/8B App 2, LAAG/11A Paras 26-34

<sup>63</sup> LAA/119 Para 5.67

#### 5.4. Ecology

- 5.4.1. Proposals for an Airfield Biodiversity Action Plan (ABAP) have been set out drawing from specialist knowledge of airfield wildlife, local knowledge and the Kent Biodiversity Action Plan (BAP).<sup>64</sup>
- 5.4.2. The ABAP is designed to be flexible and requires the involvement of stakeholders such as NE and KWT. It is essential that key habitats and species are selected and that the BAP is effectively implemented. An expert panel, including representatives from NE, KWT, Buglife, and Butterfly Conservation would review the species and habitats and agree a plan, including a baseline survey, annual monitoring against the baseline, and an annually reviewed target for maintaining or increasing site populations. An ABAP report would be compiled each year and reviewed by the panel which could add or remove species but with a maximum of three habitats and seven species.<sup>65</sup>
- 5.4.3. Survey work and an assessment of the impact of lighting on moths is set out in the ES and further statements. An assessment approach has been agreed and an annual monitoring programme would be carried out for 10 years, commencing before any construction works. An annual report would be made available for study and discussion. In addition to the mitigation set out in the ES, internal and external lighting would be minimised between 23:00 and 07:00 hours. Any security lights would be linked to movement sensors, dimmed to minimum intensity and hooded to prevent light spillage.<sup>66</sup>
- 5.4.4. Assessments carried out for the applications have been independently examined for SDC, and further expert evidence has been presented by LAA's consultants at the Inquiry. Common ground has been reached and objections withdrawn in respect of all matters of ecological interest except birds.<sup>67</sup>
- 5.4.5. NE and/or KWT originally suggested concerns in respect of species, some of which are protected, principally in connection with proposals for new drainage ditches and a potential future roundabout at Hammond's Corner. The species of specific concern were: great crested newt, common lizard, grass snake, water vole, medicinal leech and other aquatic invertebrates and bats. KWT also raised concerns in respect of moths and other invertebrates, particularly with regard to lighting. NE and KWT are now satisfied that all these species would be fully protected and the proposals would have no significant effects, or unacceptable impacts, with agreed conditions/obligations in place. NE and KWT's positions (including KWT's satisfaction with the lighting strategy in respect of moths) were formally recorded in SCGs.<sup>68</sup>
- 5.4.6. Not only is it common ground that there would be no adverse effect, but there would be a number of significant ecological benefits for a number of

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<sup>64</sup> CD4.13, CD1.45, LAA/9D

<sup>65</sup> CD4.13

<sup>66</sup> CD1.32, LAA/9D, KWT/3A, KWT/3D, CD4.14

<sup>67</sup> LAA/119 Paras 10.1-10.3

<sup>68</sup> CD4.11, CD4.12, CD4.13, CD4.14, CD4.16, LAA/9A-E, LAA/119 Paras 10.4-10.9, Mrs Dear IC & XX by LAA Day 23

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important species and flora that would only occur if the development proceeds. The runway extension requires the re-organisation of some of the existing drainage ditches. 800m of existing ditch, 250m of which lies within the existing SAC, would be infilled. However, there would be a new 1300m section of ditch, a net addition of 500m of ditch habitat. The ditches are considered to provide potentially important habitat for a number of species, including aquatic invertebrates, invertebrates, water vole, great crested newts and reptiles.<sup>69</sup>

- 5.4.7. The use of comprehensive construction species protection plans would ensure that the existing species would be properly preserved and translocated where necessary. The new habitat created would be fully prepared and better than that which it would replace. The proposed new ditches would be engineered to be suitable for water-vole.<sup>70</sup>
- 5.4.8. So far as the SAC is concerned, all parties agree that the development proposals, with the conditions and obligations attached, would not be likely to have any significant effect on the SAC nor have any adverse effect on the integrity of the SAC. So far as all other designations and policies are concerned, all parties agree that there would be no adverse effects and no basis for objection to the proposals.<sup>71</sup>

## 5.5. **Air Quality**

- 5.5.1. The effects of the proposals in terms of air quality in relation to the construction of the development, and the aircraft and ground activities at the Airport, have been fully assessed and demonstrated to be satisfactory both in terms of the environment and human health.<sup>72</sup>

### **Air Quality and Ecology**

- 5.5.2. The principal objection raised in terms of air quality was the potential impacts of nitrogen deposition on flora and fauna, in particular effects on the SAC and SSSI. Following discussions between experts, NE accepts that nitrogen deposition arising from the proposals would be unlikely to affect the integrity of the SAC in relation to the important vegetation communities and would not be likely to significantly damage the same in the SSSI. It is now common ground that, subject to conditions and a Section 106 Agreement, there are no outstanding objections to the proposals on this basis. NE and KWT are both satisfied that, with the measures proposed, the proposals would not have any adverse impacts on any of the flora, particularly lichens, or fauna.<sup>73</sup>
- 5.5.3. Not only is there no objection on these grounds, but the measures proposed would enhance the protection of, and the conditions for, the flora and fauna identified as of concern. LAA commissioned a report on lichens which identified that it was the impact of other surrounding land uses, in particular agricultural activities, rather than the Airport that played a significant part in determining the quality of the lichen heath and epiphytic lichen in the

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<sup>69</sup> LAA/119 Paras 10.10-10.12, Mrs Dear XX by LAA Day 23

<sup>70</sup> LAA/119 Paras 10.13.1-10.13.4, Mrs dear XX by LAA Day 23

<sup>71</sup> LAA/119 Para 10.13.6

<sup>72</sup> CD4.2, LAA/8A, LAA/119 Paras 6.4.1 & 9.1

<sup>73</sup> CD4.2, CD4.9, CD4.10, LAA/119 Paras 9.3-9.9

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vicinity. This is hardly surprising given the use of fertilisers. The report concluded that an enhancement could be achieved by reducing the areas of open arable land in the vicinity of the SSSI by conversion to non fertilised and extensively managed meadows, so that the drift of agrochemicals and soil particles by air and water during occasional flooding of the lower grounds on and around the airport could be reduced. It also suggested that a strict ban on the use of pesticides, particularly fungicides, would be beneficial.<sup>74</sup>

- 5.5.4. The proposal would have that direct positive effect. The runway extension would take existing unregulated agricultural land and use it for the development with consequential surrounding grass management. There would be a significant net reduction in the amount of potentially damaging agricultural land in close proximity to the lichens and flora that NE and KWT were concerned about. Furthermore, the measures proposed in the conditions and Agreement would implement a raft of monitoring to provide for the protection of these lichens in a way that would not otherwise exist.<sup>75</sup>

### **Air Quality and Health**

- 5.5.5. Potential impacts on health are dealt with in the ES, which was independently reviewed by SDC's consultants and demonstrates that there would be no impacts. Supplementary Information was provided in 2007, further modelling and information was provided in December 2009 and January 2010 demonstrating no material effects and the robustness of the modelling. Despite this, assertions are made by CPRE about potential impacts on human health. The airport's activities would have a negligible effect given existing background pollutant levels and concentrations would remain well below the UK's *Air Quality Strategy* standards for the protection of human health.<sup>76</sup>

### **5.6. Ornithology**

- 5.6.1. The only outstanding issue as far as NE/RSPB are concerned is the potential effects of the proposals on birds. The objection is articulated in the context of the *Habitats Regulations*. They do not allege that the proposals would have any likely significant effects on any of the designated sites or that they would adversely affect the integrity of those sites. The highest the objection is put is that the evidence does not demonstrate that there would not be likely significant effects and, assuming an AA is required, that there would not be an adverse effect on the integrity of the designated sites. The areas of concern are the measures to control birdstrike under the Bird Control Management Plan (BCMP) and the potential for disturbance of certain species in some locations by aviation activity.<sup>77</sup>

### **General Issues**

- 5.6.2. NE/RSPB's witness on the topic, who merely expresses concerns, has no professional experience, practical or academic, in this field. LAA's two

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<sup>74</sup> LAA/8D p.23 and following, LAA/119 Paras 9.11-9.13

<sup>75</sup> LAA/119 Paras 9.14-9.17

<sup>76</sup> CD1.14-CD1.19, CD1.23d-f, CD1.45, CD1.51, LAA/4A Para 1.2.12, LAA/8D Paras 2.3.1-2.3.3, LAA/119 Paras 9.18.1-9.19, CPRE/4A, CPRE/8A, CPRE/10A

<sup>77</sup> LAA/119 Para 15.1-15.4, Dr Underhill-Day XX2 by LAA Day 39, Mrs Dear XX by LAA Day 23



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independent experts are highly experienced ornithologists who specialise in assessments of birds and aviation, and have extensive experience. Positive evidence is produced, from a review of the available scientific literature but also grounded in the experience and expertise of the two experts, as to why there would be no likely significant effects either to birds or the designated sites.<sup>78</sup>

- 5.6.3. NE is the statutory consultee under the *Habitats Regulations* but NE/RSPB speak as one on this topic. NE has, in the past, pursued objections based on ornithological interests that have been scrutinised and rejected by Inspectors and the SoS. One example is the wind farm at Little Cheyne Court where NE relied on a joint case with RSPB that had similar themes to this case. A second is the objection to the scheme that gained planning permission in 1992. That is relevant as NE's contention that permission could not be granted in that case was fully investigated, with particular consideration of aviation effects on birds, and rejected. These decisions were not provided by NE/RSPB to their witness.<sup>79</sup>
- 5.6.4. At Little Cheyne Court there was a common position informed by local officers and ornithological specialists. In this case, NE's officers and ornithological specialists have had no input into the objection. It is entirely reliant upon that of RSPB, which has its own agenda in respect of air travel and climate change. NE's reliance upon RSPB, without taking any independent advice, contrasts with the position in 1997 when NE concluded that it wouldn't object to a renewal of the 1992 permission as it wouldn't have any material adverse effect on ornithological interests. This is the only NE expert view known to the Inquiry. NE's abrogation of its judgments to a single person within RSPB undermines the weight to be attached to its views and has compromised its role as statutory consultee.<sup>80</sup>
- 5.6.5. NE did not consult RSPB's Area Manager, who worked on site on a day to day basis, to ascertain whether any past or existing activities were causing difficulties. NE confirmed orally that it was not positively asserting that there were likely significant effects to the designated sites. Objections to the concept of netting and that the development might affect future enhancements to any of the designated sites were withdrawn. Even if a future enhancement wasn't implemented, that could not affect the integrity of a designated site.<sup>81</sup>
- 5.6.6. NE/RSPB allege that the applicant and SDC have asked the wrong questions under the *Habitat Regulations*. LAA and SDC have been scrupulous in recognising all the designated sites, and the legal framework that applies to them, whether by law, or by policy as in the case of the pSPA and pRamsar. Whilst SDC took the view that an AA was required for its decision, it is common ground that it is for the SoS to reach his own view in light of the evidence now before him.<sup>82</sup>

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<sup>78</sup> LAA/119 Paras 15.5-15.13

<sup>79</sup> CD 9.23a Paras 419, 414-465, CD9.23b, LAA/119 Paras 15.14-15.16, NE/04 Para 3, Mrs Dear XX by LAA Day 23

<sup>80</sup> CD 9.23a Para 421, LAA/119 Paras 15.17-15.20, Mrs Dear XX by LAA Day 23

<sup>81</sup> Mrs Dear XX by LAA Day 23

<sup>82</sup> RSPB/6 Para 9, LAA/15.23

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- 5.6.7. The tests are whether a plan or project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and, if a significant effect appears likely, an AA must be made of the implications for the site in view of its conservation objectives to ascertain if the plan or project would adversely affect the integrity of the site. RSPB does not say that there are likely significant effects on the designated sites, which is the threshold under the *Habitats Regulations* before requiring any AA, but seeks to reverse the position by saying that the evidence does not demonstrate that there would not be likely significant effects.<sup>83</sup>
- 5.6.8. LAA and SDC have considered the effects of the proposals in terms of bird control and noise disturbance. It is not acceptable for NE/RSPB to rely on alleged concerns without identifying any real risk of the effects arising. Moore-Bick LJ in *R(Bateman) v South Cambridgeshire District Council* [2011] EWCA Civ 157 at paragraph 17 observed in the context of the test under the *Habitats Directive* that something more than a mere bare possibility is required though any serious possibility would suffice. RSPB's concerns do not assess possibility and are not supported by any evidence to show anything like serious possibilities of significant effect.<sup>84</sup>
- 5.6.9. The tests are concerned with effects on the integrity of the designated sites, not on individual birds. It is clear that disturbances to birds, or even deaths that would not impact upon a species at population levels, would not have such effects on the designated sites. Whilst asserting the possibility of effects on species, through bird-scaring or disturbance, NE/RSPB do not identify any serious possibilities that effects on any of the species would adversely affect the integrity of the designated sites. This point features in both the Little Cheyne Court decision and the SoS's 1992 decision but is ignored by NE/RSPB.<sup>85</sup>
- 5.6.10. SDC identifies that in considering any adverse effect to the integrity of the designated sites for the purposes of an AA, the advice in paragraph 20 of *Circular 6/2005* is that one examines the integrity of the site as a whole, where integrity is defined as the coherence of its ecological structure and function across its whole area that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified. NE/RSPB do not point to any evidence that the levels of populations of any of the species concerned would be affected, even if the disturbance effects they have raised were to occur. Such an effect to the designated sites, with their huge areas and numbers of birds, are inconceivable from what is proposed.<sup>86</sup>
- 5.6.11. Despite aviation activity, the ornithological interest of Dungeness has gone from strength to strength as reflected by the existing and proposed designations. The correlation between aviation activity and bird interest was investigated at the 1988 Inquiry into proposals to extend the runway to

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<sup>83</sup> LAA/118 3.23-3.25, LAA/119 Para 15.24

<sup>84</sup> LAA/119 Paras 15.25-15.26

<sup>85</sup> LAA/119 Para 15.27

<sup>86</sup> LAA/119 Para 15.28, SDC/108 Para 37(1)

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permit larger jet aircraft to fly from the Airport. The application was made in respect of an existing operational airport facility as in this case.<sup>87</sup>

- 5.6.12. At the time of the 1988 Inquiry the SSSI to the south of the Airport had been designated, the RSPB Reserve was in existence, the area that is now an SPA was a pSPA and the pRAMSAR was in existence. Both of these were treated as if they enjoyed actual legal protection under the *Directive*. The Inquiry considered the various gravel and other pits and wetland areas throughout the SSSI, including Lade Pit, for all their ornithological interest.<sup>88</sup>
- 5.6.13. The history of the Airport demonstrates the interaction between aviation and birds over a number of years. Activity has fluctuated over the years. The 1988 Inquiry had data on the aircraft types and movements for the years 1978-1988 are set out in the 1988 Inspector's report. In 1978 there were 38,900 movements, virtually the maximum number for which permission is now sought, and in 1979 that figure rose to 60,900. A SCG sets out details of aviation activity at LAA in the period 1954 to 1960 and 1961 to 1973. There were very few movements in 1970-1972, and recently movements have again declined, but there have been sustained periods when far greater numbers of aircraft, with large jets and turboprops that were considerably noisier than the aircraft flown today, were regularly flown into and out of the Airport. This includes Chapter 2 aircraft which were so noisy that they are now banned from use in the UK. The Airport was also used by business jets and general aviation, as well as both civil and military helicopters.<sup>89</sup>
- 5.6.14. The flightpaths for the Airport during this period directly affected the RSPB Reserve and all of the designated sites more than they would now. The exclusion zone around the Dungeness power stations was only introduced after 2001 and aircraft could take off and take a left turn directly over the Reserve, pSPA, and pRamsar areas and fly directly out to the south. The flightpaths passed directly over Burrowes Pit, the location of nesting tern colonies established in 1978 and flourishing during 1978-1988 when movements peaked. The only restriction was that they could not directly overfly the power stations at a height below 2,000 feet.<sup>90</sup>
- 5.6.15. The 1992 permission involved a take-off for larger aircraft, the 6,000 permitted movements of aircraft over 5,700kg, along a corridor over the RSPB Reserve. This is flightpath D4 on the Section 52 Agreement Plan that was part of the 1992 permission. The Agreement required the Airport to use reasonable endeavours to ensure that at least 50% of departures took place on the southerly route and permitted all of the larger jets to fly along D4. Under the current proposals, the majority of jets would fly north over Lydd given the operation of the Ranges, with only a comparatively small number having the option of flying over the Ranges to the south, and no option to fly along D4 that does not exist for larger aircraft. LAA is prepared to accept a condition preventing larger aircraft from flying over the Ranges if the SoS thought it necessary.<sup>91</sup>

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<sup>87</sup> CD4.6, LAA/119 Paras 15.32-15.33.1, RSPB/1 Para 3.1

<sup>88</sup> CD8.27(d) IR Paras 2.2, 2.4-2.5, LAA/119 Para 15.33.2

<sup>89</sup> CD4.6 Apps 5a-b, CD8.27(d) IR Para 3.4, LAA/5G, LAA/119 Paras 15.30-15.33.4

<sup>90</sup> CD8.278(a) DL Para 15 & (d) Para 5.25, LAA/119 Paras 15.33.5-15.33.6

<sup>91</sup> CD8.6 Sched 1, CD8.23 Para 5.27, LAA/119 Para 15.33.7

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- 5.6.16. NE/RSPB objected to the earlier proposal relying on the SSSI, pSPA and pRamsar designations in respect of the ornithological interests and the *Directive* requirements to prevent impacts. As now they relied on the range of species, what were regarded as international and nationally important levels of the species, and the nature of the area as a breeding, wintering, and migratory area. However, they identified that the “principal bird species at risk from disturbance by aircraft” were Sandwich and Common Terns as they were “particularly sensitive”. They asserted potential adverse effects to these terns in circumstances where the identified noise levels were predicted to exceed 90-95dBA. Although NE/RSPB’s objection related to effects to all the species of interest, it is clear that their principal objection related to the most sensitive species, terns, such that if they were not significantly affected, there was no basis to conclude any other species would be significantly affected.<sup>92</sup>
- 5.6.17. In granting permission for the earlier proposal the SoS agreed that the birds “had bred successfully at Burrowes Pit since 1978 and that any variation in breeding success during that time did not correspond with variations in aircraft movements at Lydd Airport”. The scientific evidence relied upon by NE/RSPB at that time is not materially different to that which they rely upon now. The main scientific development since then, the recognition that an effect does not constitute an impact, only serves to strengthen the absence of any impacts occurring.<sup>93</sup>
- 5.6.18. At the time of the 1992 decision, it was reported that there was no evidence of decline or any problem from low flying aircraft and helicopters in respect of tern colonies in Shetland, Orkney and at an RSPB reserve. Of the 6 NE offices consulted, two had no data on the effects of civil aircraft, two reported no particular problems involving civil aircraft, and two reported that gull and/or tern colonies co-existed at airfields with no apparent harm to their numbers. Moreover, the Irish Wildbird Conservancy had confirmed that after an extensive survey, it had found there to be no threat to the seabird colony at Dublin airport which was overflowed by aircraft at a height of about 1000ft. Neither NE nor RSPB sustained any concern as to the impact on birds from bird-scaring activities at the Airport which would have been, and would continue to be, an inevitable part of the operations.<sup>94</sup>
- 5.6.19. The 1992 decision is relevant and in light of it concern that the proposals might affect the re-colonisation of Burrowes Pit by terns is unfounded. Not only was there no effect on bird species from aviation, including this most sensitive of birds, but the evidence indicates that some birds view aviation activity positively. In particular Cetti’s Warbler already breeds on the Airport in areas subject to LA<sub>max</sub> contours in excess of 85dB. There is no evidence of any material change that would alter the conclusion reached in 1992 that there were no likely significant effects.<sup>95</sup>
- 5.6.20. NE, then English Nature, after consulting RSPB, did not object to renewal of the 1992 permission in 1997 as it was not aware of any further evidence

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<sup>92</sup> CD8.27(a) Para 15, CD8.27(d) Sect 5, LAA/119 Paras 15.33.8-15.33.9

<sup>93</sup> LAA/119 Paras 15.33.10-15.33.11

<sup>94</sup> CD8.27(d) Para 3.54 & 3.59, LAA/119 Paras 15.33.12-15.33.13

<sup>95</sup> LAA/119 Paras 15.34-15.35, Dr Underhill-Day XX by LAA

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regarding the impact of aviation on birds. Indeed, because there were no objections on “bird grounds”, NE invited the Airport to withdraw its objection to the pSPA. NE/RSPB were unable to identify any material change in circumstance between 1992 and 1997 to justify an objection and are equally unable to identify any such material change between 1997 and the present day. RSPB’s own assessment is that the scientific material does not demonstrate that there would be any significant effect on birds from the type of aviation proposed.<sup>96</sup>

- 5.6.21. In closing NE identified four unjustified changes. Firstly, it is only partially true that the 1992 development differs from that now proposed. The first current application is for a runway extension shorter than that permitted in 1992. The second is for a new terminal building but no objection has ever been taken to its construction. A new terminal does not affect the maximum number of aircraft movements or types, or the LA<sub>max</sub> noise levels that were in issue in 1992. The 1992 limit on the number of jets restricted aircraft above 5,700kg to 6,000 movements pa. The current proposals are only predicted to involve some 3,600 movements of the larger aircraft. Moreover, the aircraft now contemplated are quieter than those identified then and so do not affect the validity of the 1992 conclusions regarding disturbance on birds. Indeed, the absence of flightpath D4 over the Reserve strengthens the relevance of the 1992 decision.<sup>97</sup>
- 5.6.22. Secondly, the terms of the 1997 NE letter make clear that the author did not regard the fact that the application was for a renewal as inhibiting the ability to consider the principle of the development permitted in 1992.<sup>98</sup>
- 5.6.23. Thirdly, NE asserts that it is no longer Government policy that a balance can be struck between protecting designated sites and economic growth. Whilst the 1987 *Circular* refers to protection of economic growth as a consideration, the 1992 conclusions on bird disturbance were not reached on that basis. The author of the 1997 letter makes it clear that the consideration of the renewal of the 1992 permission was in light of the new guidance, and the approach demonstrates application of the relevant tests.<sup>99</sup>
- 5.6.24. Fourthly, it is claimed that “the sites have changed”. In 1988/1992 the SPA was a pSPA, but was treated as an SPA, and the pRamsar and SSSI already existed. In any event, the exact status of any designation is irrelevant to the question of impacts of aviation on birds in real terms. Birds do not know whether they are in a pSPA, an SPA, a SSSI or a pRamsar. Whilst there are new waterbodies, reed beds and species, the 1992 conclusions were reached in respect of aircraft overflying waterbodies in a pSPA with a nesting tern colony, with noise levels in excess of 90-95dB LA<sub>max</sub>. That conclusion would apply to any waterbodies or reed beds now in issue which are not overflowed in the same way, and are subject to much lower noise levels. In terms of species some, such as terns, have left and NE has not identified what “new” species there are, or why they would affect the 1992 conclusions.<sup>100</sup>

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<sup>96</sup> CD12.39, LAA/119 Paras 15.36-15.37

<sup>97</sup> CD8.27(d) Para 3.6, NE/04 Paras 261-264, LAA/119 Paras 15.38-15.40

<sup>98</sup> LAA/119 Para 15.41

<sup>99</sup> LAA/199 Paras 15.42-15.32.3

<sup>100</sup> LAA/199 Para 15.43

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- 5.6.25. RSPB also claims a material change of circumstance in closing, asserting that the “baseline” of current activity today is “incomparable” with the baseline “with which the SoS in 1992 was faced” Whilst RSPB’s witness had not been given the 1992 report and decision, he accepted its relevance. The relevance lies in what it reveals about past levels of aviation activity and birds, not the aviation activity in 1992. Indeed, the terns established their colony when movements had already reached 39,000. The tolerance of terns as a species to this level of aviation activity from commercial jet aircraft both in terms of noise and visual effects would not have changed.<sup>101</sup>
- 5.6.26. Secondly, it is apparent from the 1992 Inspector’s report that aviation levels peaked in 1979 when terns were established under the flightpath to the south. Subsequently tern numbers altered, due to factors such as predation, when aviation was in decline demonstrating that tern numbers are unrelated to aviation activity. That conclusion remains valid now. Thirdly at the time of the 1988 Inquiry, movements had dropped to 19,400pa in 1987 and 1,100 passengers. This compares with a baseline now of approximately 22,000 movements per annum, with passenger numbers having moved from around 2,817 in 2005 to 529 in 2009. The number of movements in the “current” baseline today is more than the “current” baseline before the Inspector at the 1988 inquiry, and whilst the actual number of passengers was less, that has no material impact on aircraft movements.<sup>102</sup>
- 5.6.27. RSPB’s contends that the levels of activity “paint a wholly different picture from that which LAA has assumed as the baseline by, for example, using the Gulfstream noise contour, when flights by that size of plane are so few as to make that a wholly unrepresentative proxy for the current noise environment”. The Gulfstream noise contour has never been given as a proxy for the “current noise environment”. It is representative of the noisiest LA<sub>max</sub> level experienced at the Airport when the Gulfstream V flies on its comparatively irregular flights proving that LA<sub>max</sub> at this level has no effect on any species of concern, including breeding and feeding sites within the 88dB and above contour, even when experienced irregularly.<sup>103</sup>
- 5.6.28. The current levels and types of activity demonstrate some important points. Although the Airport is operating at lower levels of activity than in the past, that still includes:
- i) Flights by business jets, including the Gulfstream V, a jet not significantly smaller than a B737 which generates noise on a less regular basis than would be the case with the proposals, but which causes no adverse effects to the designated sites or any species;
  - ii) Flights by large turbo-prop aircraft, including a scheduled passenger flight and a more regular turbo-prop cargo aircraft that operates at night;
  - iii) Many flights by GA aircraft which are permitted to turn left off runway 21 and fly low level circuits over the RSPB Reserve, the SPA, pSPA

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<sup>101</sup> LAA/119 Paras 15.45-15.49

<sup>102</sup> CD8.23(d) Para 3.4, LAA/119 Paras 15.50-15.52.

<sup>103</sup> LAA/119 Paras 15.59-15.67, SDC/108 Para 47, RSPB/6 Paras 25 & 32-33

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and pRamsar, without causing any adverse effects to birds or these sites; and

- iv) Flights by both civil and military helicopters, including those which fly in the Lydd military areas.<sup>104</sup>

- 5.6.29. Despite the continuation of such activities over many years, there has not been any justified complaint from RSPB or any recorded incident of any bird or species in any habitat being disturbed in recent years. The effects in the scientific literature relied on by RSPB are cases where non-jet aircraft were flown directly at, or in the vicinity of, birds at low levels, where the birds had not had any opportunity to habituate to such aviation, or where the noise and effect might well be similar to that associated with a predator. Notwithstanding the scientific literature, no such adverse disturbance effect, even from light aircraft or helicopters, is experienced by any species in and around the Reserve at Lydd.<sup>105</sup>
- 5.6.30. NE/RSPB confirm that current operations, including business jets, turbo props and scheduled flights, do not result in any material adverse effects on the Reserve. RSPB's Manager at Lydd had worked for RSPB on a number of reserves over a period of 35 years but did not produce any evidence of, or identify, any impacts on birds from aviation. The Reserve Manager confirmed that he had not noticed aircraft flying out on the southerly route either because the Ranges were in use or because it is not noticeable. In addition, there are no complaints or effects noted in any of the RSPB's visitor survey answers. Although some visitors occasionally comment on light GA activity, this is consistent with the fact that GA can and does regularly fly over the reserve on the permitted circuit. However, no one had alleged a disturbance to birds, or made any comment or complaint regarding jets, helicopters or turbo-prop aircraft.<sup>106</sup>
- 5.6.31. The only event mentioned in evidence is the Gulfstream V on 15 November 2010, which is not logged anywhere or notified as a complaint. Despite the fact that the Gulfstream V had, and continues, to operate once every 15 days on average, no one has ever raised any concern about its operation or identified any disturbance effect. There has been 8 months since then when, had the continued operation of this aircraft caused any disturbance, RSPB would have drawn it to the Inquiry's attention. The Reserve Manager confirmed that although the birds had been disturbed into the air at around the time the Gulfstream V left, he could not see them leave the ground and did not know why they might have been disturbed, or whether it was as a result of deliberate disturbance as part of the standard bird-scaring regime for a vulnerable business jet movement. In any event, the birds in question circled and then seemed to settle again in the same location, albeit that the ground where they were thought to take-off and land could not be seen.<sup>107</sup>
- 5.6.32. Although RSPB claimed not to have been notified of the B737 noise trial, it was widely publicised in the local press. RSPB's Manager experienced it from a vantage point in the Reserve even closer to the aircraft and runway

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<sup>104</sup> LAA/119 Paras 15.69-15.69.1

<sup>105</sup> LAA/119 Para 15.69.2

<sup>106</sup> LAA/119 Paras 15.69.3-15.69.7, Mr Gomes XX by LAA Day 10

<sup>107</sup> LAA/119 Paras 15.69.8-15.69.9, RSPB/3A Para 10.10

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than for the Gulfstream event, which he described as the noisiest aircraft he had ever experienced at the Airport despite experiencing the B737-300 trial. Neither he, nor any other person present, witnessed any birds reacting to the aircraft, notwithstanding that there would have been many birds present. What this confirms is that birds are not disturbed by this sort of aviation activity and are not deterred from airports. Many actively choose to nest or feed there. There is no basis for believing there would be a likely significant effect from the proposed aviation activities, let alone any reasonable scientific basis for concluding any adverse effect on the integrity of the sites.<sup>108</sup>

- 5.6.33. Finally, LAA's witnesses gave evidence of observations over a number of years. This is clear, reliable, expert evidence from ornithologists with extensive experience in the field and is corroborated by other evidence. Indeed, such practical experience was part of the evidence from NE reporting stations in the 1988 Inquiry. It exists in the ES Supplementary Information that refers to case studies at BAe Warton, Belfast City Airport, Derry Airport, Military Airports around the Wash SPA, Cape Wrath SPA, RAF Lossiemouth, Dundee Airport and Glasgow Airport that demonstrate that ongoing activities at these airports have not affected SPA species on nearby SPAs. RSPB has not challenged this material with the exception of one scientific paper that relates to desert ungulates, rather than birds. NE's closing refers to its own evidence, in the context of birdstrike, where the need for deterrent measures for SPA species close to airports, including Derry, Heathrow and Warton is asserted. The point made by LAA's witnesses is that birds are not scared by such aviation activity even at much busier and noisier airports.<sup>109</sup>
- 5.6.34. NE/RSPB do not point to any precedent or principle which suggests that practical experience from specialist ornithologists is not relevant. Taken together with a proper appraisal of the scientific literature, by an expert with experience in this area, it would be negligent, and in breach of the *Habitats Regulations*, to ignore such evidence.<sup>110</sup>

### **Bird Control Management**

- 5.6.35. Birdstrike needs to be understood in context. Notwithstanding graphic photographs of bird strikes there have only been three accidents in the UK due to birdstrike that have resulted in crashes. Two of those were business jets and one a turbo-prop. None involved commercial passenger jets despite the fact that they would be at lower altitudes for slightly longer than business jets. Business jets are more vulnerable than larger jets because the latter's engines have been designed to withstand a significant degree of birdstrike, whereas smaller jet and turbo prop engines have not. The types of business jet involved in the two crashes are both used at LAA and will continue to be used regardless of the applications. The CAA is satisfied that the airport operates safely. Indeed, it has one of the lowest incidents of birdstrike recorded, despite its proximity to the RSPB Reserve. GA is slower

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<sup>108</sup> LAA/119 Paras 15.69.10-15.69.12

<sup>109</sup> CD1.23(i), CD8.23(d) Paras 3.54-3.59, LAA/119 Para 15.73-15.73.4, NE/04 Para 135, Dr Underhill-Day XX2 by LAA Day 39

<sup>110</sup> LAA/119 Para 15.74



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and has greater scope for avoiding birds but spends more time in the lower airspace, particularly on circuits over the Reserve where birdstrike is more likely to occur, than either commercial passenger jets or business aircraft which climb rapidly. Indeed, the climb out rates of business jets are even faster than B737s.<sup>111</sup>

- 5.6.36. The starting point is that LAA is an existing airport that undertakes Bird Control Management measures. There would not be any material effect on the designated sites in terms of Bird Control with the development proposals but even if there were the fallback should be considered.<sup>112</sup>
- 5.6.37. The applications were supported by a Bird Conservation and Hazard Management Assessment within the ESs. This was supplemented by an Assessment of the Predicted Impacts of a Bird Hazard Control Programme for both applications and an updated BCMP. There is now a Bird Hazard Risk Assessment (BHRA) dated December 2010 and a further updated BCMP. These documents were prepared by a co-author of CAP 680, which is the predecessor of CAP 772 *Birdstrike Risk Management for Aerodromes*.<sup>113</sup>
- 5.6.38. There would be no likely significant effect on the SPA, pSPA, pRamsar and RSPB due to the applications and the BCMP. In any event, even if an effect were to occur, the proposals would not give rise to an adverse effect on the integrity of the SPA, pSPA, pRamsar and RSPB Reserve as a result of the BCMP. There is more than sufficient detail within BHRA to judge the environmental effects. Indeed, no case is made by the RSPB that the environmental information is deficient in order to make such an assessment.<sup>114</sup>
- 5.6.39. A SCG between LAA and NE on birdstrike risk confirms that the risk at LAA is manageable within current safety standards provided that the appropriate policies and practices are applied with sufficient intensity over an appropriate area. An AA, carried out by consultants for SDC, addresses the four main measures in a BCMP: habitat management; off-site land management agreements; safeguarding; and bird scaring activities. It states that there do not appear to be any reasonable grounds for concern that the first two would affect conservation objectives. This is reiterated in a revised AA. No assumptions have been made about off-site works. Only measures which it is known the Airport could carry out on its own land have been assumed. It would be wrong to rely on off-site measures that would be contingent on agreement with another landowner as there is no way of knowing whether such an agreement could, or would, be secured. The strike numbers associated with different strike frequency categories in the risk assessment matrix are not disputed and the BHRA methodology, techniques, and staffing structure are agreed as generally appropriate subject to a number of clarifications and caveats.<sup>115</sup>

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<sup>111</sup> LAA/119 Paras 16.1-16.7, NE/1A, NE/04 Paras 142 & 145, Mr Deacon IC & XX by NE Days 2-3, Dr Allan XX by LAA Day 6-8

<sup>112</sup> LAA/119 Para 16.8-16.9.2

<sup>113</sup> CD1.14, CD1.17, CD1.23c, LAA/6C Apps 1 & 2, LAA/119 Para 16.10, Dr Allan XX by LAA Day 6-8, Mr Gomes XX by LAA Day 10

<sup>114</sup> LAA/119 Para 16.11-16.11.2

<sup>115</sup> CD2.1 Para s 3.3.12-13, CD2.3 Paras 4.3.15-16, CD4.5, LAA/119 Paras 16.12-16.12.6

- 5.6.40. These include a shift in the bird control methodology at the airport from the previous system of short “bird scaring runs” to virtually continuous patrolling of the airport. This is already considered necessary to protect business jets and commercial turbine engine aircraft, requiring techniques which are additional to or different from those currently in use. It is necessary for safety purposes to manage hazardous birds in the fields immediately adjacent to the airport where possible. This may involve habitat management and/or the application of standard dispersal techniques within or possibly outside the airport boundary. In addition, scrub removal in areas closer to the runway and, where possible, the netting of airside water bodies to exclude hazardous birds is appropriate to help to reduce the birdstrike hazard associated with game birds and waterfowl.<sup>116</sup>
- 5.6.41. It is agreed in an SCG that Aerodrome Safeguarding is an essential component of the airport’s Safety Management System and that a compromise between air safety and conservation interests is usually achievable and some positive conservation measures would have no impact on the birdstrike risk. It is also agreed that safeguarding objections to future development proposals intended to enhance any of the designated sites could not, as a matter of logic, result in any harm to the existing integrity of the sites of the type to be assessed under the relevant *Habitats Regulations*<sup>117</sup>.
- 5.6.42. NE’s witness drafted the International Bird Strike Committee’s (IBSC) *Recommended Practices Note No 1*. This states that “in the opinion of IBSC, these standards should apply to any aerodrome carrying regularly scheduled commercial air traffic, irrespective of the movement frequency or type of aircraft involved”. The Standards set out in the *Practice Note* are minimum standards and the overall strategy is to make airports as unattractive to birds as possible. They apply with as much force to the existing operation as to the proposals.<sup>118</sup>
- 5.6.43. NE agreed that a trained and equipped bird/wildlife controller should be present on the airfield for at least 15 minutes prior to any aircraft departure or arrival. Standard 3 makes clear that where there are infrequent aircraft movements, such as less than one every 15 minutes, then this may not be long enough to disperse all hazardous birds from the vicinity of the runway and the controller should be deployed sufficiently in advance to allow full dispersal to be achieved. This indicates that in terms of bird dispersal measures, “more is less” as more movements could mean less necessity for obvious deterrent measures.<sup>119</sup>
- 5.6.44. LAA does not comply with some aspects of the *Note*. These include not fully complying with grass management advice, not denying access to water, and no properly trained and equipped bird/wildlife controller present on the airfield for at least 15 minutes prior to any aircraft departure or arrival. Whilst NE initially considered that the latter, which is required by Standard 3, was necessary, it later stated that it needn’t be complied with at LAA.

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<sup>116</sup> CD4.5 Paras 4.2.1-4.4.6, LAA/119 Paras 16.12.6.1-3

<sup>117</sup> LAA/119 Paras 16.12.8-9

<sup>118</sup> CD12.33, CD12.37, LAA/119 Paras 16.13.3-6, Dr Allan XX by LAA

<sup>119</sup> NE/1/A, NE/1/D, LAA/16.13.7

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Reference was made to “jaw dropping” numbers of waterfowl very early in the morning, before the Airport opened, leading to the view that it should be doing more now to reduce birdstrike risk given the presence of business aviation, which is most vulnerable to birdstrike risk, and the additional jet aviation activity allocated to the Airport for Olympic traffic in 2012.<sup>120</sup>

- 5.6.45. Although NE originally considered that the absence of smaller bird species in reported bird strikes suggested that such strikes are going undetected or unreported, it perversely suggested that the lack of detected bird strikes was a reason why Standard 3 need not be complied with. There is no existing problem and the lack of detected bird strikes is a reasonable indicator to assess risk. LAA already has a General Licence to Kill wild birds granted by NE, which permits action against key species beyond the airport boundary. In addition, a buffer extending from the perimeter of the airport is used now and is beneficial to push birds back. It is nonsense for NE/RSPB to claim that there is no current safeguarding now. This flies in the face of references to safeguarding responses in respect of the SPA designation, and RSPB’s creation of a reed bed in 2000 which did not create any difficulty for LAA.<sup>121</sup>
- 5.6.46. Three concessions were made by NE. Firstly, having regard to the mix and numbers of aircraft set out in the SCG between LAA and SDC, the birdstrike requirements would not be significantly different in the fall-back position from the position of a throughput of 500,000ppa. Second, given the large numbers of birds present at the airport now, the airport should seek to undertake changes now, if it could. Such management of birdstrike is necessary to protect the existing business jet use of the airport. Finally, in terms of safeguarding, any application that increased the incidence of hazardous birds crossing the airport should be the subject of objection now, having regard to the current level of use of the airport.<sup>122</sup>
- 5.6.47. The BCMP that forms the basis of bird control in the proposals includes detail on many matters, none of which is controversial. NE accepted that they would be acceptable and should be taking place already. Indeed, NE could not point to any steps or recommendations within the BCMP which should not be undertaken now irrespective of the proposals.<sup>123</sup>
- 5.6.48. Whilst criticism is made that the ornithological data underpinning the BCMP and BHRA is deficient, it was accepted that a Vantage Point Survey is not the only method of gathering relevant data. Less formal observation can form the basis for a data gathering exercise. This is what was done with LAA’s bird-controller’s observations, and data gathered by LAA for the ES, being used. NE expressly stated that it was not suggesting any species had been missed. RSPB’s Area Manager accepted that the number and species of birds at the Reserve fluctuated significantly year on year but that this was not due to activities at the Airport. RSPB confirmed that there was no criticism, of the BHRA in terms of the general pattern of birds around the Airport. Additional survey work is pointless in any event as RSPB confirmed

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<sup>120</sup> LAA/119 Para 16.13.8-10, Dr Allan XX by LAA

<sup>121</sup> CD2.13 App 6, CD12.39, LAA/119 Para 16.13.11-12, NE/04 Para 23

<sup>122</sup> LAA/119 Paras 16.13.13-15, Dr Allan XX by LAA

<sup>123</sup> LAA/6C App 2, LAA/119 Para 16.14, Dr Allan XX by LAA Day 7

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that Bewick's Swans use the ARC Pits then fly north-west to fields, but had done differently over the last three years. Similarly, White-Fronted Geese had this year been feeding between Cheyne Court and Lydd town and roosting on Cheyne Court and not flying across the Airport. This is relevant in terms of off-site works for an airport operating up to 20 years hence.<sup>124</sup>

- 5.6.49. There were minor errors in two graphs in the BHRA regarding goose and swan counts. The electronic data did not coincide with the paper counts that were used in making the assessment, as is clear from the body of the BHRA. Moreover, the amendment to the graph results in a change in only 8 data points of the 819 used. No one identified any substantive errors of assessment in the BHRA. Moreover, there is no justification for more data. All the judgments reached by NE in its Vantage Point Survey, by RSPB through the long experience of its Area Manager, and by LAA through collation and assessment of large amounts of data and experience came to the same conclusions in terms of species present in the area, presence of overflights, potential flightlines, and potential roosting and feeding places. In any event, NE concluded that birdstrike risk could be appropriately managed whilst RSPB stated that there was sufficient information within the BHRA to make an informed judgment of the risk.<sup>125</sup>
- 5.6.50. NE's only remaining points relate to off-airport works and safeguarding. Birdstrike risk arising from the proposals would be manageable by works undertaken wholly within the airport boundary. This demonstrates the limited extent off-site works could have on managing birdstrike risk even if they were considered desirable in the future. The BCMP does not require or authorise any. Confirmation that an airport can operate safely pursuant to its stated bird control measures could only ever sensibly be a judgment made taking account of those measures which are within its power to deliver. Where off-site measures would require the agreement of other landowners and no such agreements exist, it would be impossible for a safety auditor to make a judgment on the assumption that such agreements would be secured. Indeed, NE referred to the difficulties airports have had in securing off-site agreements where landowners have sought extravagant or unjustified sums.<sup>126</sup>
- 5.6.51. In any event, it is ludicrous to attempt to specify off-site measures now. The examples discussed in evidence were responses to problems that could sporadically occur in the future in unknown locations. The main example was stubble left in a field that proved an attractant to geese. The desirable off-site measure would be to secure agreement from the farmer to plough the stubble in. Alternatively, some form of bird-scaring device might be placed on the field. Such measures would require the consent and co-operation of the landowner and so cannot be assumed. It is absurd to purport to be able to identify now when, where, or to what extent such a situation might arise in the future. It is not sensible to suggest that it has to be described now so that its purported effects can be assessed.<sup>127</sup>

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<sup>124</sup> LAA/119 Paras 16.15-17, Dr Allan XX by LAA, Mr Gomes XX by LAA Day 10

<sup>125</sup> LAA/119 Para 16.20-16.22

<sup>126</sup> LAA/119 Paras 16.23-16.27

<sup>127</sup> LAA/119 Para 16.28

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- 5.6.52. NE/RSPB's point is unarguable in light of the BCMP and Section 106 Agreement relating to off-site measures and the logical effect of the contentions on the *Habitats Regulations*. The legal framework for any potential future desire for safeguarding and off-airfield works has been comprehensively covered within a Section 106 Agreement. It is a requirement of the Agreement that the BCMP approved be substantially in accordance with the draft already submitted. There is no difficulty in understanding such wording. It is a well-established formula and means what it says, see *Tew* and *Milne* in the context of EIA development.<sup>128</sup>
- 5.6.53. The BCMP does not prescribe future off-site measures. However, Clauses 10.3 and 10.4 of Schedule 1 to the Agreement require that prior to carrying out any off-site bird control measures, details shall be submitted to, and approved by, SDC in consultation with NE and RSPB, including the measures to be deployed, and their duration, scope and location. If a change in land use is proposed it is required to be consistent with local agricultural practices in terms of crop rotations and seasonal timing of cultivation, or designed to have a conservation benefit to flora or fauna including birds, without increasing the risk of birdstrike. There is no possibility of any works occurring that would be likely to have any significant effects on the designated sites. NE/RSPB would have full opportunity to make their views known, including requiring the local authority to comply with the *Habitats Regulations* before granting any approval for such works. The controls offered through the Agreement do not currently exist and are a material benefit to take into consideration in the determination of these applications.<sup>129</sup>
- 5.6.54. Even if off-site measures were approved in the future under the Section 106 Agreement, NE/RSPB's interpretation of the *Habitats Regulations* means there is an additional "lock" under the law, regardless of the contractual lock under the Agreement. NE/RSPB consider that whatever future off-site operations were contemplated under the Agreement, would potentially constitute a "plan or project" engaging the *Habitats Regulations*. If such works were likely to have significant effects on any of the protected sites, LAA would be subject to the *Habitats Regulations 2010* and be required to conduct an AA.<sup>130</sup>
- 5.6.55. RSPB now asserts that bird control measures for which there is no alternative and which are necessary for public safety would have to be approved under the BCMP, irrespective of impacts, by virtue of Section 16 of the *Wildlife and Countryside Act 1981* or alternatively under the imperative reasons of overriding public interest (IROPI) formulation. The Agreement obliges the airport to get agreement for any off-site works from the local authority. SDC would be entitled to refuse those works if it considered there would be any significant effects on the environment for which an AA had not been carried out, or where carried out, did not prevent adverse effects to the integrity of the designated sites. Nothing in Section 16 of the Act or IROPI under the *Habitats Regulations* would alter this. The airport does not rely on IROPI now and there is no reason to think it could for off-site works.

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<sup>128</sup> LAA/119 Paras 6.29-6.30

<sup>129</sup> LAA/119 Para 16.31-16.33

<sup>130</sup> LAA/119 Para 16.34, RSPB/6 Para 47

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If that meant that airport operations could not continue safely, they would have to stop.<sup>131</sup>

- 5.6.56. Nothing in the Section 106 Agreement affects the airport's ability to take genuine emergency measures. However, emergency safety would not apply to a proposal to carry out off-site works of the type that would be regulated by the Section 106 Agreement, required landowner consent, and would be governed by the *Habitats Regulations* under RSPB's own analysis.<sup>132</sup>
- 5.6.57. Finally, even if any offsite works could be ascertained now it is obvious that such measures would not have any likely significant effects on the designated sites, let alone any adverse effect on their integrity and the *Habitats Regulations* would be satisfied. Even if birds are scared off a feeding area during the day, they are able to fully exploit it at night. The restriction on night flying in the proposals would result in a significant disturbance free period. NE/RSPB do not produce any evidence that any off-site measures would have any material impact on any species of concern such as to affect the integrity of the designated sites.<sup>133</sup>
- 5.6.58. Turning to safeguarding, NE asserts that LAA would be more vigorous in its objections to other development if the airport had a throughput of 500,000ppa. However, it accepts that the airport should be making safeguarding objections now as identified by the CAA. There would be no discernible difference as a result of the proposals. In any event, objections to future proposals could never in themselves adversely affect the integrity of the sites.<sup>134</sup>
- 5.6.59. Finally in relation to bird control, all of the above conclusions are reached without any reference to a fallback situation. NE accepted that the levels of movements in LAA's fallback situation would mean that there would be no material difference in bird control between the fallback and the development situation. The proposals would not result in any effect that would not occur anyway. Indeed, the proposals would enhance the position, as LAA would be subject to the raft of controls and restrictions on its BCMP.<sup>135</sup>
- 5.6.60. In light of these provisions, where no offsite measures would be approved if permission were granted, and where any such measures would be regulated, and there would be no possibility of their being approved if they were to cause any likely significant effects and/or any adverse effect to the integrity of the designated sites, there is no rational basis for objection.<sup>136</sup>

### **Bird Disturbance from Aviation**

- 5.6.61. The only other source of objection on ornithological grounds is concern about disturbance effects on birds from commercial jet aviation activity. RSPB researched all scientific papers that considered birds in the context of disturbance in general of terms. Much of the material is not relevant to the

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<sup>131</sup> LAA/119 Para 16.36

<sup>132</sup> LAA/119 Para 16.37

<sup>133</sup> CD12.27 Tab 7, LAA/16.38, Dr Armstrong IC1 Day 4, XX1 by RSPB Day 5, XX2 by RSPB Day 38

<sup>134</sup> LAA/119 Para 16.39, Dr Allan XX by LAA Day 7, Dr Underhill-day XX by LAA Day 8-9, Mr Gomes XX by LAA Day 10, Mrs Dear XX by LAA Day 23

<sup>135</sup> LAA/119 Para 16.441, Dr Allan XX by LAA Day 7

<sup>136</sup> LAA/119 Para 16.42

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situation at LAA where there is an existing airport, with existing aviation activity, including noise from Gulfstream jets intermittently several times a week, and where the proposed development relates to commercial jet aircraft using established flightpaths. RSPB considered the ES's and supporting material, including *The Predicted Impacts of Aircraft Noise at 500,000 ppa on Bird Species of Conservation Importance at London Ashford Airport (Lydd)*. This document includes case studies showing no adverse effects at a number of different airports and identifies a number of species of major conservation interest with no adverse impact on any of those species.<sup>137</sup>

- 5.6.62. Those species of "most concern" were identified by RSPB. NE sought clarification and stated "In general terms it appears to me that the western boundary of the RSPB reserve, the pSPA and SPA contain important habitat for birds throughout the year, including for example mute swan, shoveller, bittern, golden plover, marsh harrier and wigeon. These species occur within the 88dB, 85dB, 82dB, and 79dB noise contours on the new noise level diagrams." This identifies the habitats of concern and species of concern in those habitats although it is accepted that it is not exhaustive. A SCG was eventually agreed.<sup>138</sup>
- 5.6.63. NE/RSPB do not accept the noise contours as accurate, but do not offer any evidence as to why they are wrong. The SCG identifies "Breeding Birds and Locations of Concern Identified by the RSPB and NE". RSPB admitted that if the SoS was satisfied, on the basis of these areas and species, that there were no likely significant effects or adverse effect on integrity, there were no other species or habitats that would cause greater concern or where a different conclusion could be reached. Each species, with the exception of Goldeneye, was considered. Not one of the species listed is known to be sensitive to the peak level, or type, of noise being proposed for any of the habitat areas. Indeed, examples were given where each of these species nest, feed or loaf very close to existing, busier or far noisier airports. No one has suggested that Goldeneye is more sensitive, or particularly sensitive at all.<sup>139</sup>
- 5.6.64. Although LAA has carried out a species specific assessment, RSPB accepted that a generic assessment was the correct approach. Objection on a generic basis is untenable given the 1992 decision.<sup>140</sup>
- 5.6.65. Turning to the only areas of concern in the SCG, the most obvious feature is how little of the SPA or pSPA falls within any part of the 85dB contour with the proposal. 85dB has been used as a tool, as there is no evidence that this level creates an impact, but even if the area is extended to everything within the 79dB contour, a similarly minor area extends into the SPA. Each of the habitats and species were analysed in relation to the LA<sub>max</sub> and the conclusion, from knowledge of the literature and experience, is that none would be affected by the change in noise environment. The existing position was also analysed by reference to the Gulfstream V contours. The

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<sup>137</sup> CD1.23i, LAA/119 Paras 17.4-17.6

<sup>138</sup> CD4.17, LAA/7E, LAA/119 Paras 17.7-17.11, NE/103, RSPB/4F

<sup>139</sup> LAA/119 Paras 17.12-17.15

<sup>140</sup> LAA/119 Para 17.16, Dr Day IC2 Day 39

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irregularity of its flights would only serve to reduce the chance of habituation making the analysis robust.<sup>141</sup>

- 5.6.66. Indeed, a number of the species of concern already nest on the airport as a matter of choice in areas where the noise exposure from the Gulfstream V already far exceeds anything proposed for the other areas of concern. Marsh Harrier, Cetti's Warbler, Waterrail and Reed Warbler all breed within the 88dB LA<sub>max</sub> contour. Many of the habitats of concern are also already disturbed. Site 1 has well-established fishing pitches, turbid water and stock fish. It is unclear why this should not be considered intense or areas around the airfield to the north are not considered subject to substantial noise impacts from human activities or shooting. There is no reasonable basis for concern for any of the species, in any of the identified locations.<sup>142</sup>
- 5.6.67. Even if there were a basis for any concern, the notion that this would cause any impact on the species itself, let alone any adverse effect on the integrity of the site is untenable. NE/RSPB do not explain how or why if any species were to be disturbed by aviation, such disturbance would prevent them from coming back and exploiting land for feeding at night when there would be no aviation activity at all. Moreover, even if the birds were disturbed, this would not cause any material effect on the species given the availability of refuge areas and other areas in the vicinity. In any event, these areas would be capable of use by birds that are highly tolerant of noise, such as those that already nest on the airport. Even if a species were permanently excluded, there would not be a loss of habitat as many species of interest for the SPA and pSPA would be able to use those areas. The evidence establishes that there would be no likely significant effects arising from the proposals to any of the identified sites or species. Alternatively, if an AA were to be required, there would be no adverse effects on the integrity of any of the designated sites.<sup>143</sup>
- 5.6.68. LAA reviewed the assessments made by qualified and experienced ornithologists and then applied the relevant scientific literature to desk-based views of the site based on a knowledge and experience of each species, to reach the conclusion as to the absence of any likely significant effects on any of the species. There are one or two quibbles but even if Bewick's Swans are no longer at Derry they used to be there and there is no suggestion that they are intolerant of, or moved due to, aircraft. Whilst diving duck numbers have declined at Big Waters SSSI when aviation was increasing at Newcastle, a new waterbody has been opened and could account for the drop in numbers. The species continues to be found in close proximity to the airport at Belfast Lough. There are many examples for nearly all of these species where they are found close to or on airports in the UK with either greater or louder activity than that proposed here.<sup>144</sup>
- 5.6.69. No changes have been identified since 1997 when NE, consulting with RSPB, indicated that it would probably not object to any renewal of the 1992 permission. RSPB's reliance on studies concerned with road noise, where

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<sup>141</sup> CD4.17, LAA/7J Figs 4 & 5, LAA/119 Paras 17.17-17.21, Dr Armstrong XX by RSPB Day 38

<sup>142</sup> LAA/119 Paras 17.22-17.23 & 17.25, RSPB/6 Para 50, Dr Armstrong IC & XX by RSPB

<sup>143</sup> LAA/119 Paras 17.26-17.27

<sup>144</sup> LAA/119 Paras 17.29-17.32



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the noise is continuous, cannot be equated to aircraft noise that is not continuous. Indeed, the papers quoted by RSPB are largely irrelevant to the issue of aircraft noise. Only three papers, Fleming, Burger and Brown, deal with aircraft noise from jets.<sup>145</sup>

- 5.6.70. Reference has been made to numerous airports where noise levels occur far higher and more frequent than are predicted at LAA. Birds have not just been seen at them but, with one exception, LAA's witness has visited or worked at them over a period of years, or the data comes from an equivalent person with that experience. Only four were challenged on the grounds that the types of aircraft using them are small turbo prop or, in the case of Fairford, military 737 jets about once a week. Sumburgh, where Redshank breed, was challenged but they are also found under the flightpath of Belfast City Airport. That species in those locations is a real world example of the tolerance of birds to aviation noise. Stornaway is an example in respect of species including Little Tern, Arctic Tern and Short Eared Owl. There can be no doubt that terns are a species unaffected by jet aircraft noise given the 1992 decision at Lydd when the noise climate was considerably louder.<sup>146</sup>
- 5.6.71. LAA reviewed the scientific literature identifying what is germane. The comparatively new advances in literature, Gill (2007) and Nisbet (2000) on disturbance generally, identify the important difference between disturbance effects and disturbance impacts. RSPB compares a study based on flying light aircraft or helicopters at flocks of unhabituated Brant Geese in the wilds of Alaska (Ward 1987) with the position at Lydd where birds are already exposed to numerous light aircraft circuits across the Reserve at low level and no disturbance effects have been registered. Similarly, flying light aircraft at king eiders in Greenland where the birds are hunted by kayak with outboards with a similar noise does not assist the present case, where light aircraft have no such effect. The only directly comparable studies, such as commercial jet traffic at New York causing no discernible effects on gulls are displaced by the light aircraft research. Points made about lateral distances, LA<sub>max</sub> of 60dB and overflights that derive from light aircraft or military aircraft experiments are not transferable to the situation at LAA. If birds were disturbed in this location by light aircraft at 60dB flying at lateral distances of 1km, they would be disturbed already as this activity occurs on a regular basis. RSPB's interpretation of the scientific literature is simplistic and does not reflect the current view of the scientific community.<sup>147</sup>
- 5.6.72. All these conclusions are reached without reference to the fallback. However if there were any contrary decision on the analysis, the fallback demonstrates that there would be the equivalent level of jet aviation activity in the fallback situation and were any disturbance effects to occur, they would be likely to occur in any event.

## 5.7. Nuclear Safety

- 5.7.1. The SoS did not identify nuclear safety as a matter requiring consideration at the Inquiry. The effect of the proposals has been thoroughly assessed by

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<sup>145</sup> LAA/7G Sect 2, LAA 7/H, LAA/119 Paras 17.33.2-4

<sup>146</sup> CD8.27 DL Para 15, LAA/7E Paras 3.3 & 3.46, LAA/119 Paras 17.33.5-7

<sup>147</sup> LAA/7A Para 3.4, LAA/7D Para 3.6.1, Dr Armstrong IC1 & IC2

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expert consultants in the planning application process, and approved by SDC, after consulting the Health and Safety Executive (HSE) and Nuclear Industry Inspectorate now the Office for Nuclear Regulation (ONR). Their conclusions are not surprising given the nature of what is proposed and the fact that the 1992 permission also involved rejection of nuclear safety objections. Indeed, that was at a time when there was no exclusion zone around the Dungeness Power Stations, there was a flightpath for jets in closer proximity to the power stations, and when aircraft safety and security were not as good as they are now.<sup>148</sup>

- 5.7.2. LAAG asserts that the margins of safety in relation to the risk of an aircraft crashing onto the power station have increased since 1988 and argues that, having regard to the operating constraints, it is unclear why ONR find the proposals acceptable in terms of the safety of Dungeness nuclear power station. The ONR has repeatedly confirmed its position, notwithstanding LAAG's repeated attempts to get them to do otherwise. LAAG's evidence, which is not based on an objective, scientific or rational appraisal of what is proposed, consists of a number of strands.<sup>149</sup>

### **Post Incident Scenario**

- 5.7.3. ONR are well aware of what type of nuclear power stations are at Dungeness, the potential risks involved in nuclear energy, and the consequences of an accident. No party to the Inquiry, including SDC, the relevant statutory consultees and, in particular, the ONR, disputes that if an aircraft were to crash onto the Dungeness site, the consequences could potentially be very serious. The question is whether the proposals would unacceptably increase the risk of that happening. Criticisms of a 3.275km cut off misunderstand the Byrne equations. The model indicates that such large overshoots or overruns are so unlikely that the airport related crash frequency at such locations is indistinguishable from the background level and the predicted frequency is therefore zero. The same applies to take offs on runway 03 where crashes further than 0.6km away in the opposite direction to take off are so unlikely that they are indistinguishable from background levels.<sup>150</sup>
- 5.7.4. LAAG's witness fundamentally disagrees with any risk-based approach as he considers any risk too great. He maintained that there was an unacceptable risk from overflying aircraft and that no nuclear power stations, including Dungeness A and B, should be operating now because of them. It was conceded that this radical philosophy was not adopted in any policy document, or used by any regulator. The witness has repeatedly been involved in cases for anti-nuclear groups, has accused ONR of failing to prosecute, accused the French regulator of errors, and contended that Sizewell should be shut down immediately. None of these criticisms have been found to be justified or have been adopted.<sup>151</sup>
- 5.7.5. If the SoS continues to apply the well-established safety assessment process to examine risk, the matter reverts to the application of

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<sup>148</sup> LAA/119 Para 14.1, Mr Roberts IC & XX by LAAG Day 27

<sup>149</sup> LAA/119 Paras 14.1-14.2 & 14.5, Mr Roberts IC & XX by LAAG Day 27

<sup>150</sup> LAA/15D Paras 3.10-3.12, LAA/119 Paras 14.6-14.7, Mr Large IC Day 28

<sup>151</sup> LAA/119 Paras 14.8-14.9, LAAG/4C, Mr Large XX by LAA Day 28

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conventional risk assessments. These have been conducted in accordance with those methodologies, and independently by the ONR with its own consultants, all of which demonstrate the safety of what is proposed. It was accepted that the Byrne model of risk assessment had been applied correctly. Moreover, it was agreed that EDF would not do anything to affect the development land value for a possible Dungeness C. If Areva and EDF had identified any detriment to the prospects of Dungeness C in their risk analyses, it follows that they would have presented such evidence to the Inquiry to protect their interests. There is no such evidence.<sup>152</sup>

### **Risk Assessment**

- 5.7.6. Work for LAA on the risk associated with aircraft crash onto the nuclear power stations at Dungeness is critical of an assertion by LAAG that the risk would be unacceptable simply by virtue of the crash frequency being above the level of 1 in 10 million per year ( $10^{-7}$  per year). The level of  $10^{-7}$  is not a target safety level or a limit of tolerability but is the screening level below which the potential for aircraft crash does not need to be considered further. It was accepted that LAA's assessment had been peer-reviewed, unlike LAAG's report which maintains that 2mppa should be considered, even though there is no such application before the Inquiry.<sup>153</sup>
- 5.7.7. ONR's safety assessment principles (SAP) design basis event is one whose frequency is considered sufficiently high that the plant should be designed to withstand it. For aircraft crash the design basis is defined in the SAPs as one that occurs at a frequency of 1 in 100,000 per year (1 in  $10^{-5}$ ). However, the Byrne methodology allows a relaxation to 1 in 10,000 (1 in  $10^{-4}$ ) for events that could not lead to off-site doses over a threshold of 100 milliSieverts. Based on Areva's technical knowledge and experience, it is only crashes on the nuclear island that could lead to doses above that threshold.<sup>154</sup>
- 5.7.8. In its 2009 report, Areva estimated the crash frequency onto the whole site as  $8.3 \times 10^{-6}$ , which is well below the design basis. For the nuclear island the frequency was stated to be  $5.6 \times 10^{-7}$ , again well below the design basis criterion. LAAG does not dispute the mathematics but does not accept the assumptions inherent in the Byrne methodology.<sup>155</sup>
- 5.7.9. It was suggested that there are superior methods to the Byrne methodology, but none has been used and it was accepted that the Byrne methodology is the standard method used in nuclear industry safety cases for assessing aircraft risk. LAAG's approach was to make adjustments in the assumptions that underpin the Byrne methodology. These assumptions are neither necessary nor appropriate.<sup>156</sup>
- 5.7.10. LAAG's own assessment, based on its added assumptions including the use of certain runways and an increased risk in bird strikes, identified the risk, based on a throughput of 500,000ppa, as  $6.964 \times 10^{-6}$ . This figure is well

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<sup>152</sup> LAA/119 Paras 14.10-14.11, Mr Large XX by LAA Day 28

<sup>153</sup> LAA/15F App 1, LAA/119 Paras 14.13-14.14, LAAG/4P

<sup>154</sup> LAA/119 Para 14.18

<sup>155</sup> LAA/15D Paras 29 (Table 1) & 37, LAA/119 Para 14.19

<sup>156</sup> LAA/119 Para 14.17, LAAG/5A Para 1.3

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within the criteria identified by ONR in its SAPs and that assumed by Areva.<sup>157</sup>

- 5.7.11. LAAG's closing submissions concentrate on observations on the report by ESR suggesting it is wrong. LAAG asserts that "The Byrne methodology is flawed so that it is not possible for ESR or anyone else using this methodology to quantify the increase in risk associated with LAA traffic, or to provide a credible assessment of background risk" but LAAG's witness did just that, and his expert judgment was that his assessment was robust and his conclusions were valid. LAAG's general hypothesis is that the model used to predict risk took no account of the particular circumstances at Lydd. This is rejected, but in any event when the model was amended by LAAG to take account of "site specific" issues, the conclusion did not differ from LAA's.<sup>158</sup>

### **Crash Scenarios**

- 5.7.12. LAAG described four crash scenarios. The first involved an engine or other failure during a left turn departure from runway 21, but that could only be in respect of light aircraft which are unrestricted in taking off on that flight path and does not represent a change from the existing position. The second scenario relates to engine or other failure by aircraft flying an ILS, NDB or area navigation (RNAV) approach on runway 21 which precludes the aircraft from making the required right turn on a missed approach. The captain of the aircraft would wish to go straight ahead if there was such an emergency. LAAG's concern is that the aircraft would be flying directly into potentially restricted airspace over Lydd Ranges. However, that would only happen if the procedure for a general cease fire on the Ranges were inadequate. The ATC would inform the Range to cease fire via a hot line. It is a tried and tested procedure. There is no basis for doubting its efficacy and it is significant that the MoD does not object.<sup>159</sup>
- 5.7.13. These are the sort of unexpected problems that pilots drill for. In addition, aircraft now have multiple independent systems for hydraulics, ailerons, computers and electrics. LAAG was unable to offer any explanation as to what failure could lead to a failure to turn right. Taking the example of the landing of an airbus on the Hudson River, the aircraft lost 2 hydraulic and 2 electrical systems but the pilot still managed to achieve a precise landing on water. It is suggested that "go-arounds" would make an accident much more likely but the planes are required to use ILS and that makes a go-around less likely.<sup>160</sup>
- 5.7.14. The third suggestion is that there is an engine or other failure of a Cat A aircraft flying a circling manoeuvre to the east of the airport to land on runway 03 while flying the downward leg towards the power station. But that suggestion is misconceived as Cat A aircraft are not permitted to land on 03 when the range is open. If they were to land on 03 it would be because the range is closed, in which case they fly to the west of the Airport. The fourth suggestion is a Cat A, B or C aircraft flying visual to the

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<sup>157</sup> LAA/119 Para 14.21, LAAG/5A

<sup>158</sup> LAA/119 Paras 14.22-14.23, LAAG/132 Para 357(ii) 1<sup>st</sup> bullet

<sup>159</sup> LAA/16D Sect 5, LAA/119 Paras 14.25-14.26, LAAG/10A Para 6.13

<sup>160</sup> LAA/119 Paras 14.27-14.30, Mr Roberts IC & XX by LAAG Day 27

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west of the Airport, would fly the base leg pointing towards the power station. But that is not a manoeuvre a Cat A aircraft would fly as it would approach the airport via FP1.<sup>161</sup>

- 5.7.15. LAAG's concerns are not shared by the ONR which considered this matter in 1988. CAA's advice was that in the event of a malfunction when landing on runway 21 the pilot would fly straight ahead, into the range's restricted airspace. ONR considered the position in respect of aircraft flying on flightpath D4, which demonstrates an acceptance of aircraft flying even closer to the power stations than now proposed. Such a flightpath was included in the 1992 Section 52 Agreement. A letter notes that in the event of a problem for departing aircraft from runway 21 (then 22), "the MOD range can be warned very quickly and would cease operations". LAAG implies that the agreement imposed a requirement that aircraft would not turn left on departure on runway 22 but up to an annual total of 6,000 departing aircraft over 5,700kg were permitted to turn left and take flightpath D4. The current proposals would not allow a left turn increasing the operational safety level compared with 1988.<sup>162</sup>

### **Terrorist Threat**

- 5.7.16. LAAG maintains nuclear power stations are an attractive target for terrorists and that the air crash consequences would be worse than bombing. However, the prevention of hijacking of commercial passenger jet aircraft is the subject of extensive national and international safety systems, including security screening prior to boarding, and a second barrier technique to prevent access to the flightdeck. Even if a means were found to avoid the steel door to the flight deck and the mechanisms for its control, it would take a considerable time to overcome. Departing aircraft would be a long way outbound before there was any chance of an aircraft being used as a weapon, even if such a situation were to arise during a flight. The proximity of LAA to Dungeness does not, therefore, give rise to any additional terrorist risk. Indeed, the 9/11 hijackings did not involve targets close to the airfields used for take off.<sup>163</sup>

### **Demographics**

- 5.7.17. It is Government policy to control demographics around existing and proposed nuclear installations and the increase in numbers of people at the airport needs to be considered. ONR has carried out a scoping assessment and concluded that there is no basis for objection provided the application level of 500,000ppa is considered. The CALA application for housing close to the Atomic Weapons Establishment in Berkshire differs from these proposals as the population already exceeded the relevant criteria. In any event, LAAG's calculations do not show population exceeding ONR's demographic criteria for Dungeness. For 500,000ppa it would be no more than 27% of the 'remote' site classification. Whilst this would affect the

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<sup>161</sup> LAA/119 Paras 14.31-14.32

<sup>162</sup> CD13.5, LAA/3D Para 4.4, LAA/119 Paras 14.34-14.37, LAAG/10A Paras 6.6-6.7, LAAG/10D Para 6.6 & Apps 1 & 21

<sup>163</sup> LAA /16D Para 5.4, LAA/119 Paras 14.38-14.38.2

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potential for growth in other sectors, the same would be true for any development in the area and would not justify refusing permission.<sup>164</sup>

- 5.7.18. LAAG also presents demographic calculations for the railhead claiming the population already just exceeds the 'remote' site criterion. Populations do not increase until the passenger throughput reaches a hypothetical 1mppa in a 'log jam' case. This is because the railhead is closer to the population centres in Lydd town or Lydd-on-Sea. ONR maintains that the railhead "would not normally be factored into any demographic analysis". The quantity of radioactive material at the railhead is much smaller than at the power stations, even when a train carrying nuclear material is present. It is not a licensed nuclear site and has no consultation zone.<sup>165</sup>
- 5.7.19. The assertions made by LAAG are unfounded and the SoS can conclude that there would be no unacceptable risk arising from the proposals in terms of nuclear safety as has been confirmed by the ONR.

## 5.8. Socio-Economic Matters

### Policy

- 5.8.1. Regional and local economic policy support for the proposals is expressed in the Regional Economic Strategy for the South East 2006 to 2016, by RSS Policy T9, and in South East England Development Agency's March 2008 *Framework for the Coastal South East*. The development would promote the short term goals, the objectives, and four of the delivery priorities for regeneration in the *Kent Prospects 2007-2017* and the opportunities presented by LAA are recognised in *Unlocking Kent's Potential 2009*. LAA is recognised as a key asset for the Shepway area in *Choose Shepway – An Economic Regeneration Strategy for 2007 – 2017* and as one of the key building blocks crucial to the successful delivery of the overall vision for Shepway set out in the Shepway Community Partnership's Community Plan: *Sharing in Success – A Community Plan for Shepway*. The East Kent Local Strategic Partnership's *Lighting the Way to Success* identifies the potential for LAA and Manston to have significant expansion.<sup>166</sup>
- 5.8.2. The economic policy support is a product of the economic reality of the area. Relative to the South East the Coastal South East area where the Airport lies, is characterised by low productivity. It has lower economic activity and employment rates, with high concentrations of inactivity and higher structural unemployment rates. There is a comparatively low-skill profile to the workforce. Business density and start-up rates are low. There is a high dependence on public sector employment, with a low proportion of employment in knowledge based sectors, particularly the private sector, and a greater proportion of persons over retirement age than the regional average and comparatively poor infrastructure and connectivity.<sup>167</sup>
- 5.8.3. Shepway is ranked the 131<sup>st</sup> most deprived district in England out of 354. This contrasts with the comparative affluence to be found in much of the

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<sup>164</sup> LAA/15/D Sect 6, LAA/119 Para 14.39, LAAG/4D Paras 106-107 & 121, Table 3, LAAG/4E Para S28, LAAG/4K

<sup>165</sup> LAA./15D Sect 6, Mr Nicholls RE Day 27

<sup>166</sup> CD1.23b, CD1.40a, CD7.2, CD7.4, CD7.8 pp 10 & 16, CD11.16 pp1 & 3, CD11.18 pp 23 & 70, CD11.19 pp4-5, CD11.20 Para 1.1.4, LAA4/A Paras 3.22-3.33, LAA/4D Para 3.15, LAA/4J Para 7, LAA/119 Para 5.21-5.22

<sup>167</sup> LAA/119 Paras 5.23-5.24(1)

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South East. The area around LAA suffers some of the highest levels of deprivation in the district, emphasising the importance of local regeneration.<sup>168</sup>

- 5.8.4. Shepway's performance in creating employment between 1998-2008 has lagged behind the remainder of Kent. Shepway's unemployment is significantly worse than for the remainder of Kent and the South East and has either been equivalent or worse in the last few years to the position in Britain as a whole. Annual average earnings in Shepway are lower than Kent as a whole, and the South East.<sup>169</sup>
- 5.8.5. In contrast to Folkestone, the area around Romney Marsh within 20 minutes of the airport is reliant on a small number of major employers, predominantly Dungeness Power Station and, to a lesser extent, LAA. As Dungeness A and B are subject to actual and proposed decommissioning, and there are no prospects of Dungeness C materialising, or even being reconsidered, before 2020 given its exclusion from the emerging Nuclear National Policy Statement (NPS), LAA will become an increasingly critical source of employment for this area. During the course of the Inquiry the Pfizer research facility at Sandwich closed with a further 2,400 jobs lost.<sup>170</sup>
- 5.8.6. It has been suggested that there is a different level of policy support for LAA compared to Manston. Applications should be judged on their own merits. LAA's operations would serve its own local catchment area and Manston would continue to serve its. Manston is proposing growth to 4.75mppa by 2033 so it is not surprising to see this referred to in more policy documents than apply to LAA. The role that LAA can play, along with Manston, is clear from KCC's representation. It regards LAA's development as important to the regeneration prospects of Shepway District and adjoining areas of East Kent, particularly in light of the prospects for Dungeness C. KCC is clear that the introduction of new private sector jobs, of the type that LAA could offer, is what is required to grow the economy, boost employment and tackle deprivation in accordance with the Government and KCC's policy framework.<sup>171</sup>

### **Socio-Economic Impact**

- 5.8.7. The socio-economic effects were assessed in the ES but have now been independently evaluated, and updated to reflect market conditions at the time of the Inquiry.<sup>172</sup>
- 5.8.8. Residents in and around Lydd are no different to those elsewhere in their appetite for air travel. It is unsustainable that they do not have a local airport. The majority of passengers in the LAA catchment currently use the congested major airports of the South East travelling, predominantly by car, away from Europe to then fly back to destinations in Europe. It is unsustainable for passengers to travel significant distances by car to access air travel. It is also detrimental to the local area to remove the source of

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<sup>168</sup> LAA/4A Paras 3.43-44, Fig 3.1, LAA/119 Para 5.24(2)

<sup>169</sup> LAA/4A Tables 3.1-3.3, LAA/119 Para 5.24(3)

<sup>170</sup> LAA/4A Paras 3.51-3.57, LAA/4D Para 5.5, LAA/119 Paras 5.24(4)

<sup>171</sup> LAA/4D Para 5.3, LAA/4J Para 6, LAA/119 Para 5.26, CPRE/1A Paras 3.39-3.45, KWC/W1

<sup>172</sup> LAA/4A Para2.2, LAA/119 Paras 5.1-5.3

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economic activity and employment that comes from providing air services to a local catchment area.<sup>173</sup>

- 5.8.9. The Airport employs 48 staff and 58% live within 7.5 miles of LAA. Skilled jobs have been taken up by people living in the area, and other on site employers provide work for a further 24 people. The current owner has invested £30 million to improve the facilities, but LAA is currently loss making. The airport needs permission to allow passenger operations to be pursued, otherwise existing activities would have to be maximised.<sup>174</sup>
- 5.8.10. An assessment of the socio-economic impacts has been carried out in accordance with established methodologies. In the lower growth scenario, with the runway extension in operation with 300,000ppa at 2023, LAA would provide an additional 90 direct, indirect and induced jobs over the current situation. With the passenger terminal operating at 500,000ppa in 2023, these numbers would rise to 200 direct, indirect and induced jobs over the current situation. In the higher growth scenario, the same number of additional jobs over current would be achieved by the runway extension by 2021, and 200 additional jobs would be achieved by 2024 with the new terminal. Compared to the likely future scenario without development, this would mean a minimum of 50-60 more jobs with 300,000ppa and 140-160 more jobs with 500,000ppa than would otherwise be the case. From this data, the gross value added (GVA) can be calculated based on national data sources. Whereas current operations at LAA generate just over £4 million pa GVA to the local economy, with the 300,000ppa this would rise to £7.4-7.5 million at current prices and £11.5 to £11.7 million with the new terminal.<sup>175</sup>
- 5.8.11. The structure of that new employment has been identified offering a wide range of skills. This is in addition to LAA's initiative to support local employment. With the developments proposed, the assessment of passenger demand and prediction of the levels of job generation and other benefits has been conservative. The economic assessment represents the low end of the potential spectrum, with potentially greater economic activity and job creation with the same level of operations and other effects in reality.<sup>176</sup>
- 5.8.12. LAAG alone has criticised the employment densities in the original ES and has sought to compile its own assumptions by reference to other airports. However, employment densities are a function of the nature of traffic at an airport and its scale of operation, and would typically be higher at smaller airports due to inherent inefficiencies in handling smaller numbers of flights per day. LAA's assessment took full account of employment densities at other airports. It used robust densities, reducing over time, to reflect economies as passenger numbers increase. LAAG's use of 250 jobs per mppa is unrealistic and unsupported by any valid comparator.<sup>177</sup>

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<sup>173</sup> LAA/119 Para 5.55

<sup>174</sup> LAA/119 Para 5.32, Ms Congdon IC Day 14, XX Days 15 & 16

<sup>175</sup> LAA/4A Paras 6.4-6.10, 6.15-6.16 & Tables 6.1-6.2, LAA/119 Paras 5.69-5.74

<sup>176</sup> LAA/4A Fig 6.1, LAA/119 Paras 5.75-5.76

<sup>177</sup> LAA/4D Paras 5.7-5.8, LAA/119 Para 5.77, LAAG/6A Para 3.3, LAAG/8A Paras 1.9A, 1.10A, 2.0 & Sect 5



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- 5.8.13. LAAG contends that operations would be likely to be seasonal. Seasonal temporary staff are factored into the densities and the jobs are presented on a full time equivalent basis. Finally, LAAG sought to criticise the assessments of job creation by reference to a document published by Brian Sewill, an anti-aviation campaigner. The wider criticisms of aviation policy at a national level are not matters for this Inquiry and the work has little relevance to whether the job generation at LAA would be beneficial locally. The concepts of indirect and induced jobs are well established and have been a central part of economic impact analysis for some time. Given the relatively poor performance of the area, and the identified need for the regeneration, exacerbated by potential loss of employment from Dungeness in the future, the proposals are likely to make a significant beneficial contribution.<sup>178</sup>
- 5.8.14. Attempts to compare the jobs that would be created by LAA with jobs that would be created if Dungeness C were to occur, despite the draft NPS, is misleading as this is not an either/or situation. The proposed jobs at LAA would be real and would occur whether or not Dungeness C took place. The proposals would not affect Dungeness C in any way as its exclusion from the NPS had nothing to do with LAA or its aspirations.<sup>179</sup>
- 5.8.15. The positive effects from inbound tourism with passenger operations functioning at LAA need to be factored in. In the lower growth scenario at 300,000ppa with the runway extension, LAA would handle about 26,000 international and 33,000 inbound passengers, supporting £8.9 million of expenditure in the catchment area economy and approximately 207 jobs in tourism. In the higher growth scenario, these figures would be 28,000 and 36,000 international and domestic inbound passengers and £9.7million respectively. In the lower growth scenario at 500,000ppa with the terminal building, the figures are 37,000 international and 38,000 domestic inbound passengers supporting £11.7 million expenditure in the local catchment area and around 273 jobs in tourism. In the higher growth scenario, this would be 38,000 international and 40,000 domestic inbound passengers with £11.9 million expenditure and 278 jobs in the tourism industry. Stripping out visitors that might have come to the area anyway, the net figures range from £1.3 million - £4.1 million additional expenditure supporting 33-96 additional tourism jobs, and £2.0 million to £3.6 million additional expenditure supporting 47-84 jobs in tourism. In an area where the prospects of any significant regeneration remain precarious these are substantial increases.<sup>180</sup>
- 5.8.16. Objectors assert that the development would potentially make the area less attractive to tourism, and so tourism-related jobs should be netted off. This fails to grapple with the maximum level of operations proposed, 8 departures and 8 arrivals on a busy summer day when the operation is at full capacity. This is a very small level of additional activity. The claims ignore the benefits of accessibility to the area promoting tourism. RSPB's Area Manager accepted that if concerns about impacts on birds were

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<sup>178</sup> LAA/4D Paras 5.9, 5.24-5.27, LAA/119 Paras 5.78-5.80

<sup>179</sup> CD6.15, CD13.6, LAA/4D Paras 5.10-5.13, LAA/119 Para5.81

<sup>180</sup> LAA/4A Paras 6.28-6.31, LAA/119 Paras 5.82-5.85

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overcome, then it would be logical to support the proposals in terms of jobs and improved accessibility to the area.<sup>181</sup>

- 5.8.17. Turning to the effects on caravan sites, many operators recognise that the operations could only enhance the tourism prospects for their own businesses. LAAG claims that LAA would worsen a “tourism deficit” and relies on a document entitled *Airport Jobs: false hopes, cruel hoax*. This is written by an anti-aviation campaigner in respect of Gatwick and is not objective. It is counter to established Government policy that is underpinned by extensive research. Moreover, the analysis is not applicable to LAA which is seeking to meet local demand that would be met by other airports elsewhere if not at LAA and there would only be a small level of stimulation anyway. It is incorrect to assume that if tourists were not to fly abroad, they would spend their money locally on tourism. The argument fails to place any weight on the importance of overseas leisure travel that is recognised in the ATWP, and the benefits to this sector of the UK’s economy, both in tourism and aviation.<sup>182</sup>

### **User Benefits**

- 5.8.18. The Applicant has assessed other user benefits that result in monetised savings to assess the economic welfare benefits. This calculation addresses the sustainability of the proposals in reducing the amount of travel by car by passengers who would access international flights from other airports if not locally. The cumulative journey time savings would have a discounted monetised cost saving of between £6,710,998 - £7,393,227 for the runway extension alone and £8,055,470 - £10,134,914 with the terminal building. This is a significant saving that might also be supplemented by cost reductions in flights, as well as the sustainable consequence of reduction in journeys on the roads in Kent.<sup>183</sup>
- 5.8.19. Finally, there are likely to be a number of wider economic impacts that are difficult to quantify. The increased benefits in journey times are likely to improve business productivity. The improved air service connectivity is likely to stimulate the economy and make the area better connected to exploit opportunities, and the existence of the operations is likely to be a pre-requisite in the area for certain types of investments.<sup>184</sup>
- 5.8.20. It is unsurprising to find almost unanimous support for the proposals from those with experience and knowledge of economics or responsibilities for fostering the economic regeneration of the area, such as the Chambers of Commerce. With the future of Dungeness power stations as it is, LAA represents one of the last and most significant opportunities for sustaining significant economic activity in the immediate local area.<sup>185</sup>

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<sup>181</sup> LAA/119 Para 5.86

<sup>182</sup> LAA/4D Para 5.19-5.23, LAA/119 Para 5.87-5.88, LAAG/8A Para 8.2

<sup>183</sup> LAA 4/A p 70, LAA/119 Paras 5.89-5.90

<sup>184</sup> LAA/4A Paras 6.39-6.42, LAA/119 Para 5.91, Ms Congdon IC Day 14

<sup>185</sup> LAA/119 Para 5.92

## 5.9. Climate Change and Flood Risk

### Climate Change

- 5.9.1. Climate change was originally raised by CPRE and RSPB who both asked for it to be dealt with by way of written representations.<sup>186</sup>
- 5.9.2. The proposed numbers of aircraft movements, even if they were all to represent new growth, represents only 0.25% of the UK air transport movements that could be accommodated within the 60% demand growth that is consistent with meeting the UK's 2050 target of capping emissions to 2005 levels as identified by Climate Change Committee.<sup>187</sup>
- 5.9.3. The carbon footprint of the proposals in terms of all the activities necessary to run at fully capacity has been assessed using the *Guidance Manual: Airport Greenhouse Gas Emissions Management* from the Airports Council International, 2009. The calculations yield a 7,500 tonnes CO<sub>2</sub> pa footprint for passenger transport operating at full capacity. If these passengers were to fly from Gatwick instead of LAA, the additional annual carbon footprint from travelling to Gatwick would be approximately 13,000 tonnes CO<sub>2</sub> pa assuming the same modal split. The development would potentially result in a net reduction of 6,000 tonnes CO<sub>2</sub> pa when operating at capacity, simply from the travel patterns of the relevant catchment users. These calculations don't factor in the actual savings in emissions that would occur from the Landing/Take Off cycle of an aircraft, which is likely to be substantially greater from use of Gatwick than LAA. Gatwick air traffic involves significant holding times both in the air and on the stand, and longer taxiing distances, which would not occur at Lydd.<sup>188</sup>
- 5.9.4. It is Government policy that carbon emissions from aviation movements are more properly dealt with in the forthcoming EU Trading Emissions Scheme. Moreover, the growth of smaller regional airports of this scale is not constrained by the emissions targets for 2050. The Government's approach to the *Climate Change Act 2008*, and the *Report of the Climate Change Committee*, in this regard has been held to be lawful. If aircraft emissions are excluded from the calculations in accordance with that approach, the savings that would occur from using the airport, rather than passengers travelling to Gatwick or further afield, would be nearly twice the carbon footprint of operating the airport. The development proposals are consistent with the carbon reduction policy of Planning Policy Statement 1 (PPS1) supplement and the entire policy framework.<sup>189</sup>
- 5.9.5. The Terminal Building development would be constructed to meet BREEAM Very Good, nearly Excellent, rating and the renewable low carbon measures would make a valuable contribution to meet a 10% renewable energy target. The proposals are also supported by a Carbon Management Report identifying LAA's commitment to minimising its carbon footprint.<sup>190</sup>

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<sup>186</sup> LAA /11/D, LAA/119 Para 6.4.2

<sup>187</sup> LAA/11A Paras 3.1-3.19, LAA/119 Para 6.4.2

<sup>188</sup> LAA/11A Paras 4.12-4.13, LAA/119 Paras 6.4.3-6.4.4

<sup>189</sup> CD9.21 Paras 38-42, CD9.22 IR Para 614 & DL Para 16, LAA/11A Para 4.14, LAA/119 Paras 6.4.5-6.4.6

<sup>190</sup> CD1.34d, LAA/119 Para 6.4.7-6.4.8

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- 5.9.6. There is nothing in the *Hillingdon* judgment that conflicts with what is set out above. RSPB's approach does not reflect Government policy and practice, or the lawfulness of it as can be seen from *R(Griffin)*. CPRE criticises the assessment work but a quantitative evaluation for the airport activities including the landing/take-off cycle but excluding flights to and from the airport has been produced. It would not be appropriate to assess the emissions in flight given the Farnborough decision and it is more relevant to ensure that the overall target for UK emissions being no greater in 2050 than 2005 is not contravened. The comparison with train travel journeys is overstated and inappropriate given the likely destinations to be served by the airport, and travel behaviour to those destinations with journey times.<sup>191</sup>
- 5.9.7. Accordingly, there is no basis for objection in relation to climate change and sustainability. The grant of planning permission would result in a significant net reduction in carbon emissions as a result of the more sustainable travel patterns that would occur for passengers using air transport in the catchment area, where the emissions from aircraft in flight would be likely to occur anyway. In addition, this would be dealt with under the EU Emissions Trading Scheme. The proposals represent a highly sustainable enhancement.<sup>192</sup>
- 5.9.8. RSPB asserts that the foreword to the Government's Consultation Document, March 2011 conforms to its position that growth in aviation is not consistent with wider climate change goals. The contention is not supported by the document and RSPB fails to deal with the Government's *Response to the Committee on Climate Change* published on 25 August 2011. This sets out its position regarding aviation growth, the way in which emissions will be dealt with under the EU Emissions Trading Scheme, and the Government's revised aviation growth forecast figures. These confirm the approach set out above, as well as consistency with the Farnborough decision. No context is provided to the reference in closing to the comments of Sullivan LJ but it is clear that he was identifying the importance of considering the up-to-date response of the Climate Change Committee and Government policy in decisions. That is precisely what LAA has done<sup>193</sup>

### **Flood Risk**

- 5.9.9. The proposals were examined for potential flood risk issues by SDC at application stage. The approved Flood Risk Assessment (FRA) recommended that a Drainage Strategy be prepared. This was drawn up and approved by the Romney Marsh Area Internal Drainage Board (RMAIDB). The technical engineering details of the replacement drainage ditches to produce suitable and enhanced habitat for species of concern have also been approved.<sup>194</sup>
- 5.9.10. Since the applications were submitted, *Planning Policy Statement 25: Development and Flood Risk* (PPS25) has been published. This represents current national planning policy, and sets out processes to ensure flood risk

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<sup>191</sup> LAA/11D, LAA/119 Para 6.4.9

<sup>192</sup> LAA/119 Para 6.5

<sup>193</sup> CD 5.38, CD5.39, LAA 4/L, LAA/199 Para 6.6, RSPB/6 Para 119

<sup>194</sup> CD1.12a, CD1.12b, LAA/13A Para 2.1.6, LAA/13C App 2, LAA/119 Paras 7.1-7.4

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is taken into account. It refers to Regional and Strategic FRAs and Management Plans prepared by the Environment Agency (EA) for these purposes. The applications have been reassessed in an Updated FRA, in light of PPS25 taking account of, amongst other things, the EA's *South Foreland to Beachy Head Shoreline Management Plan* (2006) and its *Folkestone to Cliff End Flood and Erosion Management Strategy* (2008) and SDC's *Strategic FRA* (2009). The EA's documents confirm that the overall strategic management policy for tidal defences to the coastal cell where the airport is located are to provide a standard of protection that meets the 0.5% probability standard required by PPS25 for the next 25 years.<sup>195</sup>

- 5.9.11. The Updated FRA confirms that there is no basis for objection on grounds of flood risk, the primary source of which would be tidal. RMAIDB has no record of flooding at the airport and EA monitoring from 1961 to the present day show groundwater levels at 1.7-3.6 metres below existing ground levels. Even if groundwater levels were to match sea water rise predictions, which they wouldn't as a 1.2 metre rise in sea level would not cause groundwater to come above existing ground level, there would be no risk of groundwater flooding. RMAIDB would manage groundwater levels through the local ditch system to prevent flooding but even if it didn't the new terminal would be set above the existing flood level to afford protection and the runway would be resilient to flooding. The baseline tidal flood risk for the area identified in the Strategic FRA is overly robust for use for a site specific flood risk assessment. However, the flood hazard has been modelled taking account of the Strategic FRA in a number of scenarios. EA has reviewed the updated FRA and does not object to the proposals.<sup>196</sup>
- 5.9.12. The probability of a 0.5% tidal event and a 4 or 7% breach failure at the same time is 0.02% or 0.033%, a 1 in 5000 year or 1 in 3000 year event, respectively. The assessment demonstrates that there would be no flood risk for a terminal built with a minimum floor level of 3.5m AOD, even if the strategic defences were not maintained in the way identified in current policy and assuming a single 100m breach of the defence to the east of the Airport. Likewise the new terminal would provide a safe refuge, either on the ground or first floor, in the event of a similar 100m breach to the south of the airport. However, given the presence of Lydd town, a rapid repair could be anticipated.<sup>197</sup>
- 5.9.13. The airport's runway extension would be in Flood Zone 1, and the terminal building in Flood Zones 1, 2 and 3a, and both would benefit from the existing coastal defences. The airport is classified as a less vulnerable use under PPS25, and the proposals satisfy the Sequential Test in PPS25 as a permitted land use in Flood Zone 3a having regard to SDC's Strategic FRA. Even if the airport were classified as "essential infrastructure" under PPS25 Table D2, the exception test in PPS25 would be met because of the development's wider sustainability benefits to the community. The development within Flood Zone 3a is on brownfield land and there is no reasonably available alternative land at this existing operational airport.

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<sup>195</sup> CD2.10, CD2.12, CD6.14 Para 5, CD7.9, LAA/13A Para 3.1.6, LAA/13C App 1 & errata LAA/13D Sect 3, LAA/119 Paras 7.5-7.6

<sup>196</sup> CD4.8 Sect 6, LAA/13A Paras 5.1.1-5.1.8, LAA/119 Para 7.7 & 7.13.4

<sup>197</sup> LAA/13A Paras 5.2.15-5.2.16, LAA/119 Para 7.8 & 7.13.3

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The FRA proves that any flood risk can be adequately mitigated and there is no increase in off-site flood risk.<sup>198</sup>

- 5.9.14. In addition, the FRA includes a Flood Warning and Evacuation Plan notwithstanding that LAA is safe from flooding in the year 2115 having regard to the Strategic FRA and to existing policies in respect of flood defences. The terminal building is designed to provide a safe refuge at either ground or first floor and there are blue light services and communications equipment on site. LAA would have access to the EA's three day flood risk forecast and managers would receive Flood Warnings. SDC has consulted the EA on the Updated FRA and it has confirmed that, subject to the imposition of non controversial conditions, it has no objection to what is proposed.<sup>199</sup>
- 5.9.15. CPRE's approach to sea level rise goes beyond the parameters set down in PPS25 as used by the Department for Environment, Food and Rural Affairs (DEFRA) and EA in their strategic planning and SDC in its Strategic FRA. Predictions of sea level change have reduced from UKCIP02 to UKCP09 and the use of an extreme scenario that goes beyond the guidance on probabilities set out in PPS25 is flawed. The EA has reviewed the Updated FRA and does not object. Guidance from DCLG requires EA to use UKCIP02 predictions, even though its own internal planning uses UKCP09, but none of the low, medium or high scenarios for sea level rise in UKCP09 are greater than in UKCIP02.<sup>200</sup>
- 5.9.16. CPRE agreed to produce a combined note considering a 60 year lifetime for the development, using UKCIP02 figures in contrast to UKCP09 figures. This confirms that LAA's FRA is robust when compared with the recommendations of the Strategic FRA, and the EA's lack of objection provides reassurance that a technical analysis based on UKCIP02 with sea level 570mm lower than that used in the Strategic FRA would still show the development to be acceptable. CPRE continues to be concerned about a catastrophic flood event, and long term climate change, but acknowledges that the work done by LAA demonstrates compliance with current planning policy.<sup>201</sup>
- 5.9.17. EA has published further guidance on the use of UKCP09 in *Adapting to Climate Change: Advice for Flood and Coastal Erosion Risk Management Authorities*. This advises use of the UKCP09 Medium Growth 95<sup>th</sup> percentile, showing a reduction for 60 years in the originally predicted sea level rise of 121mm. Applying this shows that the Strategic FRA data and modelling was extremely precautionary, and represented an overestimate of sea level rise of 495mm compared with the latest data that it is now EA policy to use. This is further proof that there is no basis for objection in respect of flood risk.<sup>202</sup>
- 5.9.18. The Dungeness C decision in a national review of sites for new nuclear power stations is not relevant as the Dungeness C site did not fail on a flood

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<sup>198</sup> LAA/13A Paras 5.2.19 & 5.3.1, LAA/119 Paras 7.9-7.10, 7.13.2

<sup>199</sup> LAA/13A Para 5.2.9, LAA/119 Para 7.11-7.12

<sup>200</sup> CD4.8 Paras 3.2-3.4, LAA/13D Sect 2, LAA/119 Paras 7.13-7.13.1, CPRE/7A, CPRE/9A

<sup>201</sup> CPRE/7G Para 1.4, LAA/119 Para 7.18-7.20

<sup>202</sup> LAA/13E, LAA/119 Para 7.21

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criterion. The airport would not be essential infrastructure as the power station would be, is not immediately behind flood defences, nor at risk of rapid inundation. At the only coastal location where residual climate change flood risk exists, the EA strategy is to raise the standard of protection through improvement of the secondary defence.<sup>203</sup>

5.9.19. CPRE accepts that the FRA provides a PPS25 compliant evidence base for LAA and EA's confirmation that funds exist for their ongoing Beach Management Plan maintenance operations.<sup>204</sup>

5.9.20. CPRE contends that the airport should contribute towards coastal defences on a 'beneficiary pays' basis. However, the existing coastal defences provide the required standard of protection to the airport and the updated FRA makes clear that a breach today would not cause flooding of the proposed terminal and runway extension. The airport is not a direct beneficiary of coastal defences based on a 0.5% probability flood event and a contribution would fail the policy tests of *Circular 05/2005* and the *CIL Regulations*. Moreover, EA has not requested a financial contribution.<sup>205</sup>

#### 5.10. **Landscape, Tranquillity and Noise (Quality of Life)**

5.10.1. CPRE are the main Rule 6 party to pursue an objection on these grounds. CPRE's concern effectively relates to perceived effects on the cultural landscape/heritage of the area, and on 'tranquillity' from aircraft flying in the locality.<sup>206</sup>

##### **Landscape**

5.10.2. The landscape/visual assessments were undertaken in accordance with the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment* and provide an appraisal of the effects of the proposals in landscape and visual terms. They include consideration of the cultural heritage aspects of the locality. The assessments took full account of all relevant policy designations of landscape areas, a physical assessment of the landscape, and assessments of landscape character such as that contained in the *Character of England: Landscape, Wildlife and Natural Features 1999*.<sup>207</sup>

5.10.3. The assessments conclude that neither the built form proposed, nor the activity that would occur as a consequence, would cause any material landscape or visual harm. The conclusions are robust as they are based on a comparison of the future development scenarios and the current level of operations, without factoring in any increases in aviation activity that are predicted to occur at the airport in any event. When such increased activity is taken into account, the conclusions become all the more unassailable.<sup>208</sup>

5.10.4. CPRE asserts that aviation activity would damage the cultural landscape or perception of the Romney Marsh area. Reference was made to a wide array

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<sup>203</sup> CD4.8 Sect 4, LAA/119 Para 7.13.5

<sup>204</sup> CD 4.8, LAA/119 Para 7.14

<sup>205</sup> CD4.8 Sect 5, LAA/119 Para 7.13.6 & 7.15-7.16, Dr Meaden XX by LAA & SDC Day 18, Mr Furey XX by LAA Day 18

<sup>206</sup> LAA/119 Paras 8.1-8.3.3, CPRE/3C Para 2.7, Mr Levinson XX by LAA Day 26

<sup>207</sup> LAA/10A part 3.9, LAA/10C Apps D & G, LAA/119 Paras 8.4-8.5, Mr Self IC Day 25

<sup>208</sup> LAA/119 Para 8.6

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of cultural material, including both natural and man-made features. The most prominent in the latter category are the Dungeness power stations which are a source of beauty to some, but not to others. However, CPRE accepted that its cultural overview failed to include the Airport which is necessarily a component of the cultural heritage of the area, and has existed on Romney Marsh for longer than the power stations. Aviation activity of far greater levels, by larger and much noisier aircraft, is part of the cultural history of the area. There is no basis for suggesting that continued aviation activity, at levels significantly below historic levels and with more modern quieter aircraft, would change the cultural landscape.<sup>209</sup>

- 5.10.5. CPRE also acknowledged that there was no suggestion that the presence of the Airport and aviation activity had ever previously caused any harm to the cultural landscape, the perception of the area, or its attraction to artists and visitors. Whilst LAAG and CPRE referred to use of the area for film-making or photo shoots, neither was able to point to any harm that had been caused. The airport is not identified as a detractor, now or in the past, in any landscape character documents in contrast to the firing ranges. There is no reason why the proposed development would have such an effect in the future. CPRE's evidence relates to wider areas, such as the shore near the power station or the Dungeness Shingles, that would not be overflowed at all. This contrasts with the historic position where these areas could have been overflowed when the airport was operating at much higher levels and the flightpaths were not restricted.<sup>210</sup>
- 5.10.6. It must be remembered that the 1992 permission gave consent for a greater scale of operations than is now being proposed. No one has identified any material change in circumstances since then that would alter that conclusion. The only differences of any materiality are ones which strengthen the lack of objection on these grounds, such as the absence of a flightpath in the current proposals across the southerly area, the smaller number of movements, the use of quieter aircraft, and the caps on other activity such as night time use.<sup>211</sup>

### **Tranquillity**

- 5.10.7. The concept of tranquillity is not defined in any policy applicable to this development, nor is it applied as a policy test. The concept is nebulous and its meaning is vague for the purposes of making assessments. It is often interpreted as a wider label to things like noise. Whatever its ingredients are taken to be, they have all been assessed in the normal way through the comprehensive assessments of matters such as noise, landscape and visual effects, and cultural heritage.<sup>212</sup>
- 5.10.8. Whilst CPRE has criticised the absence of a separate tranquillity assessment, SDC and other statutory consultees have not identified the need for such an assessment and no such requirement exists in any relevant policy document. The high-water mark of CPRE's case on policy is that the word "tranquillity" or "tranquil" appears in the RSS and the Rural White Paper. In

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<sup>209</sup> LAA/119 Paras 8.7-8.8, Mr Levinson XX by LAA Day 26

<sup>210</sup> LAA/10/E.1, LAA/119 Para 8.9-8.10, LAAG/115, Mr Levinson XX by LAA Day 26

<sup>211</sup> LAA/119 Para 8.12

<sup>212</sup> LAA/119 Paras 8.14-8.15



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the RSS the only two references are in a Table under paragraph 9.2, where the reference to “maintaining tranquil areas” is put under the category of “NOISE” and the reader is referred to Policy NRM10 which deals with noise, and at paragraph 11.2 where reference is made to the tranquillity of the countryside, but read with the preceding reference, is again referring to the noise environment.<sup>213</sup>

- 5.10.9. Reference is made to other policy documents, such as those for the Northumberland National Park or the Dover Core Strategy but these are not applicable to this area and its policy context. Again, the concept of “tranquillity” used in such documents is not defined in a way that would make any difference to the assessments already carried out.<sup>214</sup>
- 5.10.10. CPRE relies on the written statement of the Kent Downs Area of Outstanding Natural Beauty (AONB) Executive, which contains numerous errors. Its references to appeal or local plan decisions where it is said that the issue of tranquillity was a determining factor have been analysed and demonstrate that the term “tranquillity” in those decisions is used as an alternative label or description of the things that have been assessed by the Applicant in the normal way and are normally used as a description of the noise environment.<sup>215</sup>
- 5.10.11. The Suffolk Coasts and Heaths AONB Local Plan report concerned a new airport for civil use of undefined scale on land within the AONB. The proposals at Lydd are at an existing airport that is not in an AONB. The Sussex Downs AONB decision was for the creation of an airfield immediately adjoining the AONB and was rejected because of the impact of noise on the immediate area. There is no reliance on the notion of tranquillity. The Exmoor National Park decision concerned the creation of a landing strip within a remote area of a National Park rather than the continued use of an existing airport outside any National Park or AONB. The Inspector in the Exmoor decision refers to “tranquillity and quietness”, but the reasoning explains this is directly concerned with noise. The same points of distinction apply to the North Wessex Downs AONB decision for the intensification of an existing airstrip for microlight use within the AONB.<sup>216</sup>
- 5.10.12. The Executive asserts that the AONB would be affected by “very noisy aircraft” flying at “low altitudes”. None of the aircraft would be lower than 3,200 ft as they passed over the AONB and many would be considerably higher. Moreover, the aircraft would not be “very noisy”. The effects of aircraft in that location have not been “almost wholly ignored”. They have been assessed in the environmental material on landscape and visual effects, and on noise, from which the absence of any significant effects can be seen. The reliance on Guidance to the CAA on environmental objectives is not well founded as the CAA has not objected to the proposal, or suggested it would conflict with its environmental objectives. Whilst there would be flights below 7,000 ft over a part of the Kent Downs AONB, that is

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<sup>213</sup> CD7.1 pp 83 & 106, LAA/119 Para s 8.16-8.17

<sup>214</sup> LAA/119 Para 8.18

<sup>215</sup> LAA/18A, LAA/119 Para 8.19, KD1/W

<sup>216</sup> LAA/119 Para 8.20

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already the case under the established departure and arrival routes. The proposal would not materially alter the existing situation.<sup>217</sup>

- 5.10.13. The AONB Executive refers to an assessment from Northumbria University. The starting point for objection is the assumption that fully laden aircraft would approach the runway at shallower angles and would be lower in the sky but all larger aircraft would follow the ILS with a standard 3.5 degree descent, regardless of their payload and would not be lower in the sky. The difference in heights during the approach to the escarpment has also been misunderstood. The height differential due to the land is 320ft, so the claim that aircraft would be at 2,100ft on the northerly route, or below 2,000ft over the escarpment is wrong. Larger aircraft cannot use the NDB approach referred to for the 2,100 feet height and for the ILS approach, the difference of 320ft from the escarpment means that the aircraft would be at a minimum height of 2,800 ft over the escarpment. This would not create any material noise or visual effect on a flightpath that already exists.<sup>218</sup>
- 5.10.14. The CPRE tranquillity mapping is relied on but proves the opposite to what is asserted. The approach paths are over an area that is the least 'tranquil' within the AONB. This is unsurprising as the flightpaths have been in existence for many years and lie over a relatively urbanised area of the escarpment with the employment area of Link Park.<sup>219</sup>
- 5.10.15. Finally, the Executive provides its own analysis of noise levels in respect of the AONB. It equates LA<sub>max</sub> or LA<sub>eq 40 secs</sub> events or noise readings with the 57dB 16 hour annual average levels for the onset of community annoyance. This is comparing apples with pears and misunderstands the noise environment that would exist. Likewise, the Executive's attenuation formulae are impossible to validate and "demonstrably wrong". As the accurate scientific assessment demonstrates, there would be no material change to the noise climate in the Kent Downs AONB as a result of the proposals.<sup>220</sup>
- 5.10.16. CPRE's witness described himself as an expert in tranquillity but accepted that there was no such discipline and that he had no professional expertise in landscape and visual impact assessments, and noise, which were described as components of tranquillity. CPRE's objection is a desk-based exercise, using its national Tranquillity Map, concluding that more aviation would be a bad thing as the area is shown as very tranquil. No site visit had been conducted, no landscape character assessment or noise assessment was carried out, and existing level of aviation or what increases would occur was not known.<sup>221</sup>
- 5.10.17. The use of the Tranquillity Map in this way is misconceived. Firstly, despite having experimented with such mapping for over 20 years, the use of such maps or the notion of tranquillity has never been reflected in policy. Secondly, not only was the exercise desk-based without any knowledge of the actual area, it did not involve any assessment of the current or future

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<sup>217</sup> LAA/18A, LAA/119 Para 8.21

<sup>218</sup> LAA/119 Para 8.22

<sup>219</sup> LAA/119 Para 8.23

<sup>220</sup> CD1.41a & b, LAA/5A, LAA 18/A, LAA/119 Para 8.24

<sup>221</sup> LAA/119 Paras 8.25-8.27, Mr Willis XX by LAA Day 25

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position with aviation activity, or night activity, if planning permission were to be refused. Thirdly, the exercise was undertaken with no knowledge of what was proposed by way of additional aviation activity.<sup>222</sup>

- 5.10.18. Fourthly, the sole source of the objection was the Tranquillity Map and it involved no judgment of the actual effects. CPRE described tranquillity as “freedom from all man-made features”. The nature of the inputs into the Tranquillity Map means that it is unable to map the real situation for a specific area. Nuclear Power Stations and the Airport, with their associated infrastructure, are not recognised. The Map categorises all such development as ‘urban development’, whether it is a small row of dwellings, an empty runway or a Nuclear Power Station in the middle of the landscape with electricity wires running towards it. Mineral workings and security fencing are not recognised, despite being identified as sources of intrusion in the *Kent Landscape Character* document. It was accepted that if this were an application for a Nuclear Power Station on the site of the Airport, CPRE would not have objected in relation to tranquillity because the nature of the mapping inputs would mean this would register as no change.<sup>223</sup>
- 5.10.19. The Tranquillity Map does not properly reflect the existing situation. This is illustrated by the Nuclear Power Station at Dungeness being rated on the Tranquillity Map as one of the most tranquil areas in the whole of the UK whilst Hythe waterfront, a beachfront tourist destination, shares the tranquillity qualities of Central London. The Map has not been checked to consider such glaring absurdities and was never intended to be used for the purpose now advocated.<sup>224</sup>
- 5.10.20. Similar earlier work used maps that showed disturbance. These are still published by CPRE and referred to as Intrusion Maps. These show that the area around the Airport and Dungeness are subject to significant intrusion. This is unsurprising given the features on the ground. Even allowing for the fact that the Intrusion Maps do not incorporate positive features, it is impossible to reconcile the Tranquillity Map with the Intrusion Map. Dungeness moves from being a location subject to significant intrusion to one of the most tranquil in the UK. It is not surprising to see that the Tranquillity Maps are subject to the warning that they are not to be used for advice.<sup>225</sup>
- 5.10.21. In any event, the assessment process undertaken by CPRE demonstrates that the proposals would have no material impact on the overall tranquillity score. The introduction of aviation would result in a reduction of three tranquillity points and the area would continue to be rated as one of the most tranquil in the UK. There would not even be a perceptible colour change on the Map. Any reduction in tranquillity points would only apply under the mapping inputs to a confined area reflecting the airport’s control zone. As the airport does not have a control zone of this type, it is doubtful whether the mapping would register any impact at all.<sup>226</sup>

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<sup>222</sup> LAA/119 Paras 8.28-8.28.3, Mr Willis XX by LAA Day 25

<sup>223</sup> LAA/119 Para 8.28.4, Mr Willis XX by LAA Day 25

<sup>224</sup> LAA/119 Para 8.28.5

<sup>225</sup> LAA/10A, LAA/10E, LAA/119 Para 8.28.6, Mr Self IC Day 25

<sup>226</sup> LAA/119 Para 8.28.7

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- 5.10.22. In an e-mail dated 6 May 2011 relating to draft work on describing National Character Areas (NCAs), NE refers to the CPRE mapping work as data at “the broad NCA scale” providing an “indication of comparable levels of tranquillity within and between NCAs”. However, it then remarks: “As with other data used in this work it is suited to the NCA scale as context for more detailed work at a more local scale”. The writer states “I would stress again that these NCA profiles are intended to be used as context to inform more detailed projects. Descriptions do not go into local detail and it is expected that partners will also use the more detailed sources of information such as local character assessments in specific cases, for example in Public Inquiries.”<sup>227</sup>
- 5.10.23. CPRE attempts to dismiss this as a criticism that the mapping ignores local factors such as “fencing or gravel workings”. These factors are the ones that the *Kent Landscape Character* document identifies as detractors. The mapping is no use at a local level if it is unable to pick up things which are identified as detracting features in the local area. In addition to local factors, the presence of the nuclear power station, the airport and existing aviation activity, and military activity including military jets are ignored. It is claimed that this misunderstands “the granularity of the national mapping” but it is the “granularity” and scale that makes the use of the Maps inappropriate for development control decisions.<sup>228</sup>
- 5.10.24. CPRE states “... where features cannot be accounted for, this is done consistently across the country, so that in relative terms the comparison on a relative scale must stand although there may be a variation at a more detailed level locally.” This confirms that the maps cannot be used at a local scale but also that the mapping limitations result in basic errors that apply to other locations in other circumstances. This does not result in consistency unless one means that the presence of errors will be a consistent theme of the maps. In this case, the map treats the airport as if it were not there and no aircraft were taking off or landing, as if Dungeness Power Station did not exist, and as if the military ranges and their firing activity were not there at all.<sup>229</sup>
- 5.10.25. CPRE tries to justify this by claiming that the power station “is largely silent and generates little traffic”, and because power stations were not mentioned frequently enough by the public to warrant a separate listing. They state that if nuclear power stations were to be recognised, so would other things such as “oil refineries ... incinerators ... factories ... railway stations ...”. This is unsupported by any evidence. On CPRE’s own case, tranquillity is not simply about noise or traffic, but visual intrusion as well. This is completely ignored for the power station. Moreover, Dungeness, in its operation and decommissioning, is not silent. There are noisy activities associated with it and it also generates car and lorry movements, as well as railway movements.<sup>230</sup>

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<sup>227</sup> LAA.119 Para 8.28.8, CPRE/2D

<sup>228</sup> LAA/119 Paras 8.29-8.31, CPRE/104 Paras 4.1.1, 4.1.8 & 4.5.1, Mr Willis XX by LAA Day 25

<sup>229</sup> LAA/119 Paras 8.32-8.33, CPRE/104 Para 4.5.2

<sup>230</sup> LAA/119 Paras 8.34-8.34.1, CPRE/104 Para 4.5.4

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5.10.26. It is self-evident that nuclear power stations are not likely to be identified “frequently” in general survey work as they are not common features in the national landscape. That does not mean that where they do occur, they have no effect and can be discounted. The list of forms of development that are omitted altogether from the mapping process confirms the basic inadequacies of the exercise. If the Map does not recognise such large scale forms of development, or their nature, it cannot possibly be used in order to make judgements about tranquillity in the way now being proposed. There is no identification of who was consulted, why those responses are considered to be representative, or how the consultation responses are then “weighted” to a local area and translated onto the Map.<sup>231</sup>

### Noise

- 5.10.27. No concerns have been raised with respect to ground noise, road traffic noise or construction noise and vibration. RSPB questions the noise contours, which have been in the public domain since 2006 and on which the ESs are based, but there are a number of errors in its assumptions. It is suggested that the noise assessments were based on there being no BAE 146 movements. That is incorrect, but in any event the noise profile of the BAE 146 is substantially similar to the Gulfstream jet, which is in regular use at the airport.<sup>232</sup>
- 5.10.28. There is criticism that the Single Event Level (SEL) unit of measurement was not used to record the ambient noise level but it is impossible to assess the ambient level by reference to a SEL. Ambient noise is, by definition, noise from many different sources. It is wrong to claim that SEL is a more usual measure of noise in terms of its effects on wildlife. Papers referred to by RSPB make their assessments on the basis of  $L_{Amax}$  and RSPB was unable to point to any study which correlates ambient noise and peak noise levels measured in SEL.<sup>233</sup>
- 5.10.29. Whilst RSPB is surprised that LAA did not appraise it of the trial flight, its Area Manager and others witnessed the flight and its lack of effect on birds. The “telling” statistic that the 737-300 was recorded at 90dB(A) when flying at 1000ft was in fact an SEL, not an  $L_{Amax}$  that is the correct form of measurement to use. The SEL level is about 7dB(A) higher than the equivalent  $L_{Amax}$  figure. Thus, the  $L_{Amax}$  figure was about 83 dB(A). This is of course from a noisier aircraft (the series 300) than is likely to be flown from LAA, and underlines the robustness of the assumptions made. The model used for the ES noise assessment assumes that aircraft would be fully laden.<sup>234</sup>
- 5.10.30. RSPB assumed that 4 flights in 10 would go out to the south across the firing range, “a situation which was not envisaged in earlier scenarios”. However, there is no restriction on the use of FP18, except when the firing range is in operation. In any event, LAA is prepared to restrict take-offs on Runway 21 to FP12 if it is considered necessary and if it passes all the other tests in *Circular 11/95*. Given the nature of the operation, with no based

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<sup>231</sup> LAA/119 Paras 8.34.2-8.34.4

<sup>232</sup> LAA5/C Figs NV20 (BAe 146) & NV22 (Gulfstream), RSPB/4A Paras 3.1 & 10.15

<sup>233</sup> LAA/5E, LAA/5F, LAA/119 Paras 12.6.1-12.6.3, RSPB4/A

<sup>234</sup> LAA/5E Para 1, LAA/119 Paras 12.6.4-12.6.6, RSPB/4A Paras 10.19 & 10.27

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aircraft at Lydd, it is difficult to see how the airport could rely on straight-out departures.<sup>235</sup>

- 5.10.31. Turning to the assessment of noise on the human population, the current thresholds of annoyance are based on the *Aircraft Noise Index Study*, which is quoted in the ATWP. The study related levels of community annoyance to average daily noise levels,  $L_{Aeq\ 16\ hour}$ , and suggests that the onset of significant community annoyance occurs at 57dB, moderate community annoyance occurs at 63dB and high community annoyance occurs at 67dB. The assessment of noise is undertaken through a combination of ambient noise assessments and calculations undertaken through modelling. The industry standard is the INM model which calculates and plots contours showing the daily continuous noise level,  $L_{Aeq\ 16\ hour}$ , on the ground.<sup>236</sup>
- 5.10.32. The effect of aircraft noise from the proposals has been summarised. For the 300,000ppa, no properties would be affected by departures on runway 21 within the 57-60dB contour band, the threshold for the onset of significant community annoyance, whilst for 500,000ppa only three properties in the 57-60 dB contour band would be affected, and there are no properties in any noise band above that. In terms of the departures on runway 03, which would be used for 30% of departures, there would be 36 properties affected in the 300,000ppa, and 75 in the 500,000ppa, scenarios. The summer average or "Upper Parameter", figures would be slightly greater at 66 and 106 properties affected respectively on 03 departures. There would be no instances where the noise climate would affect properties beyond the 57-60dB contour. The assumed flight path for runway 21 departures is FP12 over the town of Lydd.<sup>237</sup>
- 5.10.33. This demonstrates that there would be a very small noise effect. It is probably unprecedented for an airport in the South East that the noise climate from a commercial passenger airport would be constrained to so few properties within the threshold of the onset of significant community disturbance. It should be noted that the 1992 decision was based on a conclusion that the effect on residential amenity did not warrant the withholding of planning permission. If it were considered important to avoid straight ahead departures on runway 21 to reduce any potential effect on birds then the effect on residential dwellings would be very small.<sup>238</sup>
- 5.10.34. Turning to Greatstone Primary School, the concerns raised are unfounded. The World Health Organization (WHO) *Guidelines for Community Noise* (1999) notes that for Schools and Pre-schools, the critical effects of noise are speech interference, disturbance of information extraction, message communication and annoyance. The background level in class should not exceed  $35dB_{LAeq}$  during teaching sessions. For outdoor playgrounds the sound level of the noise from external sources should not exceed  $55dB_{LAeq}$ . The same guidelines apply for pre-schools. Effects on children's cognitive development occur at much higher levels of aviation noise than are predicted at LAA. The RANCH study recommends that new schools should

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<sup>235</sup> CD17.14 cond 27, LAA/119 Paras 12.6.7-12.6.8, RSPB/4A Para 10.29

<sup>236</sup> LAA/119 Paras 12.8-12.9

<sup>237</sup> LAA/5C App 1 Figs NV11 & NV12, App 2 Table NV01 (summarises data in CD1.41a & b, LAA/119 Paras 12.10-12.13)

<sup>238</sup> CD8.27 IR Para 9.21 DL Para 8, LAA/119 Para 12.14

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not be planned close to existing airports where noise levels exceed the WHO recommended levels for school playgrounds.<sup>239</sup>

5.10.35. Aircraft noise levels would increase to 46dB in the fallback position, 48dB with the runway extension and 51dB with the terminal building. This is well below the WHO guideline figures for outdoors, and would not exceed the WHO internal level of 35dB<sub>L<sub>Aeq</sub></sub>. The *Acoustic Design Guide for Schools* confirms that for the design of new schools, 35dB is the upper limit for the indoor ambient noise level for nursery school quiet rooms. For ordinary teaching areas it is 40dB. The predicted noise impacts were undertaken by calculation, which is standard best practice, and the suggested levels are easily achieved in this case.<sup>240</sup>

5.10.36. Notwithstanding the clear lack of harm to the primary school arising from the proposals, LAA has made provision in a Section 106 Agreement for sound insulation works to Greatstone Primary School to the value of £100,000 including a survey fee. In light of the *Community Infrastructure Levy (CIL) Regulations* it would have to be considered whether this is necessary to make the development acceptable in planning terms, and fairly and reasonably related in scale and kind to the development.<sup>241</sup>

5.10.37. There would be no material harm caused to Greatstone Primary School by the proposals. The harm to the wider population would be very limited, and in light of development plan support for the expansion of the airport, the very limited noise impact could not be a proper basis for refusing planning permission.<sup>242</sup>

## 5.11. **Transportation**

5.11.1. The applications were accompanied by TAs, supplemented by further information throughout the application process, and are now underpinned by a Section 106 Agreement. There are no outstanding objections from the Highways Agency, Kent County Council (as highways authority) or East Sussex County Council. No-one has raised any issue regarding highway safety arising from the proposals.<sup>243</sup>

5.11.2. A Surface Access Strategy and associated travel plan have been developed based on projected staff and passenger travel demand profiles. A Section 106 Agreement includes the following measures, none of which are unusual for an airport development:

- i) The provision of a Travel Plan;
- ii) The appointment of a Transport Co-ordinator;
- iii) The establishment of the Travel Plan Steering Group;
- iv) The provision of a Parking Management Scheme;
- v) The provision of a Car Sharing Scheme;

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<sup>239</sup> LAA/5C App 4 NV06 & NV07, LAA/119 Paras 12.15-12.15.2

<sup>240</sup> CD8.29, LAA/5D Paras 2.3.2 & 2.5, LAA/119 Paras 12.15.3-12.15.5

<sup>241</sup> CD17.2 Sched 1, clause 16, LAA/119 12.15.6

<sup>242</sup> LAA/119 Para 12.16

<sup>243</sup> LAA/119 Paras 11.1-11.4

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- vi) The provision of a Shuttle Bus between LAA and Ashford International Station;
  - vii) The undertaking of highways works in accordance with the Access Monitoring Study which is particularly concerned with the junction of the B2075 and the Airport access;
  - viii) The monitoring of the C24 Camber Road and thereafter, if the results of monitoring show an increase in the Average Daily Traffic Flow prior to the runway extension coming into operation of more than 5%, the making of a contribution towards the cost of traffic management measures in Camber;
  - ix) The provision of a Signage Strategy directing passengers in cars to use the most appropriate routes.

Whilst an outline travel plan has been submitted indicating the contents of the full travel plan the S106 Agreement requires the Travel Plan to be in conformity with a schedule of contents agreed with KCC.<sup>244</sup>

- 5.11.3. CPRE's concerns relate to the Airport's accessibility. However, LAA has a catchment population, in transport terms, of 848,000 within a 60 minute drive. Based on CAA passenger survey data, a small regional airport at Lydd would reduce car mileage of passengers within the 60 minute catchment by an average of 40%, saving over 800 tonnes of CO<sub>2</sub> pa. This demonstrates the sustainability of a regional airport in the South East to relieve the pressure on the main South East airports in line with the ATWP and subsequent statements from Government ministers.<sup>245</sup>
- 5.11.4. Turning to the highway network, CPRE's witness had not seen the provisions of the Section 106 Agreement. The coastal route through Camber would not be a quicker route than the main A259 from the west, but in any event this would be addressed by a signage strategy. Criticisms of the modelling are unfounded. The assumptions made were the most appropriate highway comparators. Traffic generation was assumed to coincide with peak traffic times, which is robust as no jet aircraft would be based at LAA and flight times would be later in the morning. A roundabout scheme has been developed for the junction of the A259 and the B2075 at Hammonds Corner and its implementation before demand reaches 30,000ppa would be required by an Agreement. The junction of the Airport access road and the B2075 has sufficient capacity but would be monitored and improved if found necessary.<sup>246</sup>
- 5.11.5. In response to other points made by CPRE, the Strategy and Travel Plan would look to reduce the use of the private car as far as possible by introducing alternative travel options. Service vehicles have been accounted for and are included in the traffic forecasts in the TA. The provision of a shuttle bus between LAA and Ashford International Station would need to be subsidised by the airport initially and its provision before the throughput reaches 30,000ppa would be required by a Section 106 Agreement as would

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<sup>244</sup> CD 1.35b, LAA/14G p3, LAA/119 Paras 11.5-11.9.9

<sup>245</sup> LAA/12/D, LAA/119 Paras 11.6-11.8, CPRE/5/A

<sup>246</sup> LAA/4/G tables 2.1 and 3.1, LAA/12A Paras 11.12-11.19, LAA/119 Paras 11.9-11.10



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its continuance until the runway extension and terminal building cease to operate.<sup>247</sup>

- 5.11.6. So far as car parking is concerned, there is a balance to be struck. The highway authority is satisfied with LAA's analysis and CPRE's scenario of 90% of a summer month peak of 25,000 passengers arriving and leaving their vehicles for 14 days is improbable given figures for comparable airports. Research suggests that only 42% would leave their vehicles. Others would be dropped off or arrive by taxi. The methodology for calculating car parking provision was agreed with KCC and the Highways Agency.<sup>248</sup>

## 5.12. Planning

### Development Plan

- 5.12.1. There is clear development plan support for the proposals. The supporting text to RSS Policy T9 states that other small airports could play a valuable role in meeting local demand and contributing to regional economic development. It goes on to say "Subject to relevant environmental considerations, their development should be supported, and regional and local planning frameworks should consider policies which facilitate growth at these airports". This broad statement of support follows the approach in the ATWP.<sup>249</sup>
- 5.12.2. Paragraph 9.23 of the RSS mentions "conserving and enhancing the extent and quality of designated conservation sites". *Great Trippetts Estate Limited v Secretary of State for Communities and Local Government* [2010] EWHC 1677 indicates that "conserving and enhancing the natural beauty of the area of outstanding natural beauty" should be construed as maintain and where possible enhance. The same should apply to conservation sites. PPS 9 states that developments should have minimal impacts on biodiversity and enhance biodiversity wherever possible. There is no suggestion in national policy of a two-fold requirement of maintaining and enhancing.<sup>250</sup>
- 5.12.3. LP Policy TR15 similarly gives support to the development of commercial aviation provided there would be no significant impact on the important wildlife communities. In addition, regard must be had to the likely effects of proposals on other special features, particularly the power station.<sup>251</sup>
- 5.12.4. Objectors fail to acknowledge this support. LP Policy SD1 identifies criteria that proposals should respect, but was adopted in full knowledge of Policy TR15, and vice versa. It is wrong to seek to diminish the weight accorded to TR15 by asserting that aviation development here is in conflict with the principal policy on sustainable development. A site specific policy with which the proposals accord is a consideration of great weight. In any event, there is no conflict with the SD1 criteria. Similarly, there is no conflict with LP Policies CO1 and CO14 which should read in the context of Policy TR15 that supports the development of a commercial airport at LAA. Mr Bingham

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<sup>247</sup> CD17.28, LAA/12/D, LAA/119 Para 11.11, Mr Sowerby XX by CPRE Day 31

<sup>248</sup> LAA/119 Para 11.12, SDC.108 Para 76

<sup>249</sup> CD 7.1, LAA/119 Para 3.3

<sup>250</sup> LAA/119 Paras 3.4-3.6

<sup>251</sup> CD7.7, LAA/119 Para 3.8

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did not acknowledge the development plan support, had not read many of the supporting documents, and based his comments on the assumption of a throughput of 2mppa.<sup>252</sup>

### **National Planning Policy**

- 5.12.5. The ATWP also supports the proposals. It remains extant Government aviation policy as demonstrated by the SoS's decision in the North East Sector, Crawley appeal (APP/Q3820/A/08/2092933). At a time of comparative prosperity the ATWP identified, amongst other things:
- i) That air travel is essential to the UK's economy and continued prosperity, where the population rely upon air travel and the economy depends upon it (including many businesses in manufacturing and services as well as tourism), with 200,000 people supported directly and three times as many supported indirectly;
  - ii) The starting point is to make best use of existing airport capacity; and,
  - iii) There is a balance to be struck between meeting the increased needs for aviation travel, whilst seeking to reduce and minimise the impacts of airports on those who live nearby and on the natural environment.<sup>253</sup>
- 5.12.6. However, the ATWP must be read in light of *The Coalition: our programme for Government* statement that additional runways at Heathrow, Stansted and Gatwick are not supported. The removal of that support makes the support for best use of existing airport capacity and encouragement for growth at regional airports even more compelling. There is no basis for asserting that LAA is not a regional airport. It is expressly considered, along with other regional airports under the heading "Smaller South East Airports".<sup>254</sup>
- 5.12.7. "Making the best use of existing airport capacity" does not mean a sequential approach with capacity at other airports in the region being exhausted before allowing new infrastructure at any existing airport. The consequences of that would mean that south east airports would have to reach breaking point before any improvements to other airports could be countenanced. That would be unsustainable and fly in the face of the Government's decision to grant planning permission for a runway extension at Southend in March 2010. Enabling LAA to accommodate modern passenger jet requirements as an existing Airport falls squarely within the Government's objective of making best use of existing airport capacity.<sup>255</sup>
- 5.12.8. The ATWP notes that, in principle, the Government supports development of smaller airports in the South East to meet local demand, subject to relevant environmental considerations. This includes LAA. Even when new runways were contemplated at the major airports the ATWP recognised and strongly

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<sup>252</sup> LAA/14A Paras 9.24-9.70, LAA/119 Paras 3.9-3.11

<sup>253</sup> CD 5.24 Foreword, Para 2.17, LAA/111 para 11, LAA/119 Paras 3.13-3.15

<sup>254</sup> CD8.7, LAA/119 Paras 3.16-3.17

<sup>255</sup> LAA 4/A Para 3.9, LAA/4J Paras 8-9, LAA/119 Paras 3.17-3.19, Ms Congdon IC Day 14 & XX by CPRE Day 16

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endorsed the important role that small airports would have to play in the future provision of airport capacity in the South East.<sup>256</sup>

- 5.12.9. The updated UK Aviation Forecasts demonstrate that the three main London airports will be at capacity by 2030 confirming that there is a strong potential for LAA to attract services from Gatwick to meet its local catchment area demand before 2020. The ATWP notes “from the studies undertaken for the White Paper and the responses to the consultation, it appears that some further development could be possible at any of the smaller airports that have been assessed without insurmountable environmental constraints”.<sup>257</sup>
- 5.12.10. In the context of growth, the ATWP refers to Southend, Lydd, and Manston as well as Shoreham and Biggin Hill. It notes that they could all play a role in meeting local demand and contributing to regional economic development and supports their development, in principle, subject to relevant environmental considerations. There is no suggestion that Lydd and Manston should be regarded as alternatives to one another. Moreover, the ATWP states that the Government recognises the important contribution made by smaller airports in the south east in providing capacity for business aviation.<sup>258</sup>
- 5.12.11. Whilst there have been changes in policy towards additional runways at major airports, the remainder of the policy remains the same. The consequence is that the reliance upon other airports to meet local demands is an imperative. Not only is meeting the needs of local travellers on their doorstep a sustainable way forward, but it is essential to meet the aviation demands that must be accommodated in the south east that the main airports will be unable to serve in the future.<sup>259</sup>
- 5.12.12. In conclusion on the ATWP, weight should be given to those aspects set out above. None of those policies conflict with the overall aim of reducing CO<sub>2</sub> emissions. No credence should be given to the suggestion that the weight given should be diminished by a generalised observation in the DfT Scoping Report that unidentified provisions of the ATWP are no longer fit for purpose. That needs to be read in the context of the paragraph of the Scoping Report that sets out a framework for the new policy, which differs little from the existing. If it was the intention to withdraw the ATWP, the Scoping Report would have done so in unequivocal terms.<sup>260</sup>
- 5.12.13. This and other announcements of Government policy or emerging policy have not altered or withdrawn the ATWP as the primary source of Government aviation policy and approach. Some aspects have changed but the same support exists for meeting local demand at regional airports, such as LAA, and supporting economic development for these areas. It reflects the aim of seeking to encourage economic growth, local sustainability, job creation and economic regeneration throughout the UK.<sup>261</sup>

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<sup>256</sup> CD5.24 Paras 11.11 & 11.93, LAA/119 Paras 3.21-3.22

<sup>257</sup> CD5.24 Para 11.94, CD5.39, LAA/41, LAA/119 Paras 3.23-3.24

<sup>258</sup> CD5.24 Paras 11.98-11.101, LAA/199 Paras 3.25-3.26

<sup>259</sup> LAA/4A Para 3.7, LAA/119 Para 3.28, Ms Congdon IC Day 14 and XX Day 15.

<sup>260</sup> CD5.36 Paras 1.14-1.15, LAA/119 Para 3.31

<sup>261</sup> LAA/119 Para 3.32

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5.12.14. There is other material of potential relevance comprising, amongst other things:

- i) The Future of Air Transport Progress Report, December 2006;
- ii) The Results of the previous Government's further consultation on a third runway at Heathrow, January 2009;
- iii) The revised UK Air Passenger Demand and CO<sub>2</sub> forecasts which indicates that unconstrained demand would still reach 465mppa in 2030 compared with 500mppa assumed in the ATWP with no consequential changes to the ATWP;
- iv) The decision in *Hillingdon* on the relevance of the proposed new National Policy Statement for Airports to take into account the findings of the *Climate Change Act 2008* and the findings of the Committee on Climate Change in December 2009 as to what would be acceptable levels of air traffic in 2050;
- v) Planning permission for development at Bristol Airport, September 2010, with the rejection of the contention that no capacity enhancing development at airports can be permitted pending the new National Policy Statement on Airports;
- vi) The Coalition Government's announcement cancelling support for new runways at Stansted and Heathrow, coupled with the continued prevention of any new runway consideration at Gatwick before 2010;
- vii) The SoS for Transport's reiteration in October 2010 of the Government's support for the role which air transport plays in supporting the national economy;
- viii) The DfT's Business Plan identifying the potential for a new policy framework in March 2013; pending this, the policy remains as set out in the ATWP, subject to the modification regarding Stansted and Heathrow, as demonstrated by the approach adopted towards Southend and Bristol Airports.

None of this material alters the overall planning and economic policy position, save that the approach of the Coalition Government to Stansted and Heathrow emphasises the importance of airports such as LAA to meet local demand.<sup>262</sup>

5.12.15. It is suggested that the weight attributable to the ATWP is diminished by the *Climate Change Act 2008*, the recession, and an alleged lack of support for the ATWP by the Coalition Government. In relation to the Climate Change Act, there is nothing in the *Hillingdon* judgment that supports this. The contention is contradicted by the recent consents for Southend, Bristol and London City Airports. The argument was rejected in *R(Griffin) v London Borough of Newham* [2001] EWHC 53 where it was held that a ministerial statement of January 2009 announcing a target for aviation emissions in

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<sup>262</sup> CD5.25, CD5.27, CD5.28, CD8.12, CD8.13, CD9.14, CD12.16, LAA/4A Paras 3.9-3.18, LAA/4D Paras 2.1-2.30, LAA/119 Paras 5.6-5.7

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2050 neither expressly, nor by implication, created a limit on increased capacity at existing smaller airports in the south east.<sup>263</sup>

- 5.12.16. The advice of the Committee on Climate Change's report in December 2009 identifies that there would be scope for an increase in demand of 60% nationally above 2005 levels without the climate change target being breached. This amounts to a potential increase of some 140mppa over current demand levels. This scale of increase, which does not affect the targets, is huge compared with the modest, but important, role LAA would play in meeting local demand. The cancellation of support for new runways at Stansted and Heathrow demonstrates that these levels of growth would have to be accommodated elsewhere and the role of LAA would be strengthened.<sup>264</sup>
- 5.12.17. It is suggested that the *Hillingdon* judgment means that climate change should form part of the material evidence before the Inquiry. So far as national policy is concerned, it is not the case that development at LAA would necessarily result in additional flights to and from the UK resulting in additional emissions. The demand for LAA services would principally be diverted from other congested airports further afield, with no net addition to UK emissions. Furthermore, the consequence of local people being able to access local flights to serve their needs would actually result in a more sustainable travel pattern, and fewer emissions than arise from people travelling by car to other airports further afield. This point is underlined by the 800 tonnes saving in CO<sub>2</sub> emissions per year.<sup>265</sup>
- 5.12.18. Finally on this first point, the approach adopted by the SoS has recently been set out in the decision on Farnborough Airport on 10<sup>th</sup> February 2011. The SoS agreed that emissions of carbon attributable to aircraft in flight are more properly dealt with through the forthcoming EU Emission Trading Scheme which will apply to aviation from January 2012 and is intended to cap carbon emissions to a fixed limit by requiring airlines operating within the EU to surrender allowances to cover annual carbon emissions. The issue of carbon emissions and climate change does not affect the prevailing national policy position.<sup>266</sup>
- 5.12.19. Secondly, even if the recession results in a short term effect on demand, Government policy is to plan for growth to stimulate recovery. The policy support for aviation in the ATWP is part of the support to economic development underpinned in the draft National Planning Policy Framework (NPPF). Moreover, the policy of meeting local demand locally, and relieving existing pressures on congested south east airports is unaffected by the recession and remains as relevant now as it was in 2003. Short term effects on demand due to the recession do not change LAA's role. Air transport growth projections are long term, and there will inevitably be peaks and troughs.<sup>267</sup>

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<sup>263</sup> CD9.21, LAA/119 Paras 5.8-5.9, RSPB/5A, CPRE 1/A Para 3.9

<sup>264</sup> CD12.16, LAA/11A Paras 3.11-3.14, LAA/119 Para 5.10

<sup>265</sup> LAA/4A Ch 5, LAA/4D Para 2.5, LAA/119 Para 5.11

<sup>266</sup> CD9.22 DL Para 16, LAA/4D Para 2.6, LAA/119 Para 5.12

<sup>267</sup> LAA/4D Para 2.7-2.9, LAA/119 Para 5.13, CPRE/1A Para 3.9

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5.12.20. Finally, the Government has not altered its policy support for the role of regional airports. Recent statements by Ministers on possible changes to Air Passenger Duty to increase rates for international flights at the congested south-east Airports and to create differential rates between these and other airports confirms that the Government is aware of the problem that underpinned the ATWP and is committed to encouraging regional airports, including smaller regional airports. The Government has subsequently produced two consultation documents: a scoping document for *Delivering a Sustainable Framework for UK Aviation* and a consultation on *Reform of Air Passenger Duty*. These documents continue the thrust of Government policy support for aviation growth, with ever greater emphasis on the role and use of regional airports. It would make sense to apply the same thinking to meeting local demands at local airports.<sup>268</sup>

5.12.21. The DfT has recently published the Government's Response to the Committee on Climate Change Report on Reducing CO<sub>2</sub> emissions from UK Aviation to 2050 and updated aviation forecasts in order to inform the policy scoping document. In short:

- i) There will be no increase in CO<sub>2</sub> emissions from predicted air traffic growth because the aviation sector will have to pay for reductions elsewhere. The overall result will be that the net contribution of aviation sectors to CO<sub>2</sub> emissions will not exceed the cap. This approach accords with the Farnborough Decision and the analysis by the Divisional Court in the London City Airport case;
- ii) The UK aviation forecasts have been revised to show short haul growth rate of 1.93% per annum from 2008 to 2020, as compared with the 2% that would have shown if a base year of 2008, prior to recession, was used. If these figures are used, there would only be a difference of no more than 20,000-30,000 passengers in 2020;
- iii) The Government's position not to provide additional runway capacity at the major London airports has been built into the published projections. Table 2.15 of the DfT's revised forecasts demonstrates that Heathrow, Gatwick, and London City will all be at capacity by 2020. Given that LAA's development would provide a local service for passengers currently using airports such as Gatwick, these predictions reinforce the contribution that the development would make in reducing congestion at Gatwick and accommodating some of the demand in the most sustainable location.

The proposals would contribute to recovery from recession and increasing consumer choice and sustainable travel patterns, reflecting the Government's *Plan for Growth*.<sup>269</sup>

5.12.22. The Government's plans for High Speed rail (HS) within the National Infrastructure Plan do not alter the position set out above. The plans for additional HS rail links would not be implemented within the timescales for the proposals. In any event, the improvements that would result from the

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<sup>268</sup> LAA/4D Paras 2.11-2.13, LAA/4E App 1, LAA/4I Paras 41-47, LAA/4J Paras 3-4, LAA/119 Para 5.14, CPRE/1A Paras 3.9-3.10

<sup>269</sup> CD5.38 Paras 2.10-2.11, LAA/4I Paras 3-6, LAA/4J Para 5, LAA/119 Paras 5.15-5.17, CPRE/1C/D Para 2.5

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first phase would not have any impact on domestic air services from the main London airports. The prospects of further HS links does not affect the need for the proposals at LAA now and, coupled with the growth in demand, would only delay the requirement for additional capacity at the main London airports for a further 3 years. There is no conflict between the two operations.<sup>270</sup>

- 5.12.23. The Inspector in the Little Cheyne Court Wind Farm Inquiry was concerned with whether that proposal was incompatible with LAA's proposals for development. He considered they were not, and noted that LAA's proposals would need to satisfy their own environmental tests, which have been addressed at this Inquiry. The decision in respect of Coventry airport concerned its particular niche role for business aviation, mail and some airfreight given its proximity to Birmingham International and the complementary role Coventry was meant to serve. Nothing in the Coventry decision affects the position at LAA, or the policy support expressed for it as an airport in the south east region.<sup>271</sup>
- 5.12.24. LAAG sought to rely upon the capacity assumptions used for the ATWP in the South East Regional Air Services Study. These considered 125,000ppa at LAA but this is an assumption as to the level of demand that LAA might attract, rather than any capacity limit or maximum. In Chapter 4 of the same report, LAA was assessed with 2mppa. The document adopted a conservative estimate as to the extent to which smaller airports might be able to relieve pressure, but was not intending to impose any form of limit.<sup>272</sup>

### **Emerging National Planning Policy**

- 5.12.25. Considerable weight should be accorded to the 23 March 2011 written statement of Rt Hon Greg Clark MP. The policy principles expressed fully support the grant of planning permission in this case. By the time the decision on these applications is made, the draft NPPF is likely to have firmed up. Considerable weight should be given to the proposed presumption in favour of sustainable development. The proposals would encourage the use of LAA rather than Gatwick for the local catchment area reducing the car mileage of passengers within a 60 minute catchment by an average of 40%, which equates to a saving of 800 tonnes of CO<sub>2</sub> pa. It would also provide local employment opportunities. The direction of travel is in favour of securing economic growth through development, which the applications would do. The Government does not believe that there is necessarily conflict between economic growth through development and the protection of the natural environment. This is corroborated by the Government's White Paper: *The Natural Choice: securing the value of nature*.<sup>273</sup>

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<sup>270</sup> LAA/4D Paras 2.14-2.15, LAA/4I Para 39, LAA/4J Paras 10-11, LAA/119 Para 5.18(1)

<sup>271</sup> LAA 4/D Paras 2.17-2.19, LAA/119 Para 5.18(2), LAAG/9A Para 3.0

<sup>272</sup> LAA/4D Paras 2.24-2.29, LAA/4E App 2, LAA/119 Para 5.18(3)

<sup>273</sup> LAA/12D Para 2.16, LAA/14F, LAA/119 Paras 3.33-3.34

## Other Material Considerations

- 5.12.26. Planning permission was granted in 1992, but for a slightly longer runway extension and operations that exceed those currently sought. There was no express development plan support such as now exists and no strong support from the ATWP and other policy documents such as the draft NPPF with its presumption in favour of sustainable development. The policy position has strengthened since then.<sup>274</sup>
- 5.12.27. There were two principal issues in 1992: asserted air-crash risk into the nuclear power station; and the effect on the adjoining SSSI and the then proposed pSPA. The SoS accepted that there was no basis to withhold permission in respect of the air-crash risk issue. The second issue was more involved at the time and requires a proper understanding of the differences in the operations between then and now in terms of flightpaths and aircraft. Whilst the SoS considered that the proposed development might have a significant impact on ornithological interests, after further evidence he concluded that the differences between predicted noise levels at Burrows Pit with or without the proposed runway extension would be relatively minor and would not be likely to influence the survival and reproduction at Dungeness of the rare species of birds that breed there. The evidence relating to the effect of noise on the most vulnerable and sensitive species of birds is an important material consideration in considering the impact of the current proposals on the bird population.<sup>275</sup>
- 5.12.28. There are some notable differences between the 1992 permitted scheme and the current applications that demonstrate that the current proposals represent a more constrained development with smaller impacts. The 1992 permission had a cap of 56,000 aircraft movements per annum. This would be limited to 40,000 under the proposals. The 1992 permission also restricted the number of jet or turbo fan aircraft movements to 6,000 but the operations now predicted mean that this restriction would not be exceeded in practice. There was no restriction in 1992 on the number of passengers passing through the airport but the current applications restrict the numbers to 300,000 and 500,000 for the two proposals. The latter implies a total average number of commercial passenger aircraft movements of 10 per day, or 3,650 per annum. In addition the 1992 permission permitted longer operational hours, with the airport opening at 06:30 hrs, rather than 07:00 hrs as now proposed.<sup>276</sup>
- 5.12.29. The 1992 permission encouraged the use of the southerly departure on runway 22, with a reasonable endeavours clause to achieve not less than 50% of departures in this direction. There was the ability to use flightpath D4 flying directly over the RSPB Reserve for all the 6,000 jet and turbo fan aircraft that were contemplated. This is what the SoS assessed in terms of the ornithological interest. By contrast, the movements now proposed would be likely to result in no more than one third of southerly departures being able to depart in a south-westerly direction, as a result of the

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<sup>274</sup> LAA/119 Para 3.44

<sup>275</sup> CD4.1 App 2, CD8.27 Paras 35-37, 42-43, 49-55, 60 & 65, LAA/119 Paras 3.45-3.48, LAAG/6A

<sup>276</sup> CD4.1 p18, LAA/119 Para 3.49



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operation of the Lydd Ranges and the existence of the Nuclear Power Station exclusion zone. Aircraft would principally be using FP12 over Lydd rather than flying over the Reserve. If it were thought necessary all such departures could be required to fly this route.<sup>277</sup>

5.12.30. Applying the principle of consistency in decision-making there is no basis for concluding differently on harm now, notwithstanding the improved position for the Reserve in terms of flightpaths, the absence of any material effect on the most sensitive species, and the absence of any effects from aviation on any species at the Reserve. The noise contours show that the effect of the airport even against the existing position would be very minor indeed. Whilst other designations have been proposed for extension or confirmed, the birds don't know that. There is no reason to believe that the differences between predicted noise levels with or without the proposed runway extension would be likely to influence the survival and reproduction of the rare species of birds that breed at Dungeness.<sup>278</sup>

### 5.13. **Other Matters**

#### **Localism**

- 5.13.1. It is likely that the Localism Bill will be enacted before decisions are made on these cases but this is unlikely to impinge on the decisions.<sup>279</sup>
- 5.13.2. LAAG claims to speak on behalf of a large number of local people. However, given the nature of the organisation, little weight should be given to its views. It is led by an individual who lives under flightpath 03 and who was "very happy" to describe herself as a "NIMBY". She made her house her main home in 2002, in full knowledge of the airport and the existing planning permission. LAAG has a rolling accumulated membership with no ability to opt out once signed up. It has no democratic structure, there are no formal meetings, and there is no voting on officers or issues. It is impossible for LAAG to claim that its membership numbers are up to date or that its evidence represents the views of the membership body, which was not asked to endorse it.<sup>280</sup>
- 5.13.3. This is the antithesis of the kind of local involvement that the Government seeks to promote. Any organisation purporting to represent the public must be accountable to it. LAAG's various campaigns are neither balanced nor fair. People joining LAAG might have been encouraged to do so by wrong assumptions about the scale of what is proposed, or claims of "60 Seconds to Disaster" with a picture of a plane heading towards the nuclear power station. These claims are not objectively justified. LAAG has protested about proposals for 2mppa and its members may not be aware of the far more limited nature of the current proposals. LAAG uses quotations selectively and its members would have gained their impressions from these inaccurate portrayals of policy and fact.<sup>281</sup>

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<sup>277</sup> LAA/119 Para 3.50

<sup>278</sup> LAA/7J, LAA/119 Para 3.51

<sup>279</sup> LAA/119 Para 3.35

<sup>280</sup> LAA/108, LAA/119 Paras 3.36-3.39, Mrs Barton XX by LAA Day 17

<sup>281</sup> LAA/119 Paras 3.39-3.43, LAAG/9A Sect 2

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## Security Fencing

5.13.4. LAAG maintains that there is a need for security fencing, regardless of the current applications. The requirement is for “appropriate security measures” and for a physical obstruction to be put in place between airside and landside areas. The physical obstruction does not have to be a security fence and the airport currently has appropriate security measures acceptable to DfT. Security checks form part of the CAA inspection prior to granting/renewing an operating license and the Airport has a CAA operating license. The extended aerodrome boundary would be delineated by dykes and fields and the only area requiring a physical obstruction between landside and airside in the future would be on the existing Bravo apron and would have no impact on the designated sites.<sup>282</sup>

### 5.14. Conditions and Section 106 Agreement

5.14.1. Draft versions of a proposed Section 106 Agreement and conditions relating to the two applications were circulated at the beginning of the Inquiry and commented on by the Inspector, the Council, and the 5 main objecting parties before a preliminary conditions session of the Inquiry was held on 24 March 2011, Day 19.<sup>283</sup>

5.14.2. Following the conditions session, revised drafts of the Agreement and conditions were issued in July, together with a guide as to how the various comments had been incorporated, or otherwise, into the revised drafts. These revised drafts were subject to further comments from the Council and the 5 main objecting parties.<sup>284</sup>

5.14.3. Further revised drafts were circulated in September 2011, again with a guide as to how the latest comments had been incorporated or otherwise. Final comments were made either in writing or at another conditions session of the Inquiry on 8 September 2011, Day 39.<sup>285</sup>

5.14.4. Following the conditions session on Day 39, final versions of the Agreement and conditions for the two applications were submitted, together with a guide as to how the latest comments had been incorporated, or otherwise. A summary of the provisions of both the Agreement and the conditions was provided and a signed copy of the final Agreement was submitted. LAA and SDC have considered all the representations and the resulting agreement has taken account of them.<sup>286</sup>

5.14.5. LAA does not consider suggested condition 27 of the runway extension conditions to be necessary. However, if there is any residual concern over any of the areas of habitat or species identified in the SCG that lie within the noise contours for a straight-out departure, the applicant would invite the SoS to impose the condition. This would require all larger jet aircraft departing on runway 21 to take FP12 on the right hand turn, which they would have to do when Lydd Ranges were active, resulting in a further

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<sup>282</sup> LAA/117, LAAG/124

<sup>283</sup> CD17.1, CD17.2, ID/4, SDC/102A & B, NE/101, RSPB/101, LAAG/105A, CPRE/106B, KWT/3G

<sup>284</sup> CD17.3, CD17.5, CD17.7, SDC/105, NE/104, RSPB/103, LAAG/126, CPRE/10E, KWT/101

<sup>285</sup> CD17.12, CD17.14, CD17.16, CD17.18, SDC/106, CPRE/103

<sup>286</sup> CD17.22, CD17.23, CD17.24, CD17.25, CD17.26, CD17.28, LAA/119 Paras 18.1-18.2

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number of the areas and species being removed from the 79dB LA<sub>max</sub> contour and above.

- 5.14.6. A number of points were raised by RSPB. In relation to paragraph 84b of its closings it is not correct that the Council/Expert would “have to approve”. The Council/Expert would be able to refuse to approve the BCMP if it did not approve of the content. If the Council/Expert did refuse, then the Airport Operator would not be able to operate the runway extension.<sup>287</sup>
- 5.14.7. In relation to paragraph 84c remedial measures are not provided for when the BCMP is being approved. The BCMP would not have been implemented and there is no reason to suppose that there would be any need for remedial measures. LAA would not be able to define them as it would not know what it was seeking to remedy.<sup>288</sup>
- 5.14.8. Concerning paragraph 84e, the BCMP has already been assessed, and would go through a further assessment under the S106, both by the Airport Operator and the Council. If the BCMP was judged acceptable following that assessment, then it would be approved. The requirement for any remedial measures would only arise if, despite the BCMP being approved following it being judged acceptable, there is a need for remedial measures. This is the same on any project. These remedial measures are not “compensation.” The remedial measures are required to prevent likely significant adverse effects, so by definition would be triggered if the monitoring showed any negative effects.<sup>289</sup>
- 5.14.9. LAAG raised a number of points. In terms of Camber Road, the Agreement has been discussed and agreed with East Sussex County Council. Noise management measures are provided by reference to noise contours, an approach agreed with SDC and its consultants, and this obviates the need to constrain the number of movements by larger aircraft. The cap on helicopter movements includes Emergency and Governmental Activities but the Airport has no control over military movements. The definition of Emergency and Governmental Activities no longer includes training which is subject to approval by SDC. Helicopter flightpaths are not incompatible with the UK AIP and would minimise disturbance<sup>290</sup>
- 5.14.10. Whilst LAAG suggests how information in the Airport Consultative Committee report should be presented this is to be agreed with SDC. The time period for the implementation of the terminal building has been queried but the 10 year period reflects the evidence on growth over time. It is claimed that the RNAV procedures are not reflected in the environmental information but that it would be used even when the ILS was available as it would save miles. The RNAV procedure does not alter the noise information but in any event LAAG accepted that ILS would be the procedure of choice. The RNAV would only be used when ILS was not available. Night flying does not need to be locked into the lease of land as planning permission runs with the land.<sup>291</sup>

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<sup>287</sup> LAA/119 Paras 18.3-18.3.1

<sup>288</sup> LAA/119 Para 18.3.2

<sup>289</sup> LAA/119 Para 18.3.3

<sup>290</sup> CD17.7, CD17.18, CD 17.22

<sup>291</sup> CD17.7, CD17.18, CD 17.22

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- 5.14.11. Concern has been raised about Greatstone School but the increase of 5dB would be negligible and in any event mitigation would be provided through the Section 106 Agreement. A house purchase scheme has been mentioned but this was, and remains, a corporate commitment outside the Agreement. Whilst LAAG maintains that ecological monitoring would be inadequate, it has been agreed with NE. Finally, LAAG suggests that operational management aspects should be covered by conditions attached to both the runway extension and the terminal building permissions. This is not necessary as the terminal could only be occupied once the runway was complete but LAA has no objection to the inclusion of the relevant conditions in both cases if it is felt necessary.<sup>292</sup>
- 5.14.12. Turning to additional comments by CPRE, the Emergency and Governmental Activities are those which the Airport operator has little control over and so cannot limit. As indicated above, a contribution towards coastal defence works would not be justified. Noise and air quality monitoring is adequately covered by the Agreement and overspill long term parking is not considered likely and has been discussed with the highway authority. Neither condition would be necessary. In terms of environmental improvement projects, 10km is the area modelled but is not the area that would be affected by noise. 5km would be fair and reasonable. Greatstone School has been considered under Noise above.<sup>293</sup>

## 5.15. Conclusions

- 5.15.1. A range of arguments have been deployed to try and erect a "legal obstacle course" of insurmountable height to the proposals. Not only is the legal obstacle course without any substance, but there is no factual basis for the arguments. There would not be any likely significant effect on the protected sites, still less any adverse effects on their integrity. The recommendation to the SoS should be that an AA need not be undertaken given that there would be no likely significant effects. Alternatively, if it is concluded that there were such likelihood, then the AA should conclude that the development would not have any adverse effect on the integrity of the designated sites.<sup>294</sup>
- 5.15.2. The objectors have, notwithstanding their number and combined resources, not attempted to undertake any assessment of the planning balance. Given the strong development plan, national, and other policy support for the proposals, this is fatal as the objectors cannot claim to have balanced benefits against material disbenefits. There are strong benefits but no material disbenefits. This is an area crying out for regeneration and job generation acting as a stimulus for other economic activity, a consistent theme advanced by local residents. The opportunity that this development presents should be grasped.<sup>295</sup>
- 5.15.3. The SoS's call-in letter identified the matters upon which he wished to be informed. This did not include nuclear safety but that and all other matters

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<sup>292</sup> CD17.7, CD17.18, CD 17.22

<sup>293</sup> CD17.7 pp34-37

<sup>294</sup> LAA/119 Paras 20.4 & 20.7

<sup>295</sup> LAA/119 Paras 20.2 & 20.6

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have been addressed and planning permission should be granted for both applications.<sup>296</sup>

## **6.0 The Case for Shepway District Council**

### **6.1. Introduction**

6.1.1. SDC is aware of the sensitivity of the site given its proximity to the designated Dungeness SAC, the Dungeness to Pett Level SPA, and the Romney Marsh and Rye Bay SSSI. The Council has carried out extensive consultation, including with the EA, NE, RSPB, KWT, KCC and various local interest groups. It has also sought advice from its own external consultants on information submitted and the consultation responses to it. SDC maintains its strong support for the proposals.<sup>297</sup>

### **6.2. Basis for Assessments**

6.2.1. LAA maintains that Environmental Impact Assessment (EIA), and AA, should have been carried out on the basis of 2 million ppa, a figure stated in LAA's Masterplan document, rather than 300,000 and 500,000 ppa for the runway extension and terminal building respectively. None of the statutory consultees, including EA and NE, nor the RSPB shares that concern. Indeed, NE advised that it was appropriate to assess the application by reference to the upper figure of 500,000 ppa as this was the number relevant to the applications.<sup>298</sup>

6.2.2. In relation to the EIA, the relevant provisions are the *Town and Country Planning (Environmental Impact Assessment) Regulations 1999*. In *R v Swale BC exp p RSPB* it was held that, except for cases where the application was an integral part of an inevitably more substantial development, "the question whether or no the development was of a category described in either schedule has to be answered strictly in relation to the development applied for, not any development contemplated beyond that".<sup>299</sup>

6.2.3. In these applications, the caps on passenger numbers have been an integral part of the development sought from the start. The applications are freestanding and not "an integral part of an inevitably more substantial development". LAA cannot be accused of 'salami slicing' to avoid the need for EIA as the applications have been the subject of EIA within the limits proposed. Should there ever be an application for 2 mppa that would also need to be accompanied by an ES.<sup>300</sup>

6.2.4. For the AA the relevant provision is the *Conservation of Habitats and Species Regulations 2010*. LAA's Masterplan is not a "plan or project" for which "consent permission or authorisation" is sought. The "plan or project" for which permission is sought is explicitly limited at the uppermost level to 500,000 ppa.<sup>301</sup>

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<sup>296</sup> CD1.47, LAA/119 Paras 19.1-19.2

<sup>297</sup> SDC/02, SDC/109

<sup>298</sup> SDC/107 Paras 2 & 4

<sup>299</sup> SDC/107 Para 5

<sup>300</sup> SDC/107 Para 6

<sup>301</sup> SDC/107 Para 5(2) & Para 6(2)

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- 6.2.5. The applications could not, in themselves, result in 2 million ppa. The only basis for assessment at this level would be if they were part of a “cumulative impact assessment” or an “in combination assessment”. The Masterplan is aspirational and may never happen. It would not be sensible to address such an uncertain possibility. In any event, the proposals do not fit the reasons for seeking a cumulative or in combination assessment. This is not a case where there are four airports each with 500,000ppa such that, in the absence of a cumulative assessment, the impacts of a combined total of 2 mppa would never be considered. If LAA wished to expand from 500,000 to 2 mppa it would need to seek planning permission and the full impacts of 2 mppa would be assessed at that stage.<sup>302</sup>
- 6.2.6. The Council’s Scoping Opinion advises that information should be provided on the basis of 500,000 and 2 mppa and LAAG argues that it would be a breach of the Aarhus Convention to carry out an assessment on any other basis. However, there is no obligation to seek a Scoping Opinion. The only reason for suggesting 2 mppa was that the applications proposed at that time included an outline application for a second phase of the terminal building. That application has not been made and the failure to carry out an assessment in accordance with a Scoping Opinion for a different development is not a legitimate criticism.<sup>303</sup>
- 6.2.7. It is a fundamental principle of planning law that permission should not be refused if concerns could be addressed through conditions. If the proposals were assessed on the basis of both 500,000 and 2 mppa and it was concluded that the former was acceptable but the latter not, then permission should be granted subject to a limit of 500,000ppa. As permission is only sought for 500,000 there is no point in assessing 2 mppa. It would be nonsensical to assess 2 million solely to ensure compliance with the EU *Directive*. The *Directive* would not impose a meaningless requirement and it would be an illogical interpretation of legislation to conclude that an analysis should be carried out that could not have any effect on the eventual decision.<sup>304</sup>
- 6.2.8. Although LAAG contends that its position is supported by advice from the Council’s Solicitor, that advice was provided by Counsel. Moreover, it explicitly concludes that the AA should be conducted on the basis of 500,000ppa. The view that a cap on numbers should not be left to be dealt with by condition is contradicted by *Habitats Regulation* 61(6) which states “In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions to which they propose that the consent, permission or other authorisation should be given”.<sup>305</sup>
- 6.2.9. The ES has been prepared on an appropriate and lawful basis and the AA should be made on the basis of 500,000ppa.<sup>306</sup>

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<sup>302</sup> SDC/107 Para 7

<sup>303</sup> SDC/107 Paras 8-11

<sup>304</sup> SDC/107 Paras 12-13

<sup>305</sup> SDC/108 Paras 5 & 6

<sup>306</sup> SDC/108 Para 14

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### 6.3. Airport Operations

- 6.3.1. Manston has been raised as an alternative to Lydd. However, the existence of a better alternative is irrelevant if the proposal under consideration is acceptable in itself. RSS Policy T9 mentions Manston and not Lydd, but there is no suggestion that Lydd would prejudice the development of Manston. Indeed, the two have distinct, but complementary, catchment areas. As well as mentioning Manston in Policy T9, the RSS also encourages the development of, and growth at, smaller airports such as Lydd, which can play a valuable role in meeting local demand and contributing to regional economic development. The 2003 White Paper recognises Lydd as a small airport, the growth of which should not be overlooked in helping to meet local demand. Both national and regional policy make it clear that it is not a question of "either/or".<sup>307</sup>
- 6.3.2. Manston might become relevant if the SoS were to conclude that the current applications would significantly affect the integrity of the internationally designated sites. Then permission could only be granted if there were "imperative reasons of overriding public importance" and the existence of Manston would make it difficult to satisfy that test. However, as neither LAA's nor SDC's case is based on the existence of IROPI the issue does not arise.<sup>308</sup>
- 6.3.3. LAAG maintains that the expansion of Lydd would not be viable, as constraints on airspace surrounding the airport would discourage operators from using it. It is inconsistent to object to the applications because of alleged consequences that could only arise if the airport was successful whilst contending that would never happen. If the applications are acceptable in all other respects, the fact that they might not be viable is irrelevant. LAA has already invested significant sums in improvements. If planning permissions were granted implementing them would be another significant step. LAA has clearly taken expert advice and is satisfied that the investment is worthwhile.<sup>309</sup>
- 6.3.4. Updated expert evidence takes a more cautious view of the catchment area that might be served and the rate at which the airport might grow than is set out in the ES. Nevertheless it identifies existing demand within the local catchment of some 2.5mppa of which 1.3 million would be travelling to 'top 40' destinations in volumes that would make services from Lydd viable. These numbers would grow by 2.7% to 2020 and then by 2.5% to 2030. These forecasts do not rely on passengers coming from London or on services within England or to Paris, Brussels or destinations served by surface links. If the forecasts are wrong and the proposals are not viable, the alleged adverse effects that some residents fear would not happen. Viability is not a matter which goes to the acceptability of the applications.<sup>310</sup>

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<sup>307</sup> CD5.24 Para 11.98, SDC/107 Paras 19 & 20, SDC/108 Paras 63-68, LAA/4A Paras 5.5, 5.9, 5.61, Congdon XX by LAAG Day 15, Lloyd XX by LAA Day 33

<sup>308</sup> SDC/108 Para 69

<sup>309</sup> SDC/108 Paras 90-92

<sup>310</sup> LAA/4A Paras 5.58-5.65, LAA/4D Paras 3.2-3.11, XE of Congdon by LAAG Day 15, SDC/108 Paras 93-94

#### 6.4. Ecology

- 6.4.1. The possible impact of the proposals on the internationally designated sites and the SSSI, is one of the most important to be addressed. Council Members have been criticised for disagreeing with NE and RSPB, and for rejecting parts of their consultant's advice. However, in the light of the matters which are now common ground between LAA, NE and KWT, Members would be entitled to feel vindicated in their decision.<sup>311</sup>
- 6.4.2. In particular, NE now accepts that all its previous concerns about possible adverse effects on the integrity of the SAC, and impacts on the SSSI, can be addressed through the imposition of agreed conditions and/or by mitigation measures which would be secured by a Section 106 Agreement. Indeed, in its negotiations with LAA, NE has applied its normal practice of seeking to gain positive benefits from the mitigation package, and believes it has achieved this. There can be little argument that the mitigation measures now proposed, such as the creation and maintenance of an additional 500m of ditches, would enhance the existing habitats. Consequently, the disagreement between the RSPB, NE and LAA has essentially been reduced to the impact of the proposals on birds.<sup>312</sup>
- 6.4.3. This level of agreement does not absolve the SoS of his responsibilities under either the *Habitats Directive* or the guidance in PPS9. In relation to the SAC, attention is drawn to the SCGs between LAA and NE relating to air quality, great crested newts and ditch mitigation and aquatic invertebrates; and between LAA and KWT relating to air quality. The SoS is invited to conclude either:
- i) that if the proposed mitigation measures were taken into account, there would not be any likely significant effect on the SAC; or
  - ii) that the proposals would not have any adverse effect on the integrity of the SAC, and to make an appropriate assessment to that effect.<sup>313</sup>
- 6.4.4. In relation to the SSSI, reference is made to the SCGs and the SoS is invited to conclude that the applications would not substantially damage the interest features of the SSSI or have any significant effects on any protected species. In relation to wider biodiversity issues reference is made to SCGs between LAA and KWT covering airfield biodiversity and lighting impacts on moths and the SoS is invited to conclude that there is no basis for refusing permission for either of the applications.<sup>314</sup>
- 6.4.5. In terms of the *Regulations* there is no dispute that the applications constitute a "plan or project" and Regulation 61 is engaged. If the applications would not have a significant effect on a European site there would not be a requirement to make an AA. If either application were likely to have a significant effect on a European site permission should not be granted until a AA has been made of the implications for the site in view of its conservation objectives. The appropriate nature conservation body, NE,

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<sup>311</sup> SDC/108 Para 33

<sup>312</sup> Dear xx LAA & Inspector Day 23

<sup>313</sup> LAA/8/A, LAA/9A & D, CD4.2, CD4.9, CD4.10, CD4.11, CD4.12

<sup>314</sup> SDC/108 Para 36(2) & (3), CD4.13, CD4.14



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must be consulted and regard had to its representations. The requirement for consultation is satisfied by NE's involvement at this Inquiry. Account must be taken of its evidence but it need not be accepted.<sup>315</sup>

- 6.4.6. Having made an AA, Regulation 61(5) indicates that permission may only be granted if the proposal "will not adversely affect the integrity of the European site". A plan or project that had an effect on the site but was unlikely to undermine its conservation objectives could not be considered likely to have a significant effect. Regard must be had to the conditions to which a permission would be subject and to the mitigation that would be secured through any Section 106 Agreement. Permission should only be granted if "no reasonable scientific doubt remains". Whilst this is stringent, it should not be equated with absolute certainty. The only exception is if there are IROPI but this is not relied on.<sup>316</sup>
- 6.4.7. As a matter of policy pSPAs and Ramsar sites should be treated as if the *Habitats Regulations* applied. This does not currently extend to pRamsar sites, although the draft NPPF specifically proposes extending the protection of the *Regulations* to such sites.<sup>317</sup>
- 6.4.8. Where a permission to which Regulation 61 would have applied has been granted before a site is formally designated but the development not been completed at the date of designation, the Council is obliged to review the permission and make an AA. Depending on the result, the LPA may be legally obliged to revoke the permission or make a discontinuance order. These provisions apply to Ramsar sites as well as European sites.<sup>318</sup>
- 6.4.9. If permission were granted for the applications in this case it is possible that the current pSPA and pRamsar sites could be designated before the developments were completed. In those circumstances SDC would have to review the permissions and might have to revoke one or other. This would not assist in the proper planning of the area and, if compensation were required, could be a significant drain on the public purse. Regardless of any legal duty, permission should only be granted if the proposals would not have a significant adverse effect on the integrity of the pSPA and pRamsar sites if those designations were subsequently confirmed/notified. Whilst this would not absolve SDC of its duty to review the permissions, it would dramatically reduce the prospect of any need to revoke the permissions as a result.<sup>319</sup>

## 6.5. Air Quality

- 6.5.1. In terms of nitrogen deposition, both NE and KWT now accept that any concerns could be addressed by conditions and/or a Section 106 Agreement. The potential impacts on human health have been raised by CPRE but only in general terms unsupported by any technical evidence. There has been no objection on these grounds from any statutory consultee and LAA's expert maintains that "taking into consideration existing background pollutant

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<sup>315</sup> SDC/107 Para 15 (1) –(5)

<sup>316</sup> SDC/107 Para 15 (6)-(12)

<sup>317</sup> SDC/107 Paras 16 & 18

<sup>318</sup> SDC/107 Para 17(1)-(3)

<sup>319</sup> SDC/107 Para 17(4)-(5)

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levels, concentrations will be well below the standards set out in the UK's *Air Quality Strategy* for the protection of human health. As to impacts on residential properties on the approach roads to the Airport, the A259 and Romney Road, even at roadside locations pollutant concentrations are predicted to remain well within the UK's air quality standard, whether or not the expansion of the Airport proceeds" and concludes "there will not be any material, let alone significant, impacts on the health of local residents as a result of the effects of air pollution following the expansion of the Airport".<sup>320</sup>

## 6.6. Ornithology

- 6.6.1. Turning to the possible impacts on birds, and the integrity of the SPA either now, or as proposed, if it is necessary to make an AA the test to be applied is whether the proposals would be likely to have a significant adverse effect on the integrity of the site(s) as a whole. That is on "the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified."<sup>321</sup>
- 6.6.2. This should not be confused with whether the proposals might have an impact on individual birds. Disturbances, or even deaths, which do not impact on a species at population level do not bring a proposal into conflict with the *Regulations*. Neither NE, nor RSPB, positively asserts that the proposals would cause material harm to the integrity of the SPA. Their case is that they are not satisfied that the proposals would not cause such harm. Whilst that is a legitimate position in terms of the burden of proof under the *Regulations*, it is necessarily a weaker complaint than an objection based on a claim of positive harm. The stringency of the test under the *Regulations* is acknowledged, but is not an excuse for objectors to say that they do not have to prove anything as it is for LAA to prove that there will be no harm. It is difficult to prove a negative, and the test under the *Regulations* is not a test of absolute certainty. An objector wishing to complain that the test is not met must at least be able to point to a credible scientific basis on which harm to the integrity of the site might be caused.<sup>322</sup>
- 6.6.3. Translating this to the possible causes of harm at Lydd, NE and RSPB's original concerns break down to three broad headings:
- i) Risk of Birdstrike;
  - ii) Noise and Visual Disturbance;
  - iii) Effects of Bird Hazard Management.

### **Risk of Birdstrike**

- 6.6.4. Although initially a point of concern, it is now common ground that it would be possible for LAA to manage the risk of birdstrike to an acceptable level. RSPB and NE's case now relates to the possible effects of increased flights in

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<sup>320</sup> SDC/108 Paras 57-60, LAA/8D Sect 2.3

<sup>321</sup> CD5.23 Para 20

<sup>322</sup> Day xx by LAA Day 39, Dear xx by LAA Day 23

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terms of disturbance and the impact of the measures that would be employed by the Airport to manage the bird hazard.<sup>323</sup>

### **Noise and Visual Disturbance**

- 6.6.5. This was considered in some detail in 1988. At that Inquiry, the range of birds breeding, feeding and wintering in the area was remarkably similar to, and in some respects more extensive than, those that can be found there today. Notwithstanding the wide range of birds then using the reserve, RSPB's objection centred on the potential effects on Sandwich and Common Terns. That is in stark contrast to its scattergun approach at this Inquiry. It is difficult to see why species about which RSPB was not concerned in 1988, when they had actual experience of frequent noisy movements, should now suddenly be at risk.<sup>324</sup>
- 6.6.6. In the years prior to the previous Inquiry there had been up to 60,000 flights pa, including flights by aircraft that would have been significantly noisier than anything that might fly from Lydd if the current applications were allowed. Notwithstanding that these much noisier aircraft were flying directly over them, areas of the reserve such as Borrowes Pit had been used by terns for nesting and roosting. Indeed, the SoS concluded that, as "the most important and vulnerable birds colonising the site, terns had bred successfully at this location since 1978", and that "there was no correlation between variations in breeding success and variations in the number of aircraft movements".<sup>325</sup>
- 6.6.7. It was estimated that the effect of the application would be to expose the birds to maximum noise levels of 90-99 dBA. This would occur up to 20 times a day, with a maximum of 3 peaks in any hour. Notwithstanding these predicted effects, the SoS was satisfied that there would not be significantly detrimental effects on the birds.<sup>326</sup>
- 6.6.8. It is not suggested that RSPB and NE's objections today should be dismissed simply because a similar, but more focused, objection was dismissed in 1992, but the question that should be asked is "what is it that has changed since 1992? What new evidence is there which would justify coming to a different conclusion?" This is consistent with the view which NE, then English Nature, took in 1997 when renewal of the 1992 runway permission was considered. At that time, English Nature's position, having discussed the matter with RSPB, was that it was "not aware of any further evidence regarding the impact of aircraft on birds" and would therefore probably not object on these grounds. It is surprising that neither NE's nor RSPB's submissions to this Inquiry identify any advance in knowledge since 1997, or even seem to realise that this is a question which needs to be answered. Their witness had not even studied the 1992 decision to see what evidence had been presented, or what conclusions the SoS had reached upon it.<sup>327</sup>

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<sup>323</sup> CD4.5 Para 1.2(b), Day xx by LAA Day 8

<sup>324</sup> CD8.27(d) paras 3.49-3.50, & 5.25

<sup>325</sup> CD8.27(d) Paras 3.4, 5.26, 15, LAA/5G

<sup>326</sup> CD8.27(d) Para 3.52 & 5.26

<sup>327</sup> CD12.39, Day xx by LAA Day 39

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- 6.6.9. This is telling as the witness accepts that he has no personal or practical experience of assessing the impacts of aviation on birds, and has not visited any other airport in preparation for this Inquiry. He has “come to the subject via the literature”. Even so it is difficult to see that things have moved on very much since 1992, when there was “very little published information”, and evidence about Sandwich terns was “particularly scant”. Looking at the post-1992 publications that have now been produced, the most that can be said is that there are various papers which indicate that there can be disturbance effects when birds and aircraft are found together. That does not take the matter any further forward, since it is common ground that disturbance effects do not necessarily lead to disturbance impacts on the overall bird population.<sup>328</sup>
- 6.6.10. Whilst there is no academic paper which demonstrates an absence of disturbance impacts neither is there any academic paper which demonstrates that aviation does produce disturbance impacts on any of the species of concern at Dungeness. That is important as it is not enough for NE/RSPB simply to say “LAA hasn’t proved its case”. It is implicit in the Waddenzee formulation that objections to development in or adjacent to European sites have to be founded on reasonable science.<sup>329</sup>
- 6.6.11. In the absence of prior studies or academic papers which provide an answer, there is no substitute for practical experience. The track record of NE/RSPB’s witness stands in contrast to that of LAA’s witnesses, whose experiences include not only the creation of bird reserves for species of precisely the sort found at Lydd, but also advising airports such as Aberdeen, Edinburgh, Newcastle, Doncaster-Finningly, Coventry, Birmingham, Carlisle and Belfast, three of which have involved issues with SPAs. Both LAA witnesses are adamant that there is no inherent conflict between birds and busy airports.<sup>330</sup>
- 6.6.12. NE/RSPB do not contradict this. It is accepted that lapwings are tolerant to noise; that golden plover are tolerant of the existing operations at the airport, including business jets; and that gulls will readily habituate. In relation to other species, LAA’s evidence is supported by much of RSPB’s own experience at Dungeness. Despite jets already using the airport, there is no record of RSPB complaining about noise or disturbance from either the aircraft, or bird scaring techniques. NE/RSPB’s witness observed no disturbance effects on the surrounding bird population during his visits to the airport and RSPB’s Area Manager expressed a similar view. The only concern expressed about noise from jet movements relates to a single experience of an existing jet operation. No similar observations are made about the demonstration take off and landing of a Boeing 737. NE confirmed that the Airport was not currently having “deleterious effects” on the SPA.<sup>331</sup>
- 6.6.13. RSPB’s explanation for the lack of impact is the current level of operations, particularly the relatively low number of jet movements. This overlooks the

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<sup>328</sup> CD8.27(d), para 3.53 -3.58, & 5.30, Day xx by LAA, Day 8

<sup>329</sup> SDC/108 Para 44

<sup>330</sup> Armstrong re-x Day 6

<sup>331</sup> Day xx by Inspector Day 8 & LAA Days 8 & 10, Gomes IC Day 9 & xx by LAA Day 10, Dear xx LAA Day 23, Day xx by LAA Day 39, NE/04 Para 21

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fact that the previous tern population established itself in 1978, when activity at the airport was at its peak. This is impossible to reconcile with the concern that, having left the immediate vicinity of the airport, for reasons unrelated to aircraft activity, terns might be put off re-colonising if the current applications were approved.<sup>332</sup>

- 6.6.14. RSPB suggests, in relation to a paper by Burger, that the reason why gulls were found literally at the end of the runway was because they had become habituated to the aircraft at a busy international airport. LAA was asked if it had any evidence of birds habituating at the lower level of movements proposed by Lydd. The inconsistency between this and the RSPB's main argument that more aircraft means more disturbance is obvious. If birds are more likely to habituate given sufficient exposure to aircraft, then increasing the number and regularity of flights (as would happen if LAA's applications are approved) should reduce rather than decrease disturbance. If birds do not habituate to infrequent or irregular flights, then the even smaller numbers of jet aircraft which currently use Lydd should already be disturbing the birds but there is no evidence that they are. The SoS can conclude that there is no inherent conflict between the bird populations and aircraft at Lydd, because the two can co-exist.
- 6.6.15. If the SoS is not entirely convinced of this it becomes necessary to consider precisely what the impact might be. A SCG between NE, RSPB and LAA identifies the relationship between the areas of habitat that are of concern to RSPB and the noise contour lines for southern departures. Even if there were an impact it would be on an extremely small area, in circumstances where there is ample room within the wider reserve for birds to take refuge. It is difficult to see how increased movements from the Airport could have any significant effect on the ability of Dungeness to "sustain the habitat, complex of habitats ... or the levels of populations of the species for which it was classified."<sup>333</sup>

### **Bird Hazard Management**

- 6.6.16. In terms of bird hazard management, the starting point is that this is an existing Airport, which has existing obligations to manage the risk of birdstrike, no matter what the number of aircraft that are using it. The airport is already operating scheduled flights, and bird control should be at the highest possible level already.<sup>334</sup>
- 6.6.17. RSPB recognises that the airport should already be seeking to reduce the risk of birdstrike "as low as reasonably practical" (ALARP). It accepts that in terms of on airfield management there is nothing that would need to be done if permission were granted that it is not already recommended should happen now. Grass management and some scrub clearance is already taking place and further clearance, including the ditches, is desirable. The need for habitat management on the airfield would be the same whether there was one flight per day or 100. Although not yet in place, it is agreed that it has been a requirement to net the ponds and watercourses on the airfield wherever reasonably practicable since July/August 2010, and that

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<sup>332</sup> CD8.27(d) Para 3.4

<sup>333</sup> CD4.17

<sup>334</sup> Armstrong IC Day 4

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this is something which the Airport should be doing now and the operation of a buffer, for which the use of audio and pyrotechnics is the best option, is good practice.<sup>335</sup>

- 6.6.18. In terms of off airfield measures, there is no reason why these should be a concern. The conclusion of NE's witness that LAA could manage birdstrike risk adequately was reached without making any assumptions about agreements with local land-owners for off-site management. This is the only way to consider the matter as it would be inappropriate to rely on measures which LAA did not have the power to enforce. In any event, witnesses from both sides agree that the Airport should already be seeking to disrupt flight lines across the airport by taking action at either the source or destination points.<sup>336</sup>
- 6.6.19. Under the terms of the Section 106 Agreement, any off site measures would have to be approved as part of the BCMP. The SoS could grant permission for these applications as the approval process does not involve starting from scratch. The BCMP would be required to be in substantial accordance with that put forward by LAA. The SoS can see and assess what the effects of that plan would be. Future changes would require SDC's approval, following consultation with NE and RSPB as part of the BCMP Panel. It is inconceivable that NE/RSPB would support changes that would be likely to have a significant effect on the integrity of the SPA. Even if LAA were to suggest such changes in the face of the BCMP Panel's recommendations, SDC could not approve them unless LAA was able to demonstrate IROPI.<sup>337</sup>
- 6.6.20. LAA may not yet be doing all these things, but it is clear that it has already embarked on a programme of improvements which are designed to bring existing practices into line with what is required. Grass management and scrub clearance is already taking place, the responsibility for bird-runs has been shifted from the fire service to a dedicated, full time, bird control manager, and LAA has been taking professional advice on other measures that are needed.
- 6.6.21. This is important, as if these are measures which the Airport is, or should, already be taking, the fact that they would also be necessary if planning permission is granted is neither here nor there. The key differences between LAA and NE/RSPB boil down to two points.
- i) The Airport should be operating according to best practice, which is to operate "bird runs" continuously, so as to discourage birds from settling on the airfield and to maintain an appropriate buffer. This is why the Airport employs a full-time bird-control manager. The view of NE/RSPB's witness that whilst it would be beneficial to push back the buffer zone it is not necessary to do more than carry out a bird-run 15 minutes before each vulnerable flight is at odds with the recommendations of the International Birdstrike Committee, which the witness drafted. Standard 3 of the Recommended Practices clearly states that "A properly trained and equipped bird/wildlife controller should be present on the airfield for at least 15 minutes prior to any

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<sup>335</sup> CD4.5 Paras 4.2.2 & 4.2.6, Allan xx by LAA Days 6 & 7, Deacon IC & xx by NE Day 2

<sup>336</sup> CD4.5 Para 4.2.4, Deacon xx by RSPB Day 3, It is clear from NE's closing (paras 125-127) that there is a dispute

<sup>337</sup> SDC/108 Para 50(2)

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aircraft departure or arrival. Thus, if aircraft are landing or taking off at intervals of less than 15 minutes there should be a continuous presence on the airfield throughout daylight hours."

- ii) It is agreed that safeguarding is an "essential component of the Airport Safety Management System" and that the Airport should have a safeguarding policy. NE/RSPB believes that any policy would be pursued more vigorously if permission were granted but this need not trouble the SoS as the test under the *Regulations* has to be applied by reference to the integrity and coherence of the SPA as it exists today. The purpose of safeguarding is to allow LAA to object to development that has yet to take place. Future proposals to make changes to the SPA or the surrounding area, such as the future restoration of gravel pits that are still being worked, would constitute enhancements of the existing SPA. This would not affect the integrity of the SPA as it stands because "changes to current permissions and site management agreements cannot be imposed retrospectively, and therefore cannot adversely affect the current status of the Designated Sites and RSPB reserve." It follows that the safeguarding policy is not something which could place the applications in conflict with the *Regulations*.<sup>338</sup>

6.6.22. These conclusions flow from the existing situation at the airport without any reference to a fall-back position. It can be concluded that the bird control management measures that would be necessary to manage the risk of birdstrike if permission were granted could not have any effect on the integrity of the SPA, for the simple reason that they are no different to what the Airport is, or should, already be doing.

6.6.23. If this is accepted it is irrelevant whether a likely fallback is accepted. This is the approach SDC took when resolving to grant planning permission. It should be noted that :

- i) It would be surprising if the Airport did not seek a return on the significant sums of money already expended;
- ii) Over the past 5 years, Lydd has bucked the national trend of a decline in air traffic movements. In 2010, against a national decline of 3%, movements at Lydd increased by 16%. If the Airport is able to attract growth in a time of recession, there is no reason why it should not continue to do so as markets improve;
- iii) There are no controls on night-flying at Lydd and the current night-cargo operation is an illustration of the way in which LAA could develop without the need for any further consent. Although this began as a temporary diversion, the operators are interested in making it permanent. If the current applications are refused, this is precisely the sort of opportunity that LAA is likely to exploit instead;
- iv) The Airport would be a suitable place to train 737 pilots. LAA has been approached twice by a commercial training school with this in

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<sup>338</sup> CD4.5 Paras 5.1.1 & 5.1.5, CD12.33, Deacon re-x Day 4, Allen xx by LAA Days 6 & 7, Day xx by SDC Day 9

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mind. Simply accommodating commercial training could add as many as 12,000 movements pa to current levels;

If a fallback position were to occur it is accepted that the bird strike management requirements would not be significantly different to those that would be needed for 500,000ppa.<sup>339</sup>

6.6.24. Contrary to NE/RSPB's submission, it is impossible to see how the incremental acceptance of business opportunities of this sort could be described as a "plan or project" for which LAA, as a statutory undertaker, would itself need to undertake an AA. Consequently, whilst it is not necessary to reach a conclusion on the fallback in order to approve LAA's proposals, if the Secretary of State accepts LAA's evidence as to what the likely fallback would be, and concludes that this is a material consideration, there can be no doubt that the applications would pass the test in the *Regulations*.<sup>340</sup>

## 6.7. Nuclear Safety

6.7.1. In simplistic terms, if an aeroplane were to crash into the Nuclear Power Station, the consequences might be catastrophic. However, there needs to be a rational assessment of the chances of such a catastrophe happening, and the extent to which the grant of permission would increase that risk.<sup>341</sup>

6.7.2. In 1992, the SoS considered, and rejected, similar arguments about the impact of airport expansion on the Dungeness power stations. That is significant because the current applications propose a lower cap on flights than that which was imposed by the SoS in 1992 and aircraft safety has improved in the intervening period.

6.7.3. These applications were considered by the ONR, which raised no objection to them. The core of LAAG's case on nuclear safety is an open attack on the methodology used by the ONR to assess risk. LAAG's approach is not the one currently adopted by the Regulator or the planning system in this country and this Inquiry is not the forum to pursue that argument. The Byrne methodology is the standard basis for assessing risk. The information as been aired and LAAG's concerns have been set out in correspondence. ONR is fully aware of the points raised but remains satisfied that it is appropriate to use the Byrne methodology. LAAG does not put forward any alternative methodology that could be used to assess the risk. Even if the Byrne methodology were modified in the way that LAAG suggests to take account the points of particular concern, the results are still well below the tolerance threshold.<sup>342</sup>

6.7.4. The risks to which LAAG refers are not specific to Lydd. They arise whenever aircraft overfly nuclear power stations. Consequently the logical extension of LAAG's argument is that nuclear power stations should be ruled out until they can be proofed against aircraft.<sup>343</sup>

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<sup>339</sup> LAA/4G Para 2.13, Maskens IC Day 11 xx by CPRE & re-x Day 12, Congdon IC Day 14, Allen xx by LAA Day 7

<sup>340</sup> SDC/108 Para 55

<sup>341</sup> SDC/108 Para 87

<sup>342</sup> Large xx by LAA, Day 28, Pitfield xx by LAA Day 29

<sup>343</sup> Large xx by LAA, Day 28 am



- 6.7.5. Concerns about the increased risk of terrorist attack lack logic or substance. None of the aircraft used in the 9/11 attacks took off from, or was scheduled to land at, the airport closest to its target. If a similar attack was planned on Dungeness power stations, the hijacked aircraft could come from, or be going to, anywhere in the UK. The proposal would not alter a terrorist's ability to carry out such an attack. Indeed Lydd would not be a sensible place from which to mount such an attack as by the time the cockpit had been stormed to seize control, Dungeness would have receded into the distance. The scenario of someone trying to shoot down an aircraft on its approach to Lydd in the hope that it would overshoot the runway, veer off course and collide with the critical part of the Power Station simply leaves too much to chance. Anyone with the weaponry to bring down an aeroplane would do better to point their missiles at the Power Station.<sup>344</sup>
- 6.7.6. The Government has recently undertaken an exercise to consider the risk which flights to and from Lydd pose to nuclear safety in the context of its review of the options for future nuclear power stations in this country. Although Dungeness C has, for the time being, been ruled out, this decision was explicitly not based on grounds of nuclear safety associated with the Airport. There is a consistent record of nuclear safety having been addressed by the SoS, by the Regulator and by the Government, always leading to the conclusion that there is no unacceptable risk. Nothing said by LAAG should cause a departure from that.<sup>345</sup>
- 6.8. **Socio-Economic Matters**
- 6.8.1. A number of indicators demonstrate that Shepway is an area of economic underperformance. Out of 354 districts in England, Shepway is ranked 123<sup>rd</sup> most deprived. Unemployment is higher than the averages for Kent, the South East, and the country and the District's success in creating employment is also lagging. The *Regional Economic Strategy for the South East* identifies Shepway as an area of generally lower economic activity with a relatively low skilled work profile and high dependence on public sector employment. The *Economic Regeneration Strategy* for Shepway highlights the perception that the area is peripheral, the localised areas of deprivation, the difficulty in retaining young professional people, and the low business startup rates.<sup>346</sup>
- 6.8.2. The Romney Marsh area is heavily dependent on a small number of major employers. Most notably the Dungeness nuclear power stations where decommissioning of Dungeness A has begun and Dungeness B is to follow. The draft National Nuclear Policy Statement suggests that there is unlikely to be a Dungeness C, although the Council continues to lobby for it. This highlights the significance of the airport in meeting the socio-economic needs of the area.<sup>347</sup>
- 6.8.3. The area faces significant economic challenges and SDC rejects the suggestions of some local residents that the Marsh is not a place for young people and that teenagers should move away to find work. Wealthy retirees

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<sup>344</sup> SDC/108 Para 88(4)

<sup>345</sup> SDC/108 Para 88(5)

<sup>346</sup> SDC/3A Paras 4.3 & 4.7, LAA/4A Paras 3.44, 3.46 & 3.47, CD7.2, CD7.8 p13

<sup>347</sup> SDC/3A Paras 4.8-4.12, CD15.1

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have done little to redress the existing problems of underperformance. Refusing to countenance the needs of the younger population is a recipe for long-term deprivation and social division.<sup>348</sup>

- 6.8.4. The *Economic Regeneration Strategy for Shepway 2007-2017* describes the airport as one of the District's most prominent assets, the *Shepway Community Plan* lists the expansion of the airport as one of the key building blocks on which progress towards the vision for Shepway depends, whilst *Unlocking Kent's Potential* describes LAA as an opportunity for transformational investment which should be maximised.<sup>349</sup>
- 6.8.5. It is not possible to predict precisely how many jobs might be created at the airport. LAA considers that, based on a rate of 500 jobs per million passengers pa reducing to 400 jobs per million by 2030, the runway extension would produce 60 direct new jobs rising to 130-140 after construction of the terminal building with 30-60 new indirect or induced jobs. SDC considers it a reasonable conservative estimate that 350 direct jobs per million passengers pa could be created and could be as high as 600 new direct jobs per million passengers pa. LAAG considers 600 jobs to be too high but advocates a range of 250-450 jobs per million passengers pa.<sup>350</sup>
- 6.8.6. The jobs would be created over several years but the contribution they would make to the local economy would be important and should be welcomed. Criticism of the number of jobs in any one year overlooks the fact that the expansion would stimulate indirect employment. New visitors would be brought to the area and whilst most passengers would be 'outbound' some would choose to spend additional time in the area and stay locally overnight. CAA Passenger Surveys indicate between 3-9% would be inbound tourists. A key difficulty for Shepway is the perception that it is 'out on a limb'. Expansion of the airport would raise the profile of this part of Kent and be a significant step in changing perceptions. Adjoining authorities such as East Sussex County Council and Rother District support the proposals as being likely to bring social and economic benefits to their areas as well.<sup>351</sup>
- 6.8.7. The benefits of the proposals would be of considerable importance to the future prosperity of the area and significant weight should be given in favour of the proposals.<sup>352</sup>

## 6.9. Climate Change and Flood Risk

- 6.9.1. In terms of carbon emissions and climate change it is necessary to distinguish between effects from ground operations and aircraft in flight. The latter is considered under the ATWP in the Planning section of SDC's case. The terminal building has been designed, and would be constructed to a BREEAM rating just short of "Excellent". The closer proximity of Lydd to its catchment area would offer significant savings in CO<sub>2</sub> emissions

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<sup>348</sup> Mr Atkins, Ms Raguin Day 33 Evening Session

<sup>349</sup> CD7.8 p10, CD11.19 p5, CD11.20 Para1.1.4, Cd11.8 paras 5.8-5.14

<sup>350</sup> LAA/4A paras 6.7-6.11 & Table 6, SDC/3A paras 5.8-5.14, LAAG/8A para5.5.2, LAAG/8E para 2.7

<sup>351</sup> LAAG/4A paras 6.21 & 6.50, SDC/3A para 5.22, 6.10-6.12, SDC/108 paras 106-108

<sup>352</sup> SDC/108 para 109

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- compared to a journey to Gatwick, and emissions from aircraft engines while planes were still on the ground would be lower than at more congested airports where holding times are longer. In all these respects, the proposals are policy-compliant or would not prevent a grant of planning permission.<sup>353</sup>
- 6.9.2. The EA was consulted on the applications and, subject to the imposition of appropriate conditions, had no objection. Only CPRE object based on flood risk and it is concerned about the risk of sea level rise in the area. However, it is now common ground that the updated FRA provides a PPS25 compliant evidence base for the Airport.<sup>354</sup>
- 6.9.3. CPRE does not contend that the development would increase the risk of flooding in the area, either by way of impedance or loss of flood storage. Its concern arises from the fact that the Airport lies in an area which it considers would be at risk of flooding if sea levels rise. CPRE argues that sea level rises may be greater than those set out in both UKCIP02 and UKCP09. This is inconsistent with national policy, and would require an assessment of climate change impact that goes beyond the probability parameters set down in PPS25, which have been used by DEFRA and the EA in their own strategic planning, and by SDC in its *Strategic Flood Risk Assessment*. The EA has reviewed the updated FRA and its response advises that prevailing guidance requires them to use UKCIP02 predictions, but none of the low, medium or high scenarios for sea level rise in UKCP09 are greater than UKCIP02 in any event.<sup>355</sup>
- 6.9.4. CPRE recognises that, if sea levels do rise, not only would the Airport be at risk but significant parts of Greatstone and New Romney would also be under threat. It is accepted that if CPRE's fears are correct, Government would almost certainly have to intervene, by improving the flood defences. If the flood defences are improved, the Airport would no longer be at risk. CPRE's objection in relation to flooding and public safety is a "non-point".<sup>356</sup>
- 6.9.5. The objection boils down to a complaint that the Airport is not making any contribution towards the cost of improving the sea defences. However, the updated Strategic FRA predicts that, even with an instantaneous breach at Lydd Ranges, flood levels at the Airport would only reach 3.25m, which would not affect either the runway or the terminal. CPRE accepts that, if flood levels ever rose to a point where they affect the terminal, the proposed terminal building would have sufficient capacity to accommodate people who might be caught up in the flooding event at first floor level.<sup>357</sup>
- 6.9.6. Even if it would be appropriate to ask the Airport to contribute to improvements which would be needed in any event, the EA has not asked for any such contribution. Moreover it was accepted that a contribution towards flood defences was "probably not" necessary in order to make the applications acceptable. In these circumstances, it is not considered necessary, or appropriate, to require a contribution. Nor would such a

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<sup>353</sup> SDC/108 Para 61

<sup>354</sup> CPRE/7A, CPRE/9A, CD4.8, LAA/13C

<sup>355</sup> LAA/13D Para 2.2.2, CD4.8 Para 3.4, Furey xx by LAA Day 18

<sup>356</sup> CPRE/7B Para 4.1, Meaden and Furey xx by SDC Day 18

<sup>357</sup> CPRE/7F Para 1.20, LAA/13A Paras 5.2.11-5.2.16, LAA/13D Para 2.9.5, Furey xx by LAA Day 18

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requirement be “directly related to” the development, as required under *CIL Regulation 122*.<sup>358</sup>

## 6.10. Landscape, Tranquillity and Noise (Quality of Life)

6.10.1. Although “tranquillity” involves more than simply noise, there is a significant overlap between the two. Noise was a significant issue at the previous inquiry into expansion at Lydd, where objectors’ concerns were dismissed by the SoS. This is relevant as many, if not most, of the properties likely to be affected today were in existence in 1992. The 1992 permission contemplated a significantly higher cap on the number of aircraft, and engine technology has improved significantly in the 20 years since the last Inquiry. None of these factors suggests that a different conclusion should be reached today than that reached in 1992.<sup>359</sup>

6.10.2. In the present case, the proposals have been the subject of detailed assessment in the ES, which was updated in evidence. The applications have been considered by reference to national guidance in Planning Policy Guidance Note 24: Planning and Noise (PPG24) and the Future of Aviation White Paper, with the conclusion that, with appropriate mitigation and conditions:

- i) in terms of the runway extension, the majority of properties assessed would experience negligible or slight noise increases, with only a minority experiencing moderate noise increases. No properties would be exposed to annual or summer averages above 57 dB(A) which is the level for the onset of community annoyance;
- ii) in terms of the terminal building, these numbers increase slightly, but only one property in the annual average and three properties in the summer average would fall within the 57dB(A) contour.

These conclusions have not been challenged by any technical evidence.<sup>360</sup>

6.10.3. In assessing these conclusions, it is recognised that many properties around the Airport currently enjoy relatively low background levels of noise and, whilst the applications may not cause these levels to rise above the thresholds recognised by national guidance, for some local residents the change would be perceptible. For this reason, SDC considers that, in subjective terms, the noise effects of the proposals would be likely to be a little more significant than LAA suggests. However, notwithstanding that difference, SDC agrees that the number of people who would be affected is low, and in the circumstances would not justify a reason for refusal.<sup>361</sup>

6.10.4. CPRE suggests that this is a U-turn on the advice given to Members in the Committee Report. In particular, it is suggested that it is inconsistent with suggested reason for refusal 2(d) and that the proposals conflicted with Policy SD1 because of the noise effects. CPRE contends that this reason for refusal could not have been advanced unless it was believed that the noise

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<sup>358</sup> Furey xx by LAA on Day 18

<sup>359</sup> SDC/108 Paras 77 & 78

<sup>360</sup> SDC/108 Para 79, LAA/5/A

<sup>361</sup> SDC/108 Para 80

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impacts alone outweighed the benefits of the scheme, and were a reason for refusal in themselves.<sup>362</sup>

- 6.10.5. This misunderstands the structure of both Policy SD1 and the reasons for refusal and ignores the explicit wording of the Report. Policy SD1 expects proposals to “respect” the considerations (a) to (k). Only where there is “significant conflict” with those considerations does the harm need to be balanced against other considerations. As was explained, the noise effects of LAA’s proposals do not, on their own, “significantly” conflict with the SD1 criteria so as to require a balancing exercise to be undertaken. It was only when they were added to the, far weightier, ecological objections that any need to balance harm against benefits arose. This structured approach to Policy SD1 is reflected in the draft reasons for refusal.<sup>363</sup>
- 6.10.6. Hence draft Reason 2(d) refers to “adverse noise effects” contrary to Policy SD1(c), (d) and (k), but makes no mention of any balancing exercise. The balancing exercise is carried out in draft Reason 2(e), in the context not only of the impact on the local community, but also of the impacts on the SPA, SSSI, pSPA and pRamsar site. Reason 2(e) makes it clear that it was the combined harm which was not considered to be outweighed, not that attributable to noise on its own. The main report and the Supplementary report explicitly state that noise and tranquillity on their own were not a sufficient reason for refusal.<sup>364</sup>
- 6.10.7. LAA accepts that, if the SoS concludes that the proposals conflict with the integrity of the internationally designated sites, LAA would “struggle to show that there is an overriding need”. However, in the case of potential impacts on local residents, the overall benefits “could well be overriding”. That has been both SDC’s and LAA’s analysis of the policy throughout the history of this application.<sup>365</sup>
- 6.10.8. CPRE has raised specific concerns about the impact on Greatstone School. Even on the Higher Growth Annual Average scenario, predicted noise levels at the school would be significantly below the 55dB and 35dB<sub>L<sub>Aeq</sub></sub> levels which are recommended for the outdoor and indoor areas of a school, respectively. CPRE’s concerns that existing sound-proofing at the school is inadequate would be addressed through LAA’s offer, secured by a Section 106 Agreement, to contribute towards additional measures. The analysis, and the offer in the Section 106 Agreement are considered acceptable by SDC and its consultants.<sup>366</sup>
- 6.10.9. Tranquillity is much harder to ascribe weight to. Whilst it is possible to find reference to tranquillity in the RSS and the *Rural White Paper*, it is not a concept that has found its way into any applicable policies of the development plan. This may be because there is, as yet, no established methodology for measuring “tranquillity” and the impacts of a proposal on it. Secondly, whilst CPRE is developing its “tranquillity mapping”, the

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<sup>362</sup> SDC/108 Para 81

<sup>363</sup> SDC/108 Para 82(1)

<sup>364</sup> SDC/108 Para 82(2) & (3), CD1.48 Paras 7.49, 7.59 & 9.8, CD1.51 Para 9.2

<sup>365</sup> McGrath xx by CPRE & Inspector Day 31, Ellames xx by CPRE Day 32

<sup>366</sup> SDC/108 Para 84, LAA/5D Paras 2.3.2-2.3.3

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methodology is still at such an early stage that its results are far too crude to be of any use.<sup>367</sup>

- 6.10.10. Although the concept of “tranquillity” includes matters such as visual intrusion, the methodology is unable to take account of less frequent forms of development, such as a nuclear power station or smaller airports such as Lydd. Consequently, the tranquillity assessment for Dungeness simply ignores the existence of the power station and the airport, with the result that the site of the power stations is shown as the most tranquil part of the area. The map is also blind to gravel extraction and the security fencing around the Lydd Ranges.<sup>368</sup>
- 6.10.11. In assessing the impact of the airport on the surrounding area, no allowance is made for the effects of either the dispersal of aircraft in different directions or the reduction in noise levels which would inevitably occur as a function of increased altitude. Hence, the “impact” of LAA is assessed to be the same at a single point on the boundary of the AONB as it would be on the boundary of the airfield at the end of the runway, notwithstanding the fact that the latter will experience far more aircraft at a much lower altitude.<sup>369</sup>
- 6.10.12. The tranquillity map has not yet been developed to a point where it can be used at a localised level and it should not be used without a local assessment, which CPRE has not done. Even if these criticisms were set aside, it is difficult to see where tranquillity mapping gets CPRE. On its own evidence, if the effect of the applications was factored in, the result would be a reduction in 3 tranquillity points on a scale which ranges from -140 to +148. Even with such a reduction, Lydd would continue to enjoy a tranquillity score on a par with National Parks and AONBs.<sup>370</sup>

## 6.11. **Transportation**

- 6.11.1. The applications were accompanied by full TAs. Any concerns that were raised by the highway authorities involved have been addressed such that, subject to appropriate conditions and a Section 106 Agreement, there is no objection from any statutory body on highways grounds. The only technical evidence before the Inquiry is that of LAA.<sup>371</sup>
- 6.11.2. LAAG’s main concern relates to the possible use of the C24 through Camber. This has been the subject of discussion with East Sussex CC. Steps would be taken to discourage use of the C24 by removing existing signing and rerouting traffic along the A259. A Section 106 Agreement would ensure that the effectiveness of these measures was monitored, and if the Airport expansion resulted in a greater-than-expected impact on flows through Camber, appropriate traffic calming measures would be introduced.<sup>372</sup>
- 6.11.3. CPRE’s criticisms relate not to any particular impact on the local highway network, but to what it describes as the relatively poor accessibility of Lydd,

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<sup>367</sup> SDC/108 Para 85

<sup>368</sup> Willis xx by LAA, Days 24 & 25

<sup>369</sup> Willis xx by SDC, Day 25

<sup>370</sup> CPRE/2A App1 & Paras 4.3, & 4.4.3, Willis xx by LAA, Day 24

<sup>371</sup> LAA/12A, C & D

<sup>372</sup> Sowerby xx by LAAG Day 30

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particularly in comparison with Manston. Policy TR15 was drafted with the existing road network, and Lydd's accessibility by public transport, in mind and provides specific support for the expansion of LAA. The scale of growth proposed in these applications is well within that anticipated by Policy TR15. This Inquiry is not a "beauty contest" between Lydd and Manston and whether or not Manston is more accessible is irrelevant.<sup>373</sup>

- 6.11.4. Accessibility depends on the catchment area and Lydd is well-related to the catchment area used as the basis for LAA's assessment. A Section 106 Agreement would secure improved accessibility by other means of transport, including employees wishing to walk or cycle from Lydd, and passengers wishing to travel by bus or use the rail service from Ashford. These measures would not eliminate the need for others to travel by car, but they would be an appropriate and proportionate response to the need to make the expansion of Lydd as sustainable as possible.<sup>374</sup>
- 6.11.5. Finally, CPRE is concerned about the adequacy of the car-parking proposed. A balance has to be struck between ensuring that the provision would be adequate, and risking over-provision that might encourage even more people to travel by car. The basis on which the proposed levels have been calculated has been explained, and the highway authority is satisfied with the analysis. CPRE's scenario of 90% of a summer month peak of 25,000 passengers all arriving by car and leaving their vehicles for 14 days is improbable as figures from comparable airports do not show that proportion of cars being left for 14 days. Moreover, CPRE overlooks the fact that not everyone arriving by car would want to leave their vehicle. Research indicates that only 42% would do this whilst others would either be dropped off, or arrive by taxi. In the circumstances, there is no reason to believe that the levels of car-parking would not be sufficient.<sup>375</sup>

## 6.12. Planning

### Historic Documents

- 6.12.1. The development plan is the latest iteration of development plan policies that have supported expansion at Lydd. The Inspector's Report in connection with the 1992 permission notes that SP and LP support for expansion dates back to at least the early 1980s. The *Kent Structure Plan 2<sup>nd</sup> Alteration* described increased aviation at Lydd as "very welcome", whilst what was then the *Romney Marsh Local Plan* considered there was scope for increasing aviation services above the 1979 peak of 60,900 movements pa. These policies were drafted at a time when the practical implications of activity on that scale were fresh in people's memories.<sup>376</sup>
- 6.12.2. In the light of the 1992 decision, which rejected concerns based on noise, nuclear safety and impact on the ecology of the area, it is not surprising that development plan support for expansion continued. Policy P11 of the *Kent Structure Plan 1996* supported proposals for the expansion of aviation activity at Lydd, subject to environmental, traffic and employment

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<sup>373</sup> SDC/108 Paras 75(1) & (2)

<sup>374</sup> SDC/108 Paras 75(3) & (4)

<sup>375</sup> Sowerby xx by CPRE, Day 30

<sup>376</sup> CD8.27(a) Paras 3.4, 3.32 & 3.36

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implications. When the *Kent and Medway Structure Plan* was adopted, Policy TP25 stated "The expansion of aviation at Lydd Airport will be supported". Paragraph 8.59 of the *Kent and Medway Structure Plan* specifically referred to LAA's view that the airport could grow to 2mppa. It is significant that the strategic development plan document for Shepway has consistently supported the expansion of Lydd for a period of at least 25 years. Moreover, this remains KCC's position today.<sup>377</sup>

### Development Plan

- 6.12.3. In terms of the development plan, strategic guidance is now in the RSS. Given the wider scope of the RSS it is not surprising that, although Policy T9 identifies the regional potential of larger airports, it does not specifically refer to Lydd. However, paragraph 8.30 states that "Other smaller airports could play a valuable role in meeting local demand and contributing to regional economic development. Subject to relevant environmental considerations, their development should be supported, and regional and local planning frameworks should consider policies which facilitate growth at these airports." Lydd is one of these "smaller airports" and the consistency of the current applications with regional strategy is reflected by the absence of any in principle objection from the former South East Regional Partnership Board, and the fact that SEEDA welcomed the "relatively small-scale nature" of the aviation expansion proposed.<sup>378</sup>
- 6.12.4. Turning to the LP, although it pre-dates the RSS, it does precisely what paragraph 8.30 of the RSS advises. In particular, Policy TR15 states that "The District Planning Authority will permit proposals for the expansion of facilities at Lydd Airport directly related to the commercial and recreational flying use provided there would be no significant impact upon the internationally important wildlife communities in the Lydd/ Dungeness area. Regard will also be given to the likely effect of proposals on other special features in the area, particularly the power station."<sup>379</sup>
- 6.12.5. Policy TR15 and its associated text are important in a number of ways:
- i) Paragraph 11.40 recognises the importance of the Airport as a source of employment on the Marsh which is consistent with SDC's evidence on the economic benefits of the proposals;
  - ii) Paragraph 11.41 gives an indication of the scale of expansion which could be expected. Whilst stating that Lydd is "unsuitable for use as a new airport for London", it refers to KCC's support for growth on a scale of 1 to 2mppa. The fact that the owners have chosen to rename Lydd "London Ashford Airport" may have caused confusion in the minds of some objectors, but if paragraph 11.41 is read as a whole it is clear that a throughput of 2mppa would not, as a matter of development plan policy, turn Lydd into a "new airport for London". LAA's proposals contemplate growth to only a quarter of that level and the applications fall comfortably within the scale of expansion for which the LP provides support;

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<sup>377</sup> CD1.46, CD7.5 Para 11.40, CPRE/1D Para 4.6, SDC/4B App1, KCC/W1

<sup>378</sup> CD7.1, SDC/4A Para 3.9

<sup>379</sup> CD7.5



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- iii) Policy TR15 plainly identifies the airport site as being “suitable for a particular land use”, and is therefore an “allocation” within the meaning of the LP. Consequently, Policy TR15 takes precedence over Policy CO1. Whilst it is true that the runway extension goes beyond the boundary of TR15 on the proposals map, TR15 expressly refers to the “expansion” of facilities at Lydd Airport. The runway extension is necessary to enable this to take place. It would have been difficult to show this on a map until there was a concrete proposal. But the LP clearly supports it. The extension is not something which could “practicably be located within an existing settlement”. Indeed, it could not be located anywhere other than at the end of the existing runway.
  - iv) Whilst Policy TR15 does not preclude the need for particular proposals to be assessed against other LP policies, it is site specific. Moreover, the policy singles out what are considered to be the key issues for expansion at Lydd: impact on the internationally designated sites, and likely effects on the nuclear power station;
  - v) For the reasons set out in the Report to Committee, and in evidence, there is no conflict with the more extensive list of criteria in other policies such as Policy SD1. It is implicit in Policy TR15 that, provided proposals remain within the bounds set by paragraph 11.41, the expansion of the airport could be achieved without unacceptable impacts in relation to those matters. For example, criterion (a) in Policy SD1 is the need to “Shape new development patterns in a way which reduces the need to travel, especially by car, and increases the attractiveness of walking, cycling and public transport.”

Some objectors have suggested that Lydd is too isolated to satisfy this criterion. However, the relative remoteness of the airport is specifically referred to in LP paragraph 11.41. Since it was known, and expressly identified at the time when TR15 was adopted, it cannot be an objection to development in accordance with TR15. Rather, when read together with TR15, criterion (a) should operate to encourage the developer to improve the airport’s accessibility by non-car modes. This has been taken on board through the Section 106 Agreement. The same approach should be taken to the other criteria in Policy SD1. The exception is criterion (d), insofar as it relates to the internationally designated wildlife sites, because Policy TR15 expressly makes support for growth of the airport subject to this consideration.<sup>380</sup>

- 6.12.6. In summary, the current proposals fall well within the scale of growth anticipated by both past and present development plans. Subject to the issues of impact on the internationally designated sites and the power stations, the regional and the local components of the development plan provide clear overarching support for the principle of expansion at Lydd.

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<sup>380</sup> CD7.5, LAA/14A Paras 9.26-9.62, Congdon xx by LAAG Day 16, Ellames xx by CPRE Day 32

### **The Emerging Development Plan**

- 6.12.7. In terms of the emerging development plan, SDC has recently published its *Core Strategy Proposed Submission Document* (CSPSD) for consultation. Having regard to the advice in paragraph 18 of “The Planning System: General Principles” the CSPSD is not something on which any significant weight should be placed but it is entirely consistent with SDC’s historic position and CSPSD paragraph 5.117 refers to SDC’s view that “the expansion of Ashford International Airport at Lydd has been regarded by Shepway District Council as an important development opportunity for Romney Marsh, with the potential to increase connectivity to southern Shepway and beyond, and to provide direct and indirect employment benefits.”<sup>381</sup>
- 6.12.8. CPRE has argued that the CSPSD signals a change of heart on the part of the Council, and that the LP’s clear policy support for development at Lydd is being watered down. The fact that the Council appeared at the Inquiry, is evidence of its continued strong support for the proposals. Whilst Policy RM3 of the Preferred Options Report left open the possibility that the Council might recognise Lydd Airport as a “strategic site”, it expressly recognised that any decision to this effect would have to be guided by the SoS’s decision on the applications before this Inquiry. That same point is now found in paragraphs 5.118-9 of the CSPSD. This is the reason why the CSPSD does not commit itself unequivocally to the expansion of Lydd.<sup>382</sup>
- 6.12.9. Given the detail in which the Inquiry considered some of the key issues affecting the airport, it is sensible to wait and see what the SoS decides. SDC cannot predict that but needs to ensure that the *Core Strategy* will be sound, no matter what the outcome of the Inquiry.<sup>383</sup>
- 6.12.10. Paragraph 5.108 makes it clear that the “spatial strategy” for the area is to “seek regeneration to assist settlements in asserting their role in defining the Romney Marsh as a unique place to live and work, supporting improved communications and respecting its natural environments, achieving additional employment and housing opportunities.” As the LP observes, LAA is one of the few significant opportunities that exist on Romney Marsh to provide the “additional employment” which is needed to underpin regeneration. The proposals before this Inquiry are entirely consistent with this. In short, it is simply not the case that the emerging *Core Strategy* represents a weakening in the SDC’s position, or undermines the clear policy support in the adopted LP.

### **National Policy**

- 6.12.11. In terms of national aviation policy, the ATWP encourages airport growth to meet rising demand, especially in the South East. It advises that “Small airports have an important part to play in the future provision of airport capacity in the South East.” and LAA is identified as a small airport, the growth of which should not be overlooked in helping to meet local demand.

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<sup>381</sup> CD7.12, CD6.16

<sup>382</sup> CD7.6, Para 10.23

<sup>383</sup> Ellames xx by CPRE, Day 32

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Paragraph 11.99 states the Government's "in principle" support for the development of Southend, Lydd, Manston, Shoreham and Biggin Hill.<sup>384</sup>

- 6.12.12. In contending that the ATWP does not support the proposals, LAAG makes much of the statement in the foreword that "Our starting point is that we must make best use of existing airport capacity." LAAG argues that this means that no new development should be allowed until the airport has fully utilised its existing runway and terminal capacity. As is demonstrated by the post ATWP grants of permission for a runway extension at Southend, and the major extension of the terminal at Bristol, this is misconceived. Although the ATWP describes making best use of existing capacity as the "starting point", it nowhere suggests that no other steps may be taken until this avenue has been exhausted.<sup>385</sup>
- 6.12.13. Indeed, the following paragraph in the foreword goes on to record the Government's view that "increased capacity is needed at a number of airports across the country, including some new runway capacity, more terminal capacity and support facilities." It is self-evident that "new runway capacity" and "more terminal capacity" will involve runway extensions and new terminal buildings. Nowhere does the ATWP say that this "need" should only be met once every last ounce of capacity has been squeezed out of the existing facilities. It is not surprising that, when paragraphs 11.98-11.99 state "in principle" support for the operators' plans for development at Southend, Lydd and Manston, they do not qualify this by requiring the development to be put on hold until all existing capacity is used up.
- 6.12.14. The foreword to the White Paper should also be read alongside the *Future of Air Transport Progress Report*, which states that "the first priority is to make the most of the UK's existing airports through a process of improvement and modernisation". "Making best use of existing capacity" will frequently involve some element of development in order to bring an existing facility up to modern standards. Lydd is a prime example. The airport and terminal were built in the 1950s, and were designed to cater for passengers who wanted to take their cars to and from France. It was not designed for modern security requirements or for large numbers of people who wish to travel with their luggage, but leave their car behind. Far from being inconsistent with the need to "make best use of existing capacity", the present proposals are designed to help Lydd achieve that objective.<sup>386</sup>
- 6.12.15. CPRE and RSPB argue that little weight should be attached to the ATWP in view of the statement in *Developing a sustainable framework for UK aviation* that it is "fundamentally out of date, because it fails to give weight to the challenge of climate change". In relation to international flights and Section 30 of the *Climate Change Act*, the SoS's position, as set out in his decision on Farnborough Airport, is that this issue is more properly dealt with through the EU Emission Trading Scheme. CPRE recognises that its objection is inconsistent with the Farnborough decision. The recent decision on the Crawley Appeal confirms that the ATWP "sets out a long-term

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<sup>384</sup> CD5.24 Paras 11.11, 11.93, & 11.98

<sup>385</sup> LAA/4J Para 9

<sup>386</sup> CD5.25 para 1.12

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national strategy for the sustainable development of air travel to 2030" and "remains extant".<sup>387</sup>

- 6.12.16. Developing a sustainable framework for UK aviation is a scoping document, not a statement of national policy. It does not say that the 2003 ATWP should no longer be taken into account. Indeed, although it indicates that any new policy will have to give greater weight to climate change, it also makes it clear that the Coalition continues to regard the aviation industry as "essential for a dynamic economy as well as to improve our well-being and quality of life". There is nothing in the scoping document which contradicts the advice in the ATWP that "Air travel is essential to the United Kingdom's economy" or that "Our economy depends on air travel". Rather, it says "We are not anti-aviation – we are anti-carbon". The government remains "firmly focused on the benefits that aviation can bring, particularly in terms of economic growth". As CPRE accepts, there is no suggestion that the Government has withdrawn its support for the role of regional airports.<sup>388</sup>
- 6.12.17. The same message is found in the Ministerial Statement *Planning for Growth* that identifies a "pressing need to ensure that the planning system does everything it can to help secure a swift return to economic growth" and advises that "Government's clear expectation is that the answer to development and growth should wherever possible be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy." The August 2011 Government Response on Climate Change describes presenting the challenge as one of "deciding between economic growth and reducing carbon emissions" as a "false choice". The Response concludes that the targets in the *Climate Change Act* can be met without the need to cap aviation activity.<sup>389</sup>
- 6.12.18. The most significant change in aviation policy since the publication of the ATWP has been the Coalition Government's announcement cancelling support for a third runway at Heathrow and for additional runways at either Gatwick or Stansted. Far from undermining the ATWP, this can only add to the pressure in the south east, and so bolster the case for expanding smaller airports such as LAA.<sup>390</sup>
- 6.12.19. In any event, the present applications are entirely consistent with the desire to make aviation "more sustainable". At present, the closest airport with any significant choice of destinations for the majority of people living within 1 hour's drive from Lydd is Gatwick. Providing this catchment area with the opportunity to fly from Lydd would result in a significant saving in CO<sub>2</sub> emissions arising from travel to and from their nearest airport. Lydd is closer to most European destinations than any other Airport. If flights from Lydd are displaced from other airports in the UK, the result should be a reduction in CO<sub>2</sub> emissions. If flights from Lydd are not "displaced" from other airports, the Climate Change Commission has concluded that the UK can still meet its climate change obligations with a 60% growth in air transport movements. The expansion of Lydd would account for only a very

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<sup>387</sup> CD5.36, CD9.22 Para 16, LAA/111 Para 11, RSPB/106 Paras 33-36, CPRE/06D Para 1.1

<sup>388</sup> CD5.24 foreword, CD5.36, Lloyd xx by LAA Day 33

<sup>389</sup> CD5.37, CD5.38 Forewaod, LAA/4/L paras 3-7

<sup>390</sup> CD8.7

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small fraction of that growth. Accordingly, these applications should be considered consistent with national aviation policy.<sup>391</sup>

### **The draft National Planning Policy Framework**

6.12.20. The draft NPPF is only a consultation draft and no significant weight should be given to it at present. However, things will have moved on by the time the SoS comes to consider these proposals. Accordingly weight is a matter for the SoS to determine in accordance with the usual principles. As to substantive relevance, SDC agrees with LAA's submissions and notes what the NPPF has to say about the Government's commitment to encouraging rather than impeding growth, the need for planning to proactively drive and support the development the country needs, and the importance of this for the social and economic success of the country.<sup>392</sup>

### **The 1992 Secretary of State Decision**

6.12.21. In terms of compliance with both policy and the legislative tests, it is relevant that, in 1992, the Secretary of State considered and rejected many of the objections which have been presented to this Inquiry. In saying this, SDC recognises that 19 years is a long time, and that many things have changed in the intervening period. The weight to be attached to the 1992 decision may be reduced according to whether either the applicable policies or the situation on the ground have changed. Where things have not changed, or where broadly similar issues arise, it remains relevant that these matters have been looked at before, and considered in depth. It follows that the relevance of the 1992 decision letter is not a question to which there is a single answer: it is a matter that can only be assessed on a topic-by-topic basis. Consequently, the decision is a material consideration.

## **6.13. Other Matters**

### **Localism**

6.13.1. Both sides at the Inquiry have argued that localism supports their case reflecting the extent to which the proposals divide opinion within the community. There is no easy way to cut through these arguments other than to recognise that localism must ultimately be underpinned by democratic accountability. It is telling that at national and local level the candidates successfully elected, from both sides of the political fence, are those who have stood on a platform of positive support for the Airport. The local MP and Councillors who gave evidence are well aware of the opposition to the proposals but have arrived at their position having canvassed opinion across the electorate and have a clear view not just of local opinion but of where the public interest lies.<sup>393</sup>

### **SDCs Handling of the Applications**

6.13.2. The Council strenuously denies LAAG's criticism of its handling of the applications and does not consider that LAAG's evidence on this issue would assist the Secretary of State in determining them. It is bizarre to suggest

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<sup>391</sup> LAA/11/A Para 3.12

<sup>392</sup> LAA/14/F section 4

<sup>393</sup> SDC/108 Paras 95-97

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that Officers were colluding with the airport as the recommendation in the Officer's report was for refusal. In explaining the option of amending the draft AA Officers were simply providing advice on what Members would need to do if they wished to go against Officer's advice. The complaint that this was unlawful as NE had not been consulted on the resulting 'composite' AA is not shared by NE. The statutory duty is to consult NE for the purposes of the assessment not on the final wording. Members were aware of NE's objection and the reasons for it. The suggestion that it was unlawful to disagree with NE flies in the face of authority.<sup>394</sup>

#### 6.14. **Conditions and Section 106 Undertakings**

6.14.1. SDC considers that any permission should be subject to conditions and to the obligations set out in a Section 106 Agreement. The conditions and Section 106 Agreement have been the subject of widespread consultation, not just with statutory consultees but all the Rule 6 parties. Great lengths have been taken to ensure the concerns raised have been taken on board. The final list of conditions and the signed Agreement provide a robust and enforceable means of ensuring that the impacts of expansion at Lydd do not go beyond those that have been assessed. Compliance with *CIL Regulation 122* is set out in a Summary Note.<sup>395</sup>

#### 6.15. **Conclusions**

6.15.1. Despite detailed scrutiny there is nothing before the Inquiry to suggest that SDC was wrong in its decision that planning permission should be granted. The development has an important role to play in the economic and social prosperity of the area, subject to the imposition of conditions and the signed S106 Agreement. An AA should conclude that there would be no adverse effect on the integrity of the designated sites and that the applications accord with national and development plan policies and planning permission should be granted for both applications.<sup>396</sup>

### 7.0 **The Case for Natural England**

#### 7.1. **Introduction**

7.1.1. NE is the Government's statutory adviser on nature conservation matters and has provided its formal advice through the Inquiry process. The proposals would affect SPA, SAC, pSPA, pRamsar and SSSI sites close to the airport, reflecting the importance of the Dungeness peninsular, and bringing into play a raft of European and domestic law and policy. Agreements reached with LAA during the Inquiry, following design changes, conditions, and mitigation schemes set out in the various SCGs, illustrate NE's willingness to help ensure that, where possible, change is made in a way which conserves and enhances the natural environment. A list of the evidence withdrawn following the SCGs has been provided.<sup>397</sup>

7.1.2. The impact of the proposals on birds was NE's principal concern. It is now, subject to conditions and obligations securing the contents of SCGs, the last

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<sup>394</sup> SDC/108 Paras 98 & 99, LAAG/132 Para 62, CD9.2 Paras 81-82

<sup>395</sup> SDC/108 Para 110, CD17.26

<sup>396</sup> SDC/108 Paras 111 & 112

<sup>397</sup> NE/01, NE/04 Paras 1-3, NE/3A Sect 2, NE/105 Para 35, NE/108

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issue. However, as far as the ornithological interest of the designations is concerned, the change cannot be accommodated without affecting the integrity of the designated sites, or the evidence is not available to reach a conclusion about the effects on integrity with a sufficient degree of certainty. Both applications should therefore be refused.<sup>398</sup>

## 7.2. Airport Operations

7.2.1. It is important to understand the existing operation of the airport, which in recent years has not had an adverse impact on the integrity of the SPA. Co-existence has been possible because of the low key nature of the existing operations but it is not appropriate to rely on the existing operations as a predictor of what would happen in the development case.<sup>399</sup>

### Number and Type of Existing Aircraft Movements

7.2.2. The movements at LAA are mostly by very small aircraft. In 2009 99% of aircraft movements were light aircraft less than 5,700kg. Only 234 aircraft movements were over 5,700kg, of which only 2 were air transport movements. Only 1.2% of the movements were for the commercial transport of passengers. The number of aircraft movements over 5,700kg has more than doubled since 2009. In 2010, there were 586 aircraft movements over 5,700kg. However, many were positioning flights by Aeronova Metroliners that have since moved to Birmingham and now only use LAA occasionally. ATR 42 flights were similar in number in 2010 to 2009, apart from additional touch and go movements for training.<sup>400</sup>

7.2.3. Cargo flights are described as "light cargo". They started in February 2010, due to works at Southend airport, and are likely to stay for around six months. However, they might turn out to be permanent as the company is interested in operating from LAA, subject to resolving ground handling issues. The parcel service is a one-off feature of the airport's operation which may or may not prove to be part of the baseline.<sup>401</sup>

7.2.4. References to the number of business jets using the airport have included the Gulfstream V. The airport's data makes clear there are few of these, or other larger business jet, flights. In 2010 there were 22 Gulfstream V flights. In 2009, the total number of movements by all types of Gulfstream and Learjet business jets was 92. The numbers of "business aviation" flights were lower in 2010, at 82, than they were in 2006 and 2007. There is no evidence to support the proposition that there has recently been a significant increase in business jet movements.<sup>402</sup>

### Aircraft Movements in the Development Case

7.2.5. LAA says that there will be 18 scheduled aircraft movements a day on average. The change in the number of larger aircraft using the airport in the development case would therefore be substantial. A Jetstream 41 is the

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<sup>398</sup> NE/04 Paras 4-5

<sup>399</sup> NE/04 Para 21, Mrs Dear XX by LAA Day 23

<sup>400</sup> CD4.4 pp4-5, LAA/4A Para 4.4, LAA/5A Para 5.3.3, NE/04 Paras 22-23, Mr Maskens XX by NE Day 11

<sup>401</sup> NE/04 Para 24, Mr Maskens IC Day 11

<sup>402</sup> CD1.25c Para 2.2.4, CD1.14, p31, CD4.6 App 7, LAA/102, NE/04 Paras 25-26, LAAG/10E p16, Mr Maskens XX by NE Day 11

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largest aircraft that regularly appears in the current fleet mix, which at 114 movements is less than one every three days. In the development case there would be an increase of 48 times the number of aircraft movements for aircraft of the same size or larger. Even on an approach which excludes only the smallest aircraft, there would be a twenty-fold increase in the number of movements.<sup>403</sup>

- 7.2.6. At the moment the vast majority of LAA's flights are during daylight hours. The BHRA recognises that dawn and dusk movements of wildfowl and gulls is an acute hazard. Moving the start of normal operating hours from 09:00 to 07:00 hours would bring in dawn in autumn, winter and spring, when on most occasions there are no flights now. LAA suggests that there would not be passenger flights at this time in the development case, but has declined to accept a condition limiting commercial passenger aircraft movements to after 10:00 hours. There would also be passenger flights during the dusk period.<sup>404</sup>

### **Flightpaths**

- 7.2.7. The ES was prepared on the assumption that the Lydd Ranges were always active and that flightpaths over them would not be used. It is now proposed that Group 1 aircraft, including 737s, would use the Scenario 3 flightpaths whenever the range is inactive. There is no information before the Inquiry on the extent to which this flightpath is currently used by aircraft over 5,700kg. LAA confirmed that Scenario 3 would be used at all times before 08:30 and, based on figures from 2008, 37% of days, amounting to around one-third of the time overall. A condition has been drafted, but not promoted, by LAA to require all aircraft with a take-off weight over 5,700kg departing runway 21 to follow FP12. This condition might not be imposed. The position remains uncertain and all possibilities must be considered.<sup>405</sup>

### **Claimed Fallback**

- 7.2.8. Under the *Habitats Directive* and *Regulations*, all aspects of a plan or project must be assessed. This would include all aspects of the expanded airport, including bird control and related activity, the effects of aircraft movements, and the application of the safeguarding regime. A cut-down version of the plan or project cannot be substituted by reference to a fallback position. Moreover, the claimed fallback is not a relevant material consideration in planning terms because there is no real prospect of it occurring. Alternatively, it is not a weighty consideration, because of its limited prospects of occurring and because its effects are said to be the same as in the development case.<sup>406</sup>
- 7.2.9. The pursuit of a fallback would involve a plan or project requiring assessment under the *Habitats Directive* and *Regulations*. It was confirmed that LAA would put a plan in place to achieve the substantial growth embodied in its fallback scenario. A change in the way the airport or the

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<sup>403</sup> CD4.1 Para 4.15, NE/04 Paras 27-28, Mr Maskens XX by NE Day 11

<sup>404</sup> LAA/4G Tables 3.2 & 3.4, LAA/6C App 1, NE/04 Paras 29-30, Ms Congdon XX by NE Day 15, Dr Allan RE Day 8

<sup>405</sup> CD1.42a App 1, CD4.4 Para 2.6, CD16.8 Para 6.1, CD 17.15 Cond 27, CD17.18 p31, LAA/3A Para 7.1.1(a), LAA/3D Para 2.10, NE/04 Paras 31-33, Mr Maskens XX by NE Day 11

<sup>406</sup> NE/04 Paras 54-55, NE/105 Paras 49-61, 74-77



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bird control regime is operated would involve different activities or interventions occurring in the natural environment which could potentially affect the European sites, and therefore amount to a plan or project in accordance with European and domestic case-law. What is included in the claimed fallback cannot be characterised as “business as usual”. It would be a change in the operation of the airport.<sup>407</sup>

7.2.10. NE made the point in 2007 that the baseline scenario should be employed for the impact assessment. LAA responded that the existing conditions scenario was used as the baseline scenario. The statement to inform the AA in relation to the SPA assessed the impacts of the development against the current baseline. It remains LAA’s primary case that the applications should be assessed on the basis of the existing situation at the airport. Whether it is appropriate to have regard to a fallback position when making assessments under the *Habitats Regulations* is an issue of law rather than professional opinion. NE does not accept that it is appropriate to have regard to a fallback position when making assessments under the *Habitats Directive*. When NE’s witness accepted that a fallback should be considered it was expressly on the assumption that LAA would have the level of activity proposed in the fallback.<sup>408</sup>

7.2.11. LAA’s “future baseline” scenario is that the airport would accommodate 300,000ppa. This remained the position until the exchange of proofs, when LAA said that the terminal could not handle more than 200,000ppa, and that without the development the airport would not see any real growth of commercial passenger services. At that stage a new fallback scenario was put forward, comprising general and business aviation, freight and MRO.<sup>409</sup>

### **Business Aviation**

7.2.12. LAA has spent some £30 million since 2001 improving facilities. All the necessary business aviation facilities have existed since at least the end of 2006. Since 2005 huge amounts of money has been spent providing a new runway surface, apron, high quality VIP lounge and the ILS. LAA aggressively marketed its business aviation facilities from 2004 to 2006 and offered free landings for business aviation flights at a time when that market was growing. Despite this, comparing 2005 and 2009 there is no evidence of growth in any aspect of aviation at the airport. Recent growth in business aviation flights has been limited and only takes the airport back to 2006 and 2007 levels. If there really was substantial unrealised potential for business aviation at LAA it would have been seen in the period from 2006 to 2008.<sup>410</sup>

7.2.13. The number of business jets in the fallback represents an increase of 40 times the existing level, or growth of 4,000%. If a growth figure of 5% is applied to the 195 business aviation movements in 2010, the number would reach about 500 movements after 20 years. This represents only a very

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<sup>407</sup> NE/04 Para 56, NE/105 Paras 62-73, Ms Congdon XX by NE Day 15, Mr Maskens XX by NE Day 11

<sup>408</sup> CD1.21 p28, CD1.25c Para 2.2.3, LAA/118 Paras 3.25-26 & 3.26.8, NE/04 Paras 57-59, NE/3A Para 357, Mrs Dear XX by LAA Day 23

<sup>409</sup> LAA/4A Paras 4.15, 4.16, 4.24, 5.15, 5.47, 7.5, NE/04 Para 60, Ms Congdon XX by NE Day 15

<sup>410</sup> CD1.15 Apps 1.3 & 1.4, CD8.232 p12, CD11.10 p28, NE/04 Paras 61-63, LAAG/101, Mr Maskens XX by NE Day 11, Ms Congdon XX by NE & RE Day 15

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small proportion of the 8,395 business jet movements included in the claimed fallback.<sup>411</sup>

- 7.2.14. LAA has assumed that it would attract business aviation flights without preparing any detailed forecast. Business aviation users are influenced by the destination location and tend to fill-up capacity first at those locations closest to London. In Government assessments, LAA has been described as remote from the regional road network and as having poor surface access and it is accepted that it would not serve more than a local market. Where this local market is for business jets is not apparent. The figure for business jets was apparently assumed in the fallback simply to provide a consistent basis of assessment with the development case.<sup>412</sup>
- 7.2.15. LAA is expected to attract 12% of the predicted 70,000 new business aviation movements in the London area, which covers from Farnborough to Luton and Southend, even though the figures show that it only handled 195 of the 70,000 existing movements in 2010. It is also expected to attract just under 25% of the surplus activity. London City Airport has capacity for growth by 30,000 movements a year. Farnborough has 27,000 movements which growth in business aviation could use and is said to be able to accommodate 38% of the growth in the London area. There are other airports whose contribution has not been quantified. Biggin Hill is a business aviation aerodrome which the ATWP says has extra capacity. It could accommodate another 75,000 movements before reaching its cap. There would not be a shortage of supply until the medium term to 2030 but there is uncertainty as to the level, and timing, of growth.<sup>413</sup>
- 7.2.16. Other airports are better placed than LAA to absorb both growth in, and displacement of, business aviation flights and it is unlikely that LAA would attract a significant share of the market in the future. What LAA states would be the operational aspects of the expanded airport for the purposes of assessment, including the number of business jet movements in the development case, is not disputed. However, this does not mean that the same would occur in the fallback. Business jet movements in the development case represent part of the application proposals that must be considered and assessed. In contrast, a fallback only becomes a consideration if it is proved to be a real prospect. In any event, the development case is not identical to the fallback.<sup>414</sup>

### **Freight**

- 7.2.17. The fallback is based on an express parcel operator serving the local parcel catchment, dealing with both in and out-bound parcels. There is no assessment of the local market and the local parcel catchment is currently served without using LAA. All the necessary facilities have been in place since 2006 or 2007 and there was nothing to stop a freight operator commencing operations at the airport at any point after 2007.<sup>415</sup>

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<sup>411</sup> LAA/4A Table 5.7, LAA/4G Paras 2.13 & 2.16, NE/04 Paras 64, Ms Congdon XX by NE & RE Day 15

<sup>412</sup> CD8.8 p110, LAA/4A Paras 5.54 & 6.6, LAA/4/E appendix 2, p450, 13.5.6, NE/04 Paras 65-66, Ms Congdon XX by NE Day 15

<sup>413</sup> CD5.24 Para 11.101, CD8.22 Paras 5.2.5 & p122 B.11.2, LAA/4G Paras 2.13, 2.16-2.17, 2.23-2.26, LAA/4I Para 19, NE/04 Paras 67-70, Ms Congdon XX by NE Day 15, Mr Maskens XX by LAAG Day 12

<sup>414</sup> NE/04 Paras 71-72, Mr Maskens XX by CPRE Day 12

<sup>415</sup> NE/04 Para 73, Ms Congdon XX by NE Day 15

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## Maintenance, Repair and Overhaul Operations

- 7.2.18. The current operator at LAA specialises in the maintenance of general aviation piston-engine aircraft serving the fleet at the airport. Given that the ATR42 aircraft included in the fallback scenario is a twin turboprop air transport aircraft, the operator would have to re-orientate the business and move into a new business sector. No detailed assessment of the market for such a move has been undertaken. There would be strong competition from established MRO bases at other airports and there are lots of airports wanting to attract MRO operations. Although the current MRO operator uses both the existing hangars it has not been considered whether new hangars would be required.<sup>416</sup>

### Conclusion on Claimed Fallback

- 7.2.19. LAA has indicated that if planning permission were not granted then as a minimum it would be essential to reduce operating costs and drastically scale back capital investment. The increased fire cover for larger jet aircraft is a very high overhead and might be scaled down again. Effectively LAA would cut its losses, which would make it less likely to attract new business. It has not attracted any whilst operating at an enhanced level in recent years. LAA's language is telling with the use of 'might' and 'potentially'. There are "considerable uncertainties" about the future of the airport without the development, and "uncertainties" about the growth projections in the claimed fallback. Two possible outcomes are described by LAA. The claimed fallback or to pare back operations and costs, or mothball, close or sell the airport. There seems little real prospect of the fallback happening.<sup>417</sup>

### 7.3. Ecology

- 7.3.1. Agreed design changes, procedures and substantial mitigation measures have overcome NE's concerns about the loss of ditches. Subject to the imposition of the agreed measures, the construction of new ditches would comprise acceptable replacement habitat for that lost to the development, including in relation to aquatic invertebrates. Concerns about mitigation of ecological impacts have been overcome by the provision of detailed mitigation proposals at this stage, together with provisions to ensure their success.<sup>418</sup>
- 7.3.2. Mitigation proposals have been agreed, together with monitoring and remedial actions, which mean that impacts on protected water voles, grass snake, common lizard, bats and medicinal leech would now be adequately addressed. Subject to the imposition of these measures, the proposals would be acceptable in relation to their impacts on these protected species. Great crested newts are dealt with in a number of SCGs. As a result of the agreed habitat works and remedial measures, and subject to their imposition, the impact of the proposals on great crested newts can be

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<sup>416</sup> CD7.7 Paras 7.40-7.42, LAA/4A Para 4.10, NE/04 Para 74, Ms Congdon XX by NE Day 15 Mr McGrath XX by NE Day 32

<sup>417</sup> LAA/4A Paras 4.22-4.24, 4.30, 5.48, 5.57, 5.64, 6.5-6.6, 6.12, & 7.7, LAA/4C App B, Ms Congdon XX by NE Day 15

<sup>418</sup> CD 4.12, CD 4.16, NE/2 Paras 22-24.

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satisfactorily addressed. The proposals are therefore acceptable in this respect in relation to the SAC and SSSI.<sup>419</sup>

- 7.3.3. LAA should be given full credit for the ecological benefits which will come from the proposals, including the ABAP. However, they do not relate to the SPA, pSPA and pRamsar interest features and so do not offset the effects on ornithological interests.<sup>420</sup>

#### 7.4. **Air Quality**

- 7.4.1. SCGs have been agreed on air quality, nitrogen deposition and vegetated shingle. As a result of the substantial monitoring and remedial provisions agreed, and subject to their imposition, the impact of the applications on the vegetated shingle in the SAC and SSSI from nitrogen deposition would be within acceptable levels and would not affect the integrity of the SAC or substantially damage the interest features of the SSSI. NE no longer objects on air quality grounds.<sup>421</sup>

#### 7.5. **Ornithology**

- 7.5.1. Dungeness is one of the most important sites in southern England for birds. The wetlands in the area provide ideal habitats, including beaches, shingle, salt marshes, damp grassland, and open water and its margins and scrub for a range of birds. The excavation of large and small pits has provided roosting and breeding sites for waterfowl. The habitats are dynamic and their bird populations change over time. The birds themselves move around, not only between roosting sites but also during each day to feed. It is important to bear in mind that the species and assemblages of birds are highly mobile and are not confined by the boundaries of the designated sites.<sup>422</sup>

- 7.5.2. The area has internationally important populations of wintering waterfowl, as well as an overall assemblage including species of swans, geese, ducks and waders. The area is also internationally important for a range of breeding birds, including seabirds, and the marsh harrier. The breeding bird assemblage as a whole is a SSSI feature. Dungeness is also a notable, and heavily used, stopping-off point for migrating birds. The RSPB Reserve in particular is enormously important for birds. It is the only place in the UK where purple herons and bitterns have bred, and it has almost all the breeding common gulls in England.<sup>423</sup>

- 7.5.3. The SEI on the impacts of the bird control programme recognised that LAA was in a unique location. It has a huge number of birds around it and many are very important species. The BHRA recognised that the area provides ideal habitat for a number of waterfowl. The ES' concluded that the peninsula is of considerable ornithological importance, with populations of waterbirds commuting regularly between feeding sites and roosts. Flocks of swans and geese frequently fly between their water roosts and farmland

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<sup>419</sup> CD 4.6, pp23-24, CD 4.11, CD4.16, CD12.44, NE/3/A Paras 332 & 339

<sup>420</sup> NE/04 Para 278

<sup>421</sup> CD4.2, CD4.6 Para 8.15, CD4.9, NE/2 Para 20, NE/04 Para 272

<sup>422</sup> NE/04 Paras 7-8, NE/3A pp 25, 47 & 168, RSPB/4D p1

<sup>423</sup> NE/04 Paras 9-10, NE/3A Para 95, Dr Underhill-Day IC Day 9

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feeding sites. The airport is located in an area of unusually high ornithological value.<sup>424</sup>

- 7.5.4. LAA accepts a number of important points. The area around the airport is of exceptional value for birds, with a wide range of important bird species present. There are very high numbers of birds, very high numbers of important birds, and high numbers of hazardous birds in and around the SPA. This is a function of the mosaic of habitats in the SPA and the surrounding land, which gives the area its ornithological interest, including a wide range of areas functionally linked to the SPA and pSPA.<sup>425</sup>

### **Functionally Linked Land**

- 7.5.5. The SPA and pSPA largely consist of waterbodies and land functionally linked to the designated sites is important. LAA accepts that functionally linked land includes land to the north-west, west and south-west of the airport, fields to the west and north-west of Lydd, and land immediately adjacent to the airport. Important bird species use all the available habitats on and around the SPA and the airport for roosting, feeding and nesting. Both arable and grassland fields around the waterbodies where the birds roost, provide feeding areas for important concentrations of designated species. Species such as swans, geese, and some wildfowl and waders, require land outside the designated sites as part of their ecological requirements and without such land being available would not be present on the designated sites.<sup>426</sup>

### **Designations and Conservation Objectives**

- 7.5.6. Information supporting the 2006 SSSI designation, which includes the SPA, and the departmental brief for the pSPA and pRamsar designations, provide background to the designations. The ornithological features of the pSPA are similar to those in the 2006 SSSI designation. The designations arise because of particular species and the overall assemblages of birds present.<sup>427</sup>
- 7.5.7. The proposed expansion of the SPA into the pSPA shows that the Dungeness peninsula, Lade Pit and RSPB Reserve are thriving, with important species extending their range. The pSPA proposals would bring areas of wetland habitat that are used by important bird species and birds in the assemblage of waterbirds, as well as add eight particular new species, seven of which are Annex I species. Within the SPA and pSPA there is a range of different wetland habitats. Each different type of habitat offers different opportunities for feeding, roosting and breeding, for different species.<sup>428</sup>
- 7.5.8. The conservation objectives for each Natura 2000 site define the desired state of the features for which the site has been designated. The conservation objectives are to maintain in favourable condition the habitats

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<sup>424</sup> CD 1.14 Paras 11.4.40, 11.4.47 & 11.11.2, CD1.23c p5, LAA/6C App 1 Para 6.8, NE/04 Paras 11-12, Dr Underhill-Day XX by LAA Day

<sup>425</sup> Mr Deacon XX by RSPB Day 4

<sup>426</sup> NE/04 Paras 14-15, RSPB/4A Paras 5.18 & 6.21, RSPB/4/D p1, Mr Deacon XX by RSPB Day 4, Dr Underhill-Day IC Day 8

<sup>427</sup> NE/04 Paras 16-17, NE/3B Apps 3 & 3, NE/103, Mrs Dear RE Day 23, Dr Armstrong XX by NE Day 6

<sup>428</sup> CD14.7, NE/04 Paras 18-19, Dr Armstrong XX by NE Day 6, Dr Underhill-Day IC Day 8

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for the bird populations and species of European importance, with particular reference to standing water, shingle, marshy grassland and arable land. The attributes of these habitats include their extent, disturbance in roosting and feeding areas, the areas of water available, and food availability.<sup>429</sup>

### **Bird Strike Risk for Aircraft**

- 7.5.9. The risk at LAA in the development case is capable of being managed, provided that appropriate measures are applied. The difference between the parties arises from the intensity, scope and area of the bird control and management measures that would be required. Birds tend to be present in the lowest 1,000 ft of airspace. LAA's evidence shows that on arrival, aircraft would be below 1,000 ft across the whole of the Denge Marsh area to the south and from well before the Romney Salts area to the north.<sup>430</sup>

### **The Bird Strike Problem at LAA**

- 7.5.10. LAA is adjacent to attractive habitat for hazardous birds and there are high numbers of them in and around the SPA. CAA's CAP 772 notes that the more open water sites there are on and around an aerodrome, the more complex and frequent will be the movements of waterfowl between them. Gulls, lapwing, golden plover, corvids, and particularly waterfowl are identified in CAP 772 which notes that geese and swans can present a significant risk to aircraft, and that their main occurrence is in relation to flightlines. Mute swans, Greylag and Canada geese, and ducks, are identified as roosting on lakes and travelling daily to feed on farmland. All these species, as well as other species of swans, ducks and geese, are present in the locality.<sup>431</sup>
- 7.5.11. The presence of birds is illustrated by LAA's ornithology surveys and the BHRA recognises that there are significant populations of Greylag and Canada geese on the local gravel pits that are a significant potential bird strike hazard. Waterbirds roost on or near waterbodies, including those at the RSPB Reserve and Lade Pits, or close to the coast, and fly out daily to feed, either by day or at night. They fly back at times in order to rest or to water, and also to roost. Depending on the species, the birds will feed on arable fields and on grassland. Waterfowl and waders fan-out from the waterbodies in the designated sites to feed on the marshes. Birds flying from the roosting sites on the designated sites at the Lade Pits and the RSPB Reserve will almost inevitably have to cross the airport or its vulnerable airspace.<sup>432</sup>
- 7.5.12. LAA accepts that Bewick's swans use the ARC pit and land to the north and west of the airport for feeding. Between 60 and 100, with a maximum of 146, have been recorded. Bewick's swans have roosted on the Reserve in recent years at certain times, including when they were feeding in the area between the Reserve and Lydd town. Last winter Bewick's swans regularly roosted on the ARC pit from December to February, from where they would

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<sup>429</sup> NE/04 Para 20, NE/3A Para 25, NE/3B App 2, Mrs Dear IC Day 23

<sup>430</sup> CD4.5 Paras 1.2, 2.1.1, LAA/5F Figs 1-2 (FP07, FP15), NE/1A pp6-12, Mr Perkins XX by NE Day 20

<sup>431</sup> CD16.2 Chap 3, 3.1, 4.6.1, 5.1, Chap 6 pp4-5, NE/04 Paras 82-84, Dr Allan XX by LAA Day 6, Mr Gomes IC Day 9

<sup>432</sup> LAA/6C App 1, NE/04 Paras 87-89, RSPB/3A Para 5.20 & pp7-12, RSPB/4A Paras 4.1-4.5 & 7.11, Mr Gomes IC Day 9, Dr Underhill-Day IC Day 8

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fly out to feed in the fields north-west, west and south of the airport, as well as further away.<sup>433</sup>

- 7.5.13. There are two parts to the bird strike problem at Lydd. Firstly, birds around and adjacent to the airport, including lapwing, golden plover, corvids, pigeons, starlings and mute swans. These are regularly disturbed and fly around in large flocks. Lapwing and golden plover in particular present a serious risk. The second element is longer distance flights over the airfield, by waterfowl such as Bewick's swans, mute swans, greylag geese, Canada geese and cormorants. These fly from the waterbodies east of the airport, over the airport, to the farmland, in flocks of tens of birds and sometimes hundreds in the case of geese. At certain times of day and with certain species, there are significant commuting links over the airport. Most birds have persistent, if not permanent, roosting sites although some species, such as the Bewick's swan and white-fronted goose, will move between sites every few weeks.<sup>434</sup>
- 7.5.14. A limited series of vantage point surveys were undertaken by NE/RSPB to gain a better understanding of the movement of birds around and across the airport. These were not ideal, due to the vantage points that had to be used, but provide an illustration of the scale of the problem, particularly with waterbirds. LAA accepted the results as useful information which is in line with its own results and conclusions. The findings show that a significant number of hazardous species overfly the airport and its environs on a regular basis. From the surveys and site visits, the number and nature of movements of hazardous bird species is considered, on some days, to be astoundingly high compared to other airports. For waterfowl, the number of movements over the airport and its vulnerable airspace was very high. Indeed "jaw dropping" and "absolutely huge" numbers were seen at dawn on 15 September 2010, more than NE's witness had ever seen in his professional career.<sup>435</sup>
- 7.5.15. The mere presence of birds, including waterfowl, is also a significant hazard that would need to be managed. There are consistent and frequent over-flights of greylag geese. LAA also accepts that there are regular over-flights of mute swans in small groups. There are flocks of 200 or 300 golden plover regularly flying over the airport, being associated with the sheep pastures close to the airport. Lapwing are also present in similar patterns and have been observed moving across the airfield at dusk. Gulls are evenly distributed around the local habitat without clear concentrations, but they fly in to feed on the grass fields. There is a weak flightline identified for gulls returning across the airfield to the coastal roost site in the evening.<sup>436</sup>

### **Existing Bird Control Measures**

- 7.5.16. The existing bird control operations are relatively low key. Runway inspections are carried out in the morning and afternoon and are generally

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<sup>433</sup> LAA/6C App 1, NE/04 Para 90, RSPB/3A Para 5.8.

<sup>434</sup> CD1.15 App 11.2, NE/04 Paras 91-92, Mr Deacon XX by NE Day 3

<sup>435</sup> LAA/6D Para 2.7, NE/04 Paras 93-94, NE/1A Para 32, NE/1E App 5 & NE/1E.1, NE/107, Dr Allan IC Day 6

<sup>436</sup> NE/04 Para s 95-98, NE/1A Paras 60 & 68, Dr Allan IC Day 6, Mr Deacon XX by NE Day 3

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combined with a bird control run. A runway inspection, combined with a bird control run, is carried out before each high risk aircraft movement.<sup>437</sup>

- 7.5.17. It is agreed that the bird control logs give a good indication of what LAA regards as a high risk movement. The bird control logs indicate that, on average, there are two high risk aircraft movements a day at the moment. There is no difference between the bird control experts as to the current level of hazardous movements. LAA accepts that there were only 18 hazardous flights in the whole of October 2010, and that there were a large number of days when no hazardous flights occurred at all. During a visit in November 2010 NE's witness did not see any off airport bird control and on airport bird control was confined to morning and evening bird control runs and runs in advance of turboprop movements. Bird runs before vulnerable movements are undertaken 10 to 15 minutes before the movement, but sometimes closer than that.<sup>438</sup>
- 7.5.18. There has been no off airport bird scaring, apart from one field immediately to the west of the airport on one or two occasions. There has been no netting of waterbodies, and no use of pyrotechnics, land, or habitat management off airport. There is no evidence of any current buffer zone around the airport boundary, only occasional clearing of the airfield for transitory movements of hazardous aircraft. The bird control logs make it clear that LAA is not undertaking continuous bird control but is seeking to create bird-free windows by carrying out bird control runs in advance of particular aircraft movements.<sup>439</sup>
- 7.5.19. A recent ramping-up of bird control effort at the airport has been suggested. However, the October 2010 bird logs show no significant ramping-up of bird control runs and nor do the bird control logs from January and February 2011. The reference in the bird control SCG to a shift in bird control being necessary is as a result of the proposals, and not one that has already occurred. After a CAA audit in July 2010 the waterbodies on the airport remained un-netted, bird control runs continued as before, and no off airport bird control was undertaken except in one field adjacent to the airport. There is no evidence before the Inquiry of a ramping-up of bird scaring activity as a result of the CAA's intervention or otherwise.<sup>440</sup>

### **Adequacy of Existing Bird Control Operations**

- 7.5.20. LAA's witnesses carried out an audit of what bird control was appropriate and were satisfied that, since 2004, the airport had operated safely and was reducing bird strike risks ALARP having regard to the nature of the operations. The airport has accommodated business jet flights for some years, and had more of them in the past than now. Although some steps were not taken following the 2010 CAA audit, the airport's existing bird control regime is adequate for current operations.<sup>441</sup>

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<sup>437</sup> CD2.13 p9, NE/04 Para 34, Mr Maskens XX by NE Day 11, Mr Deacon XX by RSPB Day 3

<sup>438</sup> CD 12.31, CD12.35A, CD12.35B, LAA/3F App 2, LAA/102, NE/04 Paras 35-37, Mr Deacon XX by NE Day 3, Mr Maskens XX by NE Day 11

<sup>439</sup> LAA/3/F, NE/04 Paras 38-40, Mr Deacon XX by NE Day 3, Dr Allan XX by LAA & RE Day 11

<sup>440</sup> CD4.5 Para 4.2.1, CD12.35, NE/04 Paras 41-43, Mr Deacon XX by NE & RSPB Day 3, Maskens XX by NE Day 11

<sup>441</sup> CD 2.13, NE/04 Para 44, Mr Deacon XX by NE Day 3, Dr Allan RE Day 8.



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- 7.5.21. LAA appeared to suggest that the airport was falling below the standards of bird control that currently ought to be applied. Despite the levels of birds, the risk is not extreme with the present aircraft patterns, fleet mix and levels of aircraft movements. Managing over-flights of birds is not necessary as it would not give a significant reduction in the risk. On airport bird control is broadly compliant with the IBSC standards, save for particular matters such as record keeping. Netting waterbodies and on-airfield habitat management are not done. The safeguarding system should also be properly operated at the moment but measures like the creation of a buffer zone are not required for the current operation of the airport.<sup>442</sup>
- 7.5.22. In the absence of a serious problem from any specific local attraction, scaring from fields adjacent to the airport would not offer a safety benefit. CAA's CAP documents require consideration of whether the risk is sufficient to justify taking steps and decisions must be made having regard to the safety benefit. There is no point in making lots of effort if it would only reduce the risk slightly.<sup>443</sup>
- 7.5.23. LAA has long recognised that the BCMP would have to change as a result of the development. The Supplementary Environmental Information (SEI) describes a number of changes between the current BCMP and that envisaged for the development case, including active bird control, local land use agreements and waterbody protection. The statement to inform the AA approached the BCMP on the basis that a revised bird control regime was a consequence of the development.<sup>444</sup>

#### **Information Available to Assess BCMP Measures Required**

- 7.5.24. Adequate information is required to assess the level of management effort necessary to control bird strike risk. Without it, it is impossible to develop an accurate picture of the bird control effort required to maintain a safe operating environment, and impossible to target the areas that pose the greatest threat. CAP 772 on bird strike risk refers to surveying not just concentrations of birds, but also their movements in the local area. Monitoring movement patterns of birds in the vicinity of the aerodrome is an essential component of bird strike risk assessment. Surveys should be conducted in different seasons to identify attractants, concentrations, regular movement patterns, and flightlines.<sup>445</sup>
- 7.5.25. The BHRA recognises that a primary factor in the risk is flightline and over-flight activity. None of the usual sources of information apply in this case. No results are available of a 13km bird survey required by CAA. The airport's bird control logs do not contain accurate records of birds overflying the airport as not all hazardous birds are recorded equally. Past bird strike

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<sup>442</sup> CD2.13 p11, CD 12.33, CD16.2, NE/04 Paras 45-46 & 49-50, Dr Allan XX by LAA & RE Days 8 & 9, Mr Deacon XX by RSPB Day 3

<sup>443</sup> CD 16.1 Intro Para 4 & Chap 5 Para 1.1, CD16.2 Intro Para 5, NE/04 Paras 47-48, Dr Allan RE Day 8, Mr Deacon XX by NE Day 3

<sup>444</sup> CD1.23c p3, CD 1.25c Para 2.3, LAA/6A Para 4.2

<sup>445</sup> CD16.2 Chap 2 Para 2.2(d), Chap 3 Paras 2.2, 3.1 & 3.4, NE/04 Paras 99-100, NE/1A Paras 9, 17 & 33, Mr Deacon XX by NE Day 3

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records do not give an accurate picture of what the risk would be with the expanded airport, because the aircraft mix and number would change.<sup>446</sup>

- 7.5.26. Other ornithological data, showing what birds were on what sites, doesn't say anything about the movements of birds. There is no data on roosting locations or night-time movements. Flightline studies only cover wetland sites, exclude feeding areas, and do not cover a range of species. The only flightline maps are for Bewick's swans, based on inferences rather than observations, which did not show any feeding areas on land to the north or west of the airport, but still show flightlines over the airport and through vulnerable airspace.<sup>447</sup>
- 7.5.27. The BHRA methodology is accepted. However, although the BHRA was revised to include more information, it does not overcome the fundamental problem of lack of information on the distribution and movement of birds around the airport. Indeed, the data included in the BHRA is obviously wrong.<sup>448</sup>
- 7.5.28. Information should be gathered through vantage point surveys. This method of systematic counting is standard practice and has been carried out at other airports. Such surveys were requested during the application process, including by the Council's consultants. Vantage point surveys would allow the levels of bird control, land and habitat management required to combat the bird strike risk to be estimated, and allow a plan to be produced describing the levels of intervention necessary to control the risk. Apart from the limited surveys carried out by NE, no such surveying has been done in this case. It is not possible to estimate the effects of the BCMP with any degree of certainty without this information.<sup>449</sup>
- 7.5.29. The bird control effort required would depend on the level and nature of hazardous bird movements. Until LAA addresses the species involved and their geography it will not know what might have to be done and what mitigation might be required. Without the information, it is not possible to assess the impacts of the development, or consider whether it is necessary to provide mitigation or compensation for the affected habitats. LAA's intention is to collect data on bird movements under the BCMP, including where birds feed but the information available is not enough to allow an AA to be undertaken.<sup>450</sup>
- 7.5.30. It is accepted that the environmental information includes all the information before the Inquiry and it is not contended that the ES is so inadequate that it does not amount to an ES and a Regulation 19 request ought to have been made. There are two points: firstly, the information available is not sufficiently detailed and robust to reach conclusions on the environmental impacts of the proposals with a sufficient degree of certainty; and secondly, because of the lack of information, or alternatively the setting

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<sup>446</sup> LAA/6C App1 p3, NE/04 Paras 101-103, NE/1A Paras 20 & 22, NE/1D Paras 22 & 28-31, NE/106, Dr Underhill-Day IC Day 8, Mr Deacon XX by NE Day 3

<sup>447</sup> CD1.33d App 1, LAA/6D Para 4.11, NE/004 Paras 104-105, NE/1A Para 24, RSPB/4A Paras 6.35 & 6.37, Mr Deacon XX by NE Day 3

<sup>448</sup> CD4.5, NE/04 Para 106, NE/106, Mr Deacon XX by NE Day 3, Dr Allan XX by LAA Day 7

<sup>449</sup> CD1.15 App 1.2, Paras 47-48, CD1.21 PP 16 & 29, CD1.28 p24, CD1.33d Para 2.4.6, CD3.7, CD3.8, NE/04 Paras 107-109, NE/1A Para 29.

<sup>450</sup> LAA/6C, App 2, p5 and p12 at 7.7, NE/04 Paras 110-112, Dr Underhill-Day IC Day 8

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of maximum parameters of operations under the BCMP, any decision would leave over issues relating to the significance of environmental impacts and the effectiveness of mitigation, which is not permissible. This relates to the *Habitats Directive* as much as the *EIA Directive*. It is not possible to properly assess the impacts of a project the parameters of which are undefined.<sup>451</sup>

### **Provisions and Measures Under the BCMP**

- 7.5.31. The provisions of the BCMP are agreed. It has an appropriate menu of techniques including:
- i) Bird control and dispersal action at breeding, feeding and roosting sites off-airport;
  - ii) Habitat management to minimise the attraction of the airfield and its environs to birds;
  - iii) Disturbance and habitat management measures at feeding sites;
  - iv) Agreement with local landowners to modify land use practices; and
  - v) Shooting hazardous bird species and removing nests and eggs, both on-airport and in the surrounding area, where birds occurring at sites beyond the airport boundary are regularly causing a hazard to aircraft.<sup>452</sup>
- 7.5.32. NE's concern is the level of intensity of the application of the techniques to achieve the necessary safety margins. Nothing before the Inquiry gives any information as to where such measures could be taken, at what intensity, and what and how much land would be affected. LAA states that in terms of bird control effort nothing is ruled out and measures will be taken as and when issues arise.<sup>453</sup>
- 7.5.33. The ICAO standards cover the airport and the vicinity of the airport which is taken to mean land or water within 13km of the airport. The standards require airport operators to decrease the number of birds constituting a hazard in the vicinity of an airport by discouraging their presence and eliminating or preventing the establishment of attractants.<sup>454</sup>
- 7.5.34. CAP 772 states that the objective of bird strike risk management is to implement the measures necessary to reduce the risk to the lowest practicable level. The measures should be aimed at deterring birds from flying on and in the lower flightpaths in the vicinity of aerodromes and the emphasis should be to minimise the presence of flocks of birds on and in the vicinity of the aerodrome as much as possible. The obligation under CAP 168 is to take all reasonable measures where practicable in the vicinity of the aerodrome. This includes controlling the existence of birds in the vicinity of the airport. The obligation to control birds applies to the airspace at the airport as well as flightpaths in the approach and climb-out areas.<sup>455</sup>

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<sup>451</sup> NE/01 Paras 6.17-6.20, NE/104 Para 113, NE/105 Para 78

<sup>452</sup> LAA/6C App 2, NE/04 Paras 115 & 117, Mr Deacon XX by NE Day 3

<sup>453</sup> LAA/6C App 2, NE/04 Paras 116, 118, NE/1A Paras 53-54, & 57

<sup>454</sup> CD12.7 Annex 14, Chap 9, p9.7, 9.4.3-9.4.4, CD 16.2 Intro p1 Para 4, NE/04 Para 119

<sup>455</sup> CD16.2 Chap 1 p1 Paras 1.1, 1.3 & 2.2, Chap 5 p1 Para 1.1, NE/04 Paras 120-121, Mr Deacon XX by NE Day 3

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- 7.5.35. Measures in CAP 772 comprise activities to control or influence areas within the vicinity of the aerodrome to minimise their attraction for birds, including by influencing land use and encouraging landowners to take action. Airport staff roles include “acting on habitat changes” in the vicinity of the airport, through management and control activities. Landowners may co-operate by allowing access to control action on their land or by taking action themselves. They should be encouraged to adopt measures to reduce the attractiveness of their land to birds, especially in the immediate approach and departure areas. Birds visit places that provide habitats which offer food or security for foraging, resting and sometimes breeding, and will visit as long as the attraction remains. Habitat management should be aimed at removing or reducing these habitats.<sup>456</sup>
- 7.5.36. In the development case there would have to be continuous bird control patrols on the airport. Also, the use of pyrotechnics along the airport perimeter would be essential to maintain the buffer zone described in the BCMP. The airport’s ambition is to create a 0.5km buffer zone beyond the airport fence. Although this might not be possible to the south, due to the constraints around the railway, LAA declined to amend the BCMP to remove provision for a buffer zone to the south. There would be a need to scare repeatedly to create the zone, either by men walking in the fields or pyrotechnics. LAA contends that no off site measures are currently known to be required under the BCMP but the amount of off airfield bird control would depend on agreements with landowners about which no assumptions have been made.<sup>457</sup>
- 7.5.37. The BCMP includes a raft of off airport measures that have been part of the proposals since the publication of the ES. The SEI indicates that wherever possible agreements with local landowners should be entered into for off airfield habitat management to reduce the attractiveness of the Airport’s environment to risk species of birds. The BHRA says that farmland would be acquired and leased back subject to conditions “if the application is successful” and it also includes particular proposals to discourage local farmers from growing oil seed rape, to plough in stubble quickly following harvest, and to negotiate scaring measures at the sites where geese and swans feed. It is apparent that off airport measures are proposed and that they would be different if the development proceeds.<sup>458</sup>
- 7.5.38. LAA explained that off airport measures would be employed under the BCMP and that it would “influence local land use”, although details were not disclosed. It is recognised that there are persistent or regular over-flights of greylag geese and mute swans, and it was accepted that swan strikes are so hazardous that flights of swans must be addressed. The SCG states that where possible it is preferable to manage bird flightlines through vulnerable airspace by taking action at either the source or destination and this is what is recommended in the BHRA. The areas where crop management and scaring at feeding sites would have to be done have not been identified, and

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<sup>456</sup> CD16.2, Chap 1 Para 2.3(e), Chap 2 Para 2.2(a), Chap 4 Paras 1.2 & 2.1, NE/04 Paras 122-123

<sup>457</sup> LAA/118 Para 3.20.4, NE/04 Paras 124-127, NE/1A Para 46

<sup>458</sup> CD1.14 Paras 11.7.5-11.7.14, 11.9-11.13, CD1.23c Para 3.2.5, CD1.33d Para 2.6.2, LAA/6C App 1, pp 19 & 25-27, NE/04 Paras 128-129

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until they are it is impossible to tell where the measures would have to be applied.<sup>459</sup>

- 7.5.39. Off airport measures are envisaged as normal in the CAA's CAP documents and the Airport Solutions reports make clear that off airport bird control would be expected at passenger airports. Measures undertaken at other airports, including paying farmers not to grow crops that provide a feeding resource for birds, deterring birds using scaring techniques such as dogs or lasers, population management by destruction of eggs or nests and by culling, and habitat modification to make roosting or feeding sites unattractive. These are reflected in the BCMP in this case. At Derry airport, adjacent to an SPA including Bewick's swans, action is being taken to deter birds from feeding on fields close to the airport, reducing feeding opportunities for the SPA species. Habitat management has been carried out within an SPA at Heathrow to remove breeding sites for geese whilst at Warton, BAe is pursuing an appeal for permission to cull large gulls in an SPA.<sup>460</sup>
- 7.5.40. If there was no need to carry out any of the BCMP's provisions beyond the airport boundary this could be secured by condition or Agreement. Instead, the Agreement proposes an elaborate mechanism for including details of off site bird control measures in the BCMP to be approved. Rather than preventing off airport bird control, the Agreement provides for it to be included in the BCMP. In order to be successful for the proposed frequency of movement of jets, including large passenger jets, considerable off airport effort would be required, dispersing roosting or feeding flocks of birds, and modifying habitat to make it unattractive to hazardous birds.<sup>461</sup>
- 7.5.41. Intensive on airfield bird control would be able to push birds feeding in fields close by further from the airfield. However, the only proper way to manage the risk is to actively disperse the birds from the fields or to change the agricultural cropping and habitats to make the fields unattractive to them. For waterfowl, action should be taken to disperse the birds from one end or other of their flightline, permanently removing the problem. As the airport would be unlikely to be able to take action in the SPA itself, the management of birds across the marsh could be needed, at fields and waterbodies to the north and west of the airport. The target birds would be swans, geese and smaller waterfowl. The BCMP gives no indication of how far out off airport measures could be taken.<sup>462</sup>
- 7.5.42. It is clear that considerable off airport bird control and land and habitat management would be required. But the nature, amount, scope and location of that effort is not defined.<sup>463</sup>

### **Bird Control Effort for the Claimed Fallback**

- 7.5.43. Bird strike risk depends on the underlying hazard from birds and on the nature and volume of the air traffic. GA aircraft are the least at risk and, in

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<sup>459</sup> CD4.5 Para 4.2.4, LAA/6D pp 17-18, Para 2.11, 2.19 & 2.21, NE/04 Paras 130-132, Mr Deacon XX by NE Day 3 & RE Day 4

<sup>460</sup> NE/04 Paras 133-135, NE/1A Paras 77, 84-86, NE/1B Para 4.2, NE/1E App 6 Para 6.3

<sup>461</sup> CD4.1, NE/04 Paras 136-137, NE/1A Paras 47 & 88, Dr Allan XX by LAA Day 7

<sup>462</sup> NE/04 Paras 138-139, NE/1A Paras 68, 91, 95, 96 & 98, Dr Underhill-Day RX Day 9

<sup>463</sup> NE/04 Para 141

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terms of probability of a strike, an aircraft such as a B737 would be the highest risk although business jets are most vulnerable to a strike. This is because aircraft such as the B737 have larger engines and are at risk of multiple bird strikes. Introducing passenger jets increases the risk of bird strike because of the larger area of vulnerable airspace covered. LAA accepts that a key factor in the bird control effort is the potential number of casualties and that more effort would be made when more people were at risk.<sup>464</sup>

- 7.5.44. On take off the rate of climb, and hence the time taken to reach 1,000 ft, would vary according to factors, including the aircraft type, the engine type, the take off weight, the wind speed and direction, and other matters such as temperature and pressure. A business jet would climb at around 3,000 to 4,000 ft per minute, whereas a commercial passenger jet would climb at around 2,500 to 3,000 ft per minute. Commercial passenger jets would, therefore, create a greater area of vulnerable airspace around the airport, because they would be below 1,000 ft further out from the airport than a business jet would be. There would be a larger area of vulnerable airspace for a B737 in the development case than a business jet in the claimed fallback.<sup>465</sup>
- 7.5.45. In relation to the claimed fallback, it would be possible to increase the number of business jet movements at LAA by around 750 a year without the operations necessitating a change in the bird control regime. This could be accommodated within the current intermittent bird control and would not require anything off airport. The projected business aviation movements produced by LAA show that this level would not to be met in the claimed fallback until around 2019. LAA's evidence is that on airport bird control would only become continuous when the airport reached the level of one hazardous movement per hour. This accords with the BCMP and would allow scope for considerable growth in the number of such movements at the airport before continuous on airport bird control was required.<sup>466</sup>
- 7.5.46. When passenger jet transport aircraft are introduced in the development case there would be a need for continuous bird control on airport and to extend the effort to include off airport bird control, given the shallow angles of flight of passenger jets. Airlines, especially low cost carriers, can be extremely sensitive to bird strike issues, due to the costs involved in replacing engines on passenger jets, as well as the number of precautionary turn-backs after strikes which cause delays to tight schedules. It is important for airlines to be able to operate at the times they choose. The ability to hold business jets due to birds passing over would not apply to scheduled passenger transport aircraft, which have scheduled 'slots'.<sup>467</sup>
- 7.5.47. For these reasons, even if the claimed fallback is accepted, it is clear that the bird control regime in the fallback scenario would not be the same as in

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<sup>464</sup> CD4.5 Para 2.1.2, NE/04 Paras 142-143, Dr Allan XX by LAA Day 7, Mr Deacon XX by NE Day 3

<sup>465</sup> NE/04 Paras 144-145, Mr Maskens XX by NE & RE Day 11, Dr Allan IC Day 6

<sup>466</sup> LAA/4I p5, LAA/6C App 2 p2 & p10 Para 7.4.1, NE/04 Paras 146-147, Mr Deacon XX by NE & RSPB Day 3, Dr Allan IC Day 6

<sup>467</sup> LAA/4A Paras 4.16 and 5.46, LAA/4G Para 4.8, LAA/6D Para 2.19, NE/04 Paras 148-149, NE/1A Paras 73-76, NE/1B Paras 4.2-4.3, NE/1D Para 35, NE/1E App 6 Paras 5.6, 6.1-6.13, Dr Allan RE Day 8

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the development case and that more effort would be required if the proposals are permitted.<sup>468</sup>

### **The Effects of Safeguarding in the Development Case**

- 7.5.48. CAA's CAP 168 requires all reasonable steps to be taken to ensure that airports and their airspace are safe at all times. CAA now requires all aerodromes to make local safeguarding arrangements and the production of a 13km survey for safeguarding was required by the CAA in its July 2010 audit of LAA. CAP 738 on safeguarding recommends airports seek assurances that developments do not include water features that may increase the risk of bird strike, which includes wetlands and nature reserves. CAP 772 states that safeguarding should address developments that individually or cumulatively could become bird attractants with the potential to increase bird strike risk. Safeguarding covers not only planned developments but also existing developments, as is recognised in the BCMP. The threshold for an objection is low where bird strike risk may increase or could increase under certain conditions in the future. LAA has an informal safeguarding agreement with SDC, there is a written safeguarding policy and a safeguarding map. The airport has not actively operated its safeguarding arrangements in relation to bird strike risk.<sup>469</sup>
- 7.5.49. The BHRA highlights any additional wetland as a risk, especially wetlands to the north and west of the airport as they could generate bird traffic which would conflict with aircraft movements. Excavations for new waterbodies or reed beds, engineering operations to create islands in them if they required planning permission, and the approval of quarry restoration schemes would all be covered by safeguarding. Although the BCMP contains an area of "no anticipated objection" to wetland creation schemes, this only applies to an area south-west of the airport, and excludes SPA and SSSI land. Even within this area the Airport would have to object if a proposal materially increased the bird strike risk.<sup>470</sup>
- 7.5.50. Although it is accepted that the Airport should be applying its safeguarding policy properly now, the level of vigour with which the policy would be applied by the airport and the local planning authority would significantly increase with the airport expansion. The larger the airfield the more vigorous and more diligent the airport would be in applying the safeguarding policy. The degree of vigour with which a safeguarding policy is operated would be affected by the circumstances, including the potential liability issues following an air accident. When B737 passenger jets are involved, the area of vulnerable airspace would be larger and the potential number of casualties means that the airport would make more effort.<sup>471</sup>
- 7.5.51. It would be very difficult for an airport operator not to object to a development that would increase the bird strike risk at its airport, even if only by a relatively small amount. Similarly, the local planning authority's

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<sup>468</sup> NE/04 Para 150

<sup>469</sup> CD1.16 Fig 11.4, CD1.25c Fig 5, CD1.33d Para 2.7.2 & App D, CD16.1 Chap 4 p20 & Para 11.2, Chap 5 p1 & Para 2.1(c), CD16.2 Chap 4 Paras 4.2, 4.8, CD16.4 Chap 1 Para 5.7(a), App A Para 2, LAA/6C App 2 Para 11.2.2, NE/04 Paras 52-53, 151-152, NE/1E App 6 Para 8.9, Mr Maskens XX by NE Day 11, Mr Deacon XX by NE Day 3

<sup>470</sup> CD1.25c Fig 4, LAA/6C App 1 Para 9.1, App 2 pp26-27 & Para 11.2.3(a), CD5.22, NE/04 Paras 153-154, NE/3E App 4, RSPB/3A, RSPB/4A p8, RSPB/4D pp8-9, Mr Gomes XX by LAA Day 10, Mr Deacon XX by NE Day 3

<sup>471</sup> NE/04 Para 155, NE/1A Para 52, Dr Allan xx by LAA Day 7

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scope for over-ruling safeguarding objections is likely to be very limited and it would put public safety first. The impacts of safeguarding could be considerable. Using vantage point surveys and the 13km safeguarding survey, Glasgow airport opposed development to create roosting habitat in the SPA for Whooper swans, because it would have created an additional risk. There have also been objections to developments designed to increase the quantity of habitat for waterfowl within the SPA near Heathrow, in relation to Canada geese and mute swans.<sup>472</sup>

- 7.5.52. Safeguarding objections lead to compromises involving the removal of the features that attract hazardous birds and their replacement with habitat for other wildlife. In this case, the birds that would need to be designed out are the very species that are of most interest for the SPA and a compromise would be harder to achieve. There would be circumstances where compromise was not achievable. LAA accepts that the intention would be to design out the attraction for birds such as swans and geese.<sup>473</sup>

### **Conclusions**

- 7.5.53. Proper surveys are necessary to accurately assess what effort is required to control the bird strike risk. Off airport measures are recommended by the BHRA, included in the BCMP, and noted in LAA's evidence. The scope and intensity of actions under the BCMP are unclear, as a result of which it is impossible to estimate the likely impacts on the ornithological interest features of the designations and their supporting habitats. The maximum parameters of the measures to be taken under the BCMP could have been set in either the BCMP or the Section 106 Agreement but have not been set in a way that would enable the full extent of the effects to be identified and assessed.<sup>474</sup>
- 7.5.54. The necessary level of intensity of the application of the measures in the BCMP would be considerable. The effort could be increased until the airport was safe, but the consequences would be at large. High intensity on airport bird control, the creation of a buffer zone, dispersing birds from fields close to the airport or changing the agricultural regime to make them unattractive, and preventing over-flights by waterfowl and gulls would be likely. Even if all the measures under the BCMP necessary for the development case were also necessary currently or in the claimed fallback then the measures would still have to be assessed as part of the in combination assessment with the other effects of the operation of the expanded airport.<sup>475</sup>

### **Disturbance from Aircraft Noise**

- 7.5.55. The combined effect of the noise and vision of aircraft have to be considered. Peak noise levels are only one aspect of disturbance caused by aircraft movements, as are differences above background noise levels. There is no longer any monitoring proposed for the effects of noise on ornithological interests. The baseline monitoring locations were all in

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<sup>472</sup> NE/04 Paras 57-58, NE/1A Paras 82, 85 & 98, NE/1E App 6 Paras 8.2-8.9, Dr Allan XX by LAA Day 7

<sup>473</sup> CD4.5 Para 5.1.3, LAA/6E pp28-33, NE/04 Para 159, Dr Allan XX by LAA Day 7

<sup>474</sup> NE/04 Paras 169-170, NE/105 Para 34

<sup>475</sup> NE/04 Paras 171-173



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residential or suburban areas, not in the open countryside, and none were within the SPA. There are, therefore, no baseline noise data for these areas, including the whole area of countryside south of the airport. However, it is apparent that the noise levels in the Denge Marsh and RSPB Reserve areas in particular are relatively low.<sup>476</sup>

- 7.5.56. There was no noise measurement taken in the SPA during the B737 trial flight. At Lydd Cemetery, some distance around the flightpath, the B737 was at 1,000ft and had a SEL of 91dB. The updated ES says that a B737-800 would reach at least 1,000ft over Lydd village and have a SEL of 88-104dBA. Even with the runway extension, B737-800 aircraft on take-off would be crossing Dungeness Road, alongside the SPA and pSPA, at around 1,000ft. On landing, aircraft would be crossing the Dungeness Road in the same location at under 200ft, having flown over Denge Marsh at under 500ft.<sup>477</sup>
- 7.5.57. There is a question over whether Scenario 3 flightpaths would be used for aircraft over 5,700kg departing from runway 21. The SEI was based on the assumption that on take off aircraft would turn right over Lydd. It was then proposed that aircraft would fly over Lydd Ranges (DO44) for one-third of the time. The use of FP12 over Lydd rather than the Scenario 3 flightpaths over DO44 (FP15 or FP18) would move aircraft further away from parts of the SPA and pSPA and would make a difference, primarily for the south-western part of the SPA. Of the sites on the western side of the RSPB Reserve, which were identified in a SCG, it would appear to remove sites 7-8 and A-C from the 79dB contour, but not sites 1-6 and D-E. It would be a benefit to some extent, but would not remove the high noise levels from the SPA, the pSPA and the pRamsar. The supporting habitat of Denge Marsh would still be overflown to a large extent.<sup>478</sup>
- 7.5.58. It is impossible to properly consider the general noise impacts of the current operation of the airport as there are no LA<sub>max</sub> noise contours for any aircraft smaller than a Gulfstream V, which is not representative of the usual aircraft movements at the airport. It is accepted that at Lade Pit in the SPA the difference between a Gulfstream and a 737 was about 8dB, with the 737 reaching around 81dB. LAA assessed the difference between the existing and development cases at Lade Pit as being 9dB. At the SPA boundary near the RSPB Reserve, further away from the airport than the pSPA boundary, the difference between a Gulfstream and a 737 was 9dB, with the 737 reaching around 85dB. This would not change if FP12 was used. The difference between the noise impacts of a Gulfstream V and a 737 are substantial and the use of a 737 would push the noise level at the SPA from below to above the 80dB level identified in LAA's assessments.<sup>479</sup>
- 7.5.59. There are substantial areas of land in the designated areas and functionally linked land that fall within LAA's 79dB noise contour and above. These

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<sup>476</sup> CD1.23i Para 4.2.4, CD1.25c Para 2.2, CD1.41b Paras 16.3.35-36, CD4.7 Para 2.1, LAA/5A Para 3.3.4, NE/04 Para 175, RSPB/4A Para 10.2, Mr Perkins XX by NE & RSPB Day 20, Dr Underhill-Day IC2 Day 39

<sup>477</sup> CD1.41b Para 16.7.28, LAA/5F Fig 2 (FP15), LAA/5E, 1<sup>st</sup> INM Profile Graph, NE/04 Paras 177-178, Mr Maskens XX by NE Day 11

<sup>478</sup> CD4.17, CD4.19 App 1, CD17.15 Prop Cond 27, LAA/7H App 3 Figs 1 & 3, LAA/7J (revised) Fig 10, NE/04 Paras 180-181

<sup>479</sup> CD 1.23, Table 1 (SPA1), CD1.25c, LAA/5C APP 1 NV17, NV18, NV21, NV22, NE/04 Paras 182-185, Mr Perkins XX by NE Day 20

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areas enjoy a generally quiet environment as aircraft as large as a Gulfstream V are few and far between. In the development case there would be many more large aircraft movements, leading to high noise levels in absolute terms, but also substantial noise events compared to existing aircraft noise and background levels. The updated ES was clearly right to record that the current airport activity does not significantly influence the existing noise climate. The professional opinion of the Council's consultant in February 2011 was that the applications would lead to "a huge change in the noise environment at Lydd".<sup>480</sup>

### **Disturbance from Aircraft Movements**

- 7.5.60. NE published a note on disturbance to birds from aircraft in 1999 and it is accepted that all the peer-reviewed academic papers were pulled together in that paper. It highlights that the impacts identified by research included reduced food intake rates, increased energy expenditure, decreased breeding productivity, and physiological changes. It notes that frequent and high levels of disturbance can effectively result in habitat loss, in the form of decreased carrying capacity or if birds move away from a disturbed site. Displaced birds may have to feed at higher densities elsewhere, which may affect food intake due to increased competition.<sup>481</sup>
- 7.5.61. In terms of scientific evidence, the number of species studied is limited and the results are varied and conflicting. There are a wide variety of outcomes for different species in different locations and different species have different tendencies to habituate to aircraft noise. However, it is clear that aircraft can significantly disturb birds and affect their feeding, growth, behaviour, and breeding. Disturbance caused to birds can act at the population level, especially when feeding conditions are poor.<sup>482</sup>
- 7.5.62. LAA accepts that study of other airports was done because there was a gap in the science in relation to the correlation of birds and aircraft movements on which it was thought appropriate to give evidence. The results of the study were subject to a very large number of independent variables which were not taken into account. It is clear that although LAA recognised a gap in the science, the work done to fill it was flawed and provides no answer.<sup>483</sup>
- 7.5.63. There is a lack of specific, relevant, scientific literature to enable conclusions to be reached as to whether there would not be an adverse effect on birds or the integrity of the designated sites in this case. LAA was unable to point to any paper demonstrating a lack of an impact. NE carefully examined the research and identified factors, including noise levels, difference above background noise levels, lateral distance and altitude, relevant to disturbance and disturbance impacts. All these factors come together here. LAA accepts that there are a wide range of relevant factors, not just noise levels, but have not assessed their implications.<sup>484</sup>

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<sup>480</sup> CD1.41b Para 4.2.3, SDC/102B App 4 Para 21, NE/04 Paras 186-187

<sup>481</sup> NE/04 Paras 188-189, RSPB/4C App IV Tab 5, Dr Armstrong XX by RSPB Day

<sup>482</sup> NE/04 Paras 190-191, NE/3A Paras 193-195, RSPB/4A Para 10.1 & 10.81, Dr Armstrong XX by RSPB Day 5

<sup>483</sup> LAA/6C App 3, NE/04 Para 192, Mr Deacon XX by RSPB Day 4

<sup>484</sup> LAA/7E Para 1.5, NE/04 Paras 193-195, RSPB/4A Paras 10.82 & 10.84, Dr Armstrong XX by RSPB Days 4-6 & 38, Dr Underhill-Day IC2 Day 39

- 7.5.64. The flightpaths would take aircraft, at low heights, alongside SPA, pSPA and pRamsar areas at Lade Pits and the RSPB Reserve, as well as over functionally-linked land. There is a rich and complex mosaic of habitats in this area. The western side of the Reserve, and the land near to it, includes waterbodies, grassland, reeds and shingle, which are used by a number of SPA, pSPA, and pRamsar species and breeding birds. A particular concern is reed bed birds at the RSPB Reserve, including bittern and purple heron. They are very rare and breed in areas of reeds to the western edge of the Reserve. If these birds were disturbed there are no other nearby areas of similar habitat to which they could move.<sup>485</sup>
- 7.5.65. The habitats within LAA's 79 to 88dB noise contours have been described and agreed. LAA had said that there were no key blocks of habitat or breeding areas within the 85dB contour but from what has now been agreed that was incorrect. There are also areas of functional land within the 79dB contour. There is important habitat for a range of species a few hundred metres from the end of the runway.<sup>486</sup>
- 7.5.66. It was accepted that linking science through behavioural ecology to the facts was necessary to assess the significance of the impact on designation bird species. LAA's witness made judgements from his own experience and practical knowledge which should be scrutinised carefully. He:
- i) Did not know that the SPA included more land than just the two blocks of land on the Dungeness peninsula;
  - ii) Did not know that the old cross-runway was not only no longer used but has been physically removed;
  - iii) Had not visited the RSPB Reserve or the functionally linked land to prepare his evidence, and had made only one site visit around the area of the airfield;
  - iv) Did not know that there could be flights alongside the RSPB Reserve over Lydd Ranges; and,
  - v) Had not considered the heights and lateral distances of aircraft from bird habitats, nor the frequency of flights.

It is apparent that he was relying on his general knowledge rather than any site-specific consideration.<sup>487</sup>

- 7.5.67. LAA did not think it necessary to look at the functionally linked land, as the habitats were considered so remote that it was unnecessary to think about the impacts. The SCG makes it clear this is not the case. Whilst LAA's witness did not know at what level of aircraft movements habituation would be expected, NE's position is that some studies show quite rapid habituation whereas others show none at all.<sup>488</sup>

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<sup>485</sup> NE/04 Paras 196-197, RSPB/4F Para 4.1, Dr Underhill-Day IC Day 8

<sup>486</sup> CD4.17, LAA/7G Paras 10.2-10.4, NE/04 Paras 198-199, NE/103, Dr Armstrong XX2 by RSPB Day 38

<sup>487</sup> LAA/7E Para 2.3, NE/04 Paras 200-202, Dr Armstrong IC Day 4, XX by RSPB Day 5, Insp Questions Day 5, RE Day 6

<sup>488</sup> NE/04 Paras 203-204, Dr Armstrong XX by RSPB Day 5, Dr Underhill-Day IC2 Day 39

- 7.5.68. The suspension of night flights is claimed to be a “massive advantage” for the species in the SPA. However, apart from recent parcel flights, and some occasional flights by arrangement, there are no night flights at the moment. Moreover, it was accepted that a bird’s night is from dusk until dawn rather than the 23:00-07:00 hours in the proposed conditions. Normally birds would try to feed as soon as they could after dark and use as much of the night as possible to feed. Whilst there are not generally flights later than 19:00 hours currently, in the development case there would be flights between dusk and 23:00 hours when birds would be trying to feed.<sup>489</sup>
- 7.5.69. LAA relies on examples of birds at other airports to demonstrate the absence of disturbance impacts, based on the logic that if birds are present near an airport they must be tolerant and there would be no disturbance impact. There is no scientific paper to support such an approach. Disturbance impacts are a complex area and difficult to study. Impacts on birds, such as poorer conditions during winter, reduce breeding productivity which would not be apparent merely from observations. Nor does the presence of birds mean that there are no adverse effects in terms of feeding rates, breeding productivity and predation. Research shows that some birds remain in disturbed locations but suffer effects as a result. The ultimate question is whether the disturbance stimuli affect the physical health or reproductive success of individual birds, and then the population, in a particular location. There is no evidence on this.<sup>490</sup>
- 7.5.70. The basis for an AA needs to be rigorous. Where there is uncertainty appropriate evidence should be given to overcome it, either by reference to previous scientific literature or research in the particular case. That has not been done. The SEI states that aircraft noise, perhaps coupled with visual disturbance, would constitute a significant environmental impact. Increased aircraft noise would impact to some extent on the bird reserves in the SPA and this would amount to a moderate impact. These assessments were based on the assumption that aircraft would not fly over the SPA due to the Lydd Ranges. LAA’s statement to inform the AA on the SPA concluded that increased noise disturbance was “likely”. Amongst the indirect impacts were increased noise levels with sudden and intermittent peak noise events, involving larger jet aircraft and more movements.<sup>491</sup>
- 7.5.71. The literature review undertaken for the ES concluded that there was disturbance to some species at peak noise levels exceeding 80dB(A). It noted that the bird species under consideration at Lydd had not previously been the subject of bespoke research studies and that “much caution” had to be used when applying the literature review to particular airports and bird species. LAA accepted that this was a fair characterisation of the position.<sup>492</sup>
- 7.5.72. The 80dB(A) threshold in the ES has been applied to judge the significance of effects, concluding that the result of the exceedance of that level would be moderate adverse impacts. SDC also applied it as a threshold to assess

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<sup>489</sup> CD4.4 Para 2.6, NE/04 Para 205, Mr Maskens XX by NE Day 11, Dr Armstrong IC Day 4, XX by RSPB Day 5

<sup>490</sup> NE/04 Paras 206-208, RSPB/4D Para 6.27, RSPB/4F pp1-3, Dr Armstrong XX2 by RSPB Day 38, Dr Underhill-Day IC2 Day 39

<sup>491</sup> CD1.21 Para 8, CD1.22 p2, CD1.23i p3, CD1.25c Paras 2.1 & 5.3.7-5.3.9, Table 5.3.1, CD1.33d Paras 4.1.6 & 4.4.3, CD1.38 Para 5.103, NE/04 Paras 209-211

<sup>492</sup> CD1.23i Paras 3.1.9, 3.1.20 & 4.1.4, NE/04 Para 212

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impacts on birds from aircraft in its AA. That threshold is crossed for substantial areas of the SPA, pSPA and functionally linked land, all including important habitats for birds. LAA has more recently sought to revise the figure up to 85dB but there is no scientific basis for adopting 85dB rather than 80dB. LAA accepts that there would be disturbance effects above 80dB but not that there would be disturbance impacts. It argues that aircraft movements might affect individual birds but would not affect the population.<sup>493</sup>

- 7.5.73. LAA seeks to draw inferences from anecdotal observations. When the scientific literature shows how complex and sophisticated the disturbance impacts of aircraft are, this is not an appropriate approach to resolving the uncertainty. LAA has produced insufficient evidence to contradict NE/RSPB's evidence. In these circumstances, the conclusion is that there is a reasonable scientific doubt and it is not possible to reach a conclusion that there would be no adverse impact on integrity as a result of the noise and visual disturbance from aircraft movements in the development case.<sup>494</sup>

### **Combined Effects**

- 7.5.74. The designated sites, their interest features and supporting habitats would be subject to the combined effects of measures taken under the BCMP and disturbance from aircraft movements in the development case. It is the total impact that falls to be assessed. Under the BCMP there would be the creation of a buffer zone and off airport bird control measures. These are intended to keep hazardous birds off land around the airport and out of the vulnerable airspace which covers not only parts of the SPA, pSPA and pRamsar, but also large areas of functionally linked land. The hazardous birds are also in large measure birds of conservation concern, but even measures targeted at one species of bird will have similar effects for other species present or that use the same habitat. Bird control activities and the disturbance from aircraft would occur at a similar time and in overlapping areas. In effect, the two things would happen together and would reinforce each other to an extent but no assessment of those combined effects has been presented.<sup>495</sup>
- 7.5.75. The protection conferred by the designations is not limited to effects occurring within the boundaries of the designated sites. The concept of indirect and off site impacts on designated sites is well recognised in European and national guidance and has been recognised in other cases. Any impact on a designated species, or a habitat on which they depend, which causes a significant decline in the size, distribution, structure or function of the population within the designated site should be regarded as having an adverse effect on the integrity of the site.<sup>496</sup>
- 7.5.76. There is no difference between the parties that a risk of a significant effect on a site is enough to necessitate the carrying out of an AA. Where a project risks undermining a site's conservation objectives it must necessarily be considered likely to have a significant effect on the site. It is apparent

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<sup>493</sup> CD1.53 Para 4.3.4, LAA/7E Para 2.1, NE/04 Paras 213-214, Dr Armstrong XX2 by RSPB Day 38

<sup>494</sup> NE/04 Paras 215-216, Dr Armstrong XX2 by RSPB Day 38

<sup>495</sup> NE/04 Paras 218-221, Dr Armstrong XX by RSPB Day 5, Dr Underhill-Day IC Day 8

<sup>496</sup> NE/04 Para 222, NE/3A pp 49-50, NE/105 Para 44

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that individually, and in combination, the measures taken under the BCMP and disturbance from aircraft movements in the development case mean that the proposals would be likely to have a significant effect on the SPA, pSPA and pRamsar sites.<sup>497</sup>

- 7.5.77. *Circular 06/05* makes it clear that the judgement on whether AA is required should be made on a precautionary basis, considering whether there is a risk that a proposal would have significant effects on a site. This follows the approach set out in *Waddenzee*. This threshold is obviously passed in this case for the ornithological designations, necessitating an AA.<sup>498</sup>

### **Effects from the BCMP**

- 7.5.78. The bird control approach adopted in the BHRA is to reduce the probability of bird strikes by removing birds from the vicinity of aircraft. Many of the bird species which present high bird strike risks are important birds in the designations. The conflict between the provisions of ICAO and the CAA's CAP documents and the position of LAA close to SPA and pSPA waterbodies, and between them and surrounding functional land, especially land used for feeding, is clear.<sup>499</sup>
- 7.5.79. The SEI described a number of impacts from the BCMP, including possible disturbance to Bewick's swans and other waterbirds at the ARC pit, and that the land surrounding the airfield would be less attractive to golden plover. The bird scaring techniques have the potential to cause disturbance reactions in some species at ranges of up to 1km from the source. The buffer zone around the airport would effectively sterilize that land for the use of birds. The scaring activities, for the buffer zone and elsewhere, are designed to drive birds off the ground, denying them the use of the land for feeding and roosting, with resultant impacts. As birds are often in mixed groups, measures taken to target one species would also affect others using the same land.<sup>500</sup>
- 7.5.80. The effect would be to limit the feeding areas available around the designated sites. These areas include functionally-linked land where SPA, pSPA and pRamsar birds feed. Affecting this land would create an indirect but substantial effect on the designated areas themselves. The birds would be denied some suitable feeding areas, as well as land for loafing and in some cases roosting. Important birds such as swans, geese, some wildfowl and waders all need land outside the designated areas for feeding. Without that land, those birds would not be in the designated site. The SPA Natura 2000 standard data form identifies changing agricultural practices, including ploughing of grassland for arable crops, as one of the vulnerabilities of the SPA as this may influence the site's bird population.<sup>501</sup>
- 7.5.81. Future improvements to the habitats for birds in the Dungeness area could also be jeopardised by the expansion. Landowners who might have improved their land for birds such as lapwing could be discouraged from

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<sup>497</sup> NE/04 Paras 223-224, NE/105 Paras 29-32

<sup>498</sup> CD5.23 Para 13, NE/04 Para 225, NE/105 Paras 29-32

<sup>499</sup> CD1.14 Para 11.3.34, LAA/6C App 1 p6, NE/04 Para 226, Mr Deacon RE Day 4

<sup>500</sup> CD1.23c p3 & 7, LAA/6D Para 4.5, App 5 Part 2, NE/04 Paras 227-231, RSPB/4A Paras 4.12 & 8.29, Dr Armstrong XX by RSPB Day 5

<sup>501</sup> CD1.25c App 2 Para 4.3, NE/04 Paras 232-233, NE/3B App 1, RSPB/4A Para 6.21, RSPB/4D Para 2.12.6

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doing so as a result of the operation of the expanded airport. The effects of the safeguarding system could also prevent future improvements to the designated sites interrupting the achievement of their conservation objectives, which is identified in EC guidance as a factor relevant to site integrity. Some work, such as mineral restoration schemes, could be both enhancement and restoration to ensure that favourable conditions are restored or maintained.<sup>502</sup>

- 7.5.82. The BCMP does not describe the spatial extent, frequency or intensity of the measures required. No limitations or maximum parameters are set out. It is not possible, therefore, to properly assess the implications of the BCMP for the designated sites, or to conclude that there would be no adverse effect on integrity. The level of uncertainty about what would be required under the BCMP alone means that the integrity test cannot be satisfied in this case.<sup>503</sup>

### **Disturbance from Aircraft Movements**

- 7.5.83. LAA accepts that there would be disturbance effects on birds from aircraft movements but that there would not be impacts as a result. The ability of birds, if disturbed, to move elsewhere is highlighted and it is claimed that if the birds sit in one corner of the Reserve every day but have ample opportunity to feed outside the Reserve at other times, then there would be no net impact on the population. If birds are disturbed and move away, this could still amount to an adverse effect on integrity.<sup>504</sup>
- 7.5.84. It is mistaken simply to assume that birds could move elsewhere. Moving elsewhere is not a real solution as when birds are disturbed, they lose feeding time and expend energy flying. If they move to another feeding place, there may well already be feeding birds there, so that there would be increased competition for food, which would affect feeding rates and deplete the available food more quickly. In the winter 'bottleneck' period there would not be anywhere else the birds could go as other sites would be full of other birds. If disturbance means that there is not enough time for birds to exploit feeding areas, then this would affect the population size. There would be examples of circumstances where birds can move without detriment, but each case should be looked at carefully, especially in relation to winter feeding and breeding.<sup>505</sup>
- 7.5.85. No assessment has been made of what would happen to birds displaced from areas, where they would go and whether the other areas are already utilised by birds. There is no evidence to underpin LAA's view that there would be "plenty of time" for the birds to exploit food resources fully. Within the RSPB Reserve there are a range of habitats including smaller water bodies, reed beds, and wetland areas. Birds disturbed from these areas would need to find other similar habitat, pushing the birds into other

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<sup>502</sup> NE/04 Para 234, NE/3A pp 54, 56 & 63, Mrs Dear XX by LAA Day 23

<sup>503</sup> NE/04 Para 235, RSPB/4A Para 8.28, RSPB/4D Para 2.15

<sup>504</sup> NE/04 Paras 236-237, RSPB/4D Para 6.22, RSPB/4F Para 3.16, Dr Armstrong XX by NE Day 6, XX2 by RSPB Day 38

<sup>505</sup> NE/04 Paras 238-239, Dr Armstrong XX by RSPB Day 5, Dr Allan IC Day 6, Mrs Dear RE Day 23, Dr Underhill-Day IC2 Day 39

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areas. There are no studies on the carrying capacities of the areas under the flightpaths.<sup>506</sup>

- 7.5.86. It is not acceptable to say that parts of the SPA, pSPA or pRamsar would be undisturbed and available to be used. If birds move away to areas free of disturbance, even for only part of the day, then that would change the way the habitat functions. If some species of birds did move away, then there would be changes in the balance of species present, changes in the species density, changes in the distribution of species, and the fragmentation of species.<sup>507</sup>

### **Adverse Effects on the Integrity of the Sites**

- 7.5.87. The reasonably foreseeable outcomes of the combined effects of the implementation of the BCMP measures, and disturbance caused by the aircraft movements include the loss of habitat for the use of birds from the designated sites. Although the bird control, and land and habitat management measures, may be targeted at particular species, other species present would also be affected. Such effects could reach into not only the functionally-linked land surrounding the airport but also the designated sites themselves, especially from the lower flightpaths either end of the airport. The result would be disturbance to, and fragmentation of, the habitats of SPA, pSPA and pRamsar birds. These are classic indicators of an adverse impact on the integrity of a site such as were held to adversely affect the integrity of an SPA in *Commission v Portugal*.<sup>508</sup>
- 7.5.88. The most authoritative guidance on whether a proposal would adversely affect the integrity of a designated site is the formal EC guidance which describes integrity as being the quality or condition of being whole or complete. It is necessary to look at the factors that contribute to the ecosystem including the "structural and functional assets" of the site's ecosystem.<sup>509</sup>
- 7.5.89. LAA and SDC submit that the effect should be "on the integrity of the site as a whole" but it would be wrong to ask whether the proportion of a site affected is so great as to amount to an effect on the whole site. The concept of integrity, and the reference to "across its whole area" in the Circular, means in effect that all elements of a site are to be protected. Integrity is the quality or condition of being whole or complete. There are numerous examples of an adverse effect on the integrity of a site being identified where only small proportions of the sites are affected.<sup>510</sup>
- 7.5.90. The application of the integrity test in this case, where parts of the SPA, pSPA and pRamsar are very close to the airport (Lade Pits and the RSPB Reserve) but other parts are distant (Rye Harbour and Pett Level), cannot lead to a conclusion that integrity is not affected because the whole area of the site is not affected. The areas at Dungeness play a role in the overall designated sites and adverse effects on those areas must be regarded as

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<sup>506</sup> NE/04 Paras 240-241, Dr Armstrong IC Day 4, XX by NE Day 6, Dr Underhill-Day RE Day 9

<sup>507</sup> NE/04 Para 242, NE/3A pp57-67

<sup>508</sup> NE/04 Paras 243-245, NE/3A pp 53-55, NE/105 Para 45

<sup>509</sup> CD5.9, CD5.10, CD5.11, NE/04 Paras 246-247, NE/3A pp57-67, NE/3B Apps 6 & 7

<sup>510</sup> NE/04 Para 248, NE/105 Para 48



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adverse effects on the sites. LAA and SDC effectively claim that “significantly” should be read in to the phrase “not adversely affect the integrity of the site”. This is an unwarranted gloss on the *Directive* and *Regulations*. An adverse effect on the integrity of the site is just that. There is no further qualification or threshold in the integrity test.<sup>511</sup>

- 7.5.91. The effects relating to integrity in this case would be fragmentation and reduction of habitats, disturbance of species and habitats, and species density and balance through displacement. These effects could arise within the designated sites or off-site by affecting species for which the sites are designated or habitats which form part of the ecological functioning of the sites. There could be changes to the areas and compositions of habitats supporting the ornithological interest of the sites. The effects would be cumulative and permanent.<sup>512</sup>
- 7.5.92. The scale of these effects is uncertain, in terms of both geographic extent and intensity, but it is clear that there would be significant effects amounting to adverse effects on the integrity of the SPA, pSPA and pRamsar sites. There could be significant declines in the size, distribution and functioning of the populations of some species within the designated sites, which would be considered to be an adverse effect on integrity.<sup>513</sup>
- 7.5.93. NE has relied on reasonable and objective evidence in relation both to bird control and disturbance from aircraft to show what the likely and reasonably foreseeable effects of the proposals would be. LAA has not produced sufficient objective evidence to clearly contradict or overcome this. It is accepted that the evidence does not demonstrate that an adverse effect on the integrity of the sites would occur, but nor does it show that it would not. The effects are uncertain but the likely, and reasonably foreseeable, effects would be significant. Where the effect on integrity is uncertain then the integrity test is not satisfied.<sup>514</sup>
- 7.5.94. The conservation objectives are based on maintaining the habitats of birds in favourable condition. This includes there being no significant decrease in the extent of habitats or displacement of birds by disturbance in roosting and feeding areas, and the maintenance of available areas of open water and food. These are precisely the things that would be affected if there was disturbance of species and habitats and fragmentation of habitats as a result of the operation of the expanded airport. It is notable that in *Waddenzee* it was held that in principle any adverse effect on the conservation objectives of a site must be regarded as an adverse effect on the integrity of the site.<sup>515</sup>
- 7.5.95. Overall, it cannot be ascertained that the proposals would not have an adverse effect on the integrity of the SPA, pSPA and pRamsar sites, because the effects are uncertain and could be significant. It cannot be said that no reasonable scientific doubt remains as to the absence of such effects. Ultimately the judgement on whether or not the integrity test is properly

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<sup>511</sup> NE/04 Paras 249-250

<sup>512</sup> NE/04 Para 251, NE/3A pp 61-62 & 66

<sup>513</sup> NE/04 Para252

<sup>514</sup> CD5.23 Para 20, NE/04 Paras 253-254

<sup>515</sup> NE/04 Para 255, NE/3B App 2, NE/105 Para 47, Mrs Dear IC Day 23

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met in this case is for the SoS. NE's formal advice is that the test is not satisfied. The proposals could significantly damage the assemblages and species of birds for which the Dungeness, Romney Marsh and Rye Bay SSSI is of special interest.<sup>516</sup>

## 7.6. Planning

### The 1992 Permission

- 7.6.1. The 1992 decision inevitably needs to be examined in the light of changes in circumstances. The development granted permission in 1992 is not the same as now proposed. It was for a runway extension and not a new terminal building and was subject to a range of conditions, including a limit on the number of jets and aircraft in certain weight categories. NE's 1997 letter was written when the 1992 planning permission remained extant and related to its renewal. In 1992 there had also been passenger flights within relatively recent times, with large numbers of passengers and large aircraft using the airport in the 1980s.<sup>517</sup>
- 7.6.2. It is no longer Government policy that a balance can be struck between protecting the site and economic growth. The law has changed with the decision in *Waddenzee* and the test is not that set out in the 1987 Circular. The SPA was classified in 1999 and was only a candidate in 1992. It has changed over the last 20 years with the addition of new waterbodies and reed beds. The habitat has become more diverse, and there are now more bird species. The 1989 inquiry focused on terns but these cannot be used as a proxy for all birds. In addition, there is now the pSPA designation, which is larger and closer to the airport, and includes additional species and the assemblage of birds, as well as the pRamsar designation, which also adds to the designation species.<sup>518</sup>

### Planning Policy Considerations

- 7.6.3. In relation to ornithological impacts, it is agreed that the proposals include no compensation or enhancement measures and the only mitigation for ornithological impacts identified is the BCMP. RSS Policy T9 provides no support for the expansion of LAA and any support in the explanatory text is subject to a proviso as to environmental considerations. Policy NRM5 covers biodiversity and includes the provision that there should be no damage to the supporting habitats to European sites, which applies to land beyond the boundary of the designated sites.<sup>519</sup>
- 7.6.4. Any support for the proposals in LP Policy TR15 is limited in that it includes the proviso that there should be no significant impact on the internationally important wildlife communities in the area. The effects on the environmental designations are key and other LP policies make that point, including SD1(d). LP Policy CO14 covers the ornithological interest of the sites at Dungeness and requires priority to be given to them over other

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<sup>516</sup> NE/04 Paras 258-259, NE/3A Para 221, Dr Underhill-Day XX by LAA Day 8

<sup>517</sup> CD4.1 App 2 Conds 2, 4 & 5, CD 12.39, LAA/14/D Para 2.2, NE/04 Paras 260-262, Mr McGrath XX by NE Day 32

<sup>518</sup> CD 8.27 Paras 3.46, 8.27 & 9.14, NE/04 Paras 263-264, Mr McGrath XX by NE Day 32

<sup>519</sup> NE/04 Paras 265-266, Mr McGrath XX by NE Day 32

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planning considerations. It is accepted that that priority should be applied by the SoS in this case.<sup>520</sup>

- 7.6.5. The ATWP requires disturbance of habitats and species, impacts on biodiversity and the loss of habitats and species to be minimised. The reference to LAA is expressly qualified as being subject to relevant environmental considerations. In any event, the ATWP needs to be considered in the light of the Government's most recent statement of policy.<sup>521</sup>
- 7.6.6. The draft NPPF is a material consideration but should be given limited weight at this stage. However, a point made twice in that document is that development likely to have a significant effect on sites protected under the *Birds and Habitats Directive* would not be sustainable under the terms of the presumption in favour of sustainable development.<sup>522</sup>
- 7.6.7. In planning there is a line drawn on environmental effects beyond which development is not supported by policy. Significant adverse impacts on the environment should be avoided. The draft NPPF provides, in summing-up existing national policy, that if significant harm resulting from development cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused. Wildlife sites with national and international designations should receive the highest level of protection.<sup>523</sup>
- 7.6.8. Setting aside the legal issue of impact on integrity of the international sites, when reaching a conclusion on the planning balance the SoS should have regard to all provisions of the development plan and material considerations and weigh together all the advantages, and disadvantages, of the proposals. The adverse effects of allowing the developments would be substantial and should be weighed in the balance. The proposals would not meet the tests in the development plan and other policies due to the harm that would be likely to be caused to ecological interests. Planning permission should be refused.<sup>524</sup>

## 7.7. Section 106 Agreement and Conditions

- 7.7.1. Following the agreement of SCGs many of NE's concerns are now covered by conditions that have been the subject of much discussion and many of which are agreed. The main area of disagreement relates to the BCMP.
- 7.7.2. In its application documents, LAA proposed a specific monitoring programme for testing the effects of the BCMP on SPA species. There was also a proposed monitoring programme for the effects of the increased air traffic movements and change in fleet mix arising from the development case on SPA species. Neither of these is now proposed. The fundamental problem with LAA offering consultation or compromise as a means of reducing the impacts on birds is that public safety must come first. No airport operator, or anyone else, could afford to adopt a position that

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<sup>520</sup> NE/04 Para 267, Mr McGrath XX by NE Day 32

<sup>521</sup> CD5.24 Paras 3.6, 3.34 & 11.99, CD 5.36 Para 9, NE/04 Para 268, Mr McGrath XX by NE Day 32

<sup>522</sup> NE/04 Para 269, NE/102

<sup>523</sup> CD 6.1 Paras 17 & 19, NE/01 Paras 3.29-3.30, NE/04 Para 270, NE/102 Para 12, Mr McGrath XX by NE Day 32

<sup>524</sup> NE/01 Para 6.24, NE/04 Para 271, NE/102 Para 9

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compromised operational safety in order to accommodate conservation interests. LAA accepts that it could not rule out any actions for dealing with hazardous bird movements and that constraints could not be imposed. The areas of restraint in the BCMP could not be operated to prevent the dispersal of birds when necessary. The BCMP states that its provisions are not intended to override air safety considerations and it notes that concerns about conservation interests must not be allowed to endanger flight safety by adversely affecting the efficacy of bird control efforts at the airport.<sup>525</sup>

- 7.7.3. The main concern about the Section 106 Agreement in relation to the BCMP is that it only imposes procedural steps and provides no substantive restrictions on what could be done. It provides no assistance in assessing, at this stage, what the impacts of the BCMP would be, in relation to their nature, intensity and extent. Nor does it define or limit the measures, or the effects which they could have on the designated sites. The Agreement does not limit the emergency measures that might be taken. The exception for emergency bird control actions could cover short-term bird control activity, including dispersing birds from fields or preventing them from flying over the airport, because the airport could not afford to wait for approval for safety reasons. This reflects the existing bird control manual which says that the flocks of mute and Bewick's swans are a hazard that requires immediate response.<sup>526</sup>
- 7.7.4. There is no information before the inquiry as to what remedial measures could be taken in relation to the BCMP, nor whether such measures would be effective, or even possible. The efficacy of such measures and the extent to which they could offset the impacts of the BCMP on the designated sites, their interest features and supporting habitats, cannot be assessed.<sup>527</sup>
- 7.7.5. There is a mechanism in the Agreement for the prior approval of the BCMP, and this would require AA under the *Habitats Regulations*, but consideration of the impacts cannot be postponed until that stage. The BCMP is part of the project which arises for assessment and is tied into the planning applications by the Section 106 Agreement. It forms part of the proposals before the SoS. The Agreement contains provisions for a revised BCMP to include details of off airport measures. Issues relating to the significance of impacts and the mitigation, if any, which is to be applied, cannot be left until after the grant of permission.<sup>528</sup>
- 7.7.6. By the time the BCMP first has to be approved under the Agreement, the runway extension would have been built. There would be pressure for the BCMP to be approved to enable the development to be put into use. For later revisions of the BCMP, the position would be even worse as once the expanded airport is operating it would have to operate safely. Different considerations would be involved if the assessment of the BCMP is not made at this stage.<sup>529</sup>

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<sup>525</sup> CD 1.23c p3, CD 1.25c p4 & 29, CD4.5 Para 4.2.3, CD 17.18, pp31-32, LAA/6C App 2 Pp15 & 21, NE/04 Para160-161, NE/1D Paras 12 & 36

<sup>526</sup> CD2.13 p6, CD17.18 Paras 1.6(2), (3) & (4b), 1.8, 1.9, 1.10 & 1.16(4 at pp14-25), NE/04 Paras 163-164, Dr Allan XX by SDC Day 8

<sup>527</sup> NE/04 Para 165

<sup>528</sup> NE/04 Para 166, NE/105 Paras 68 & 78

<sup>529</sup> CD17.28 Sch 1 Para 10.1, NE/04 Para 167

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7.7.7. The right, and lawful, time to judge whether the BCMP can operate acceptably is now. Bird strike risk is recognised as an important factor in deciding whether to proceed with the development of airports. The whole thrust of European environmental law is to take preventive action and avoid situations where habitats could deteriorate or be disturbed. It cannot be right to permit the development and then see whether there would be a problem at a later stage.<sup>530</sup>

## 7.8. Conclusions

7.8.1. LAA seeks to introduce its development proposals into one of the finest and most important sites for the conservation of biodiversity in the UK. In principle it is possible for an expanded LAA to operate safely, as bird control interventions could be increased to a level where that occurs. The issue is what intensity of intervention is necessary and what the impacts of that would be. The BCMP contains a long list of bird management interventions but no document properly assesses the impacts of them, and nor could it when their scale and range are not known.

7.8.2. The bird control measures would combine with disturbance from aircraft movements to have an overall impact on the ornithological interests in the area. This combined impact would be significant. The proposals must be subject to AA, but that cannot properly be done on the basis of the information available. It cannot be ascertained that the proposals would not have an adverse effect on the integrity of the international sites because the effects are uncertain. As a result, planning permission for the proposals cannot be granted as a matter of law. Even those supportive of the proposals recognise that the impact of the developments on the international sites is a pivotal issue and that the integrity of these areas cannot be put at risk.<sup>531</sup>

7.8.3. The environmental impacts of the proposals are such that, even if permission could be granted, it should not be. The site-specific development plan policy only allows development where there would be no significant impact on the internationally important wildlife communities in the area. The policy relating to Dungeness gives priority to that flora and fauna over other planning considerations. In addition, there is a raft of development plan and national policy which requires ecological interests to be protected and enhanced, adverse impacts to be minimised, and residual impacts to be subject to mitigation or compensation. The proposals fail these tests and should not be permitted.

## 8.0 The Case for RSPB

### 8.1. Introduction

8.1.1. LAA has not objected to RSPB sharing witnesses with NE to avoid duplication. RSPB adopts and endorses NE's detailed assessment of the evidence. RSPB has analysed the available data and made observations

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<sup>530</sup> NE/04 Para 167, NE/1/D Para 6, NE/1/E App 4 especially pp200-205, NE/105 Paras 13-20

<sup>531</sup> KCC/1/W Para 1.4

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where there are gaps that need to be filled but it is not for RSPB to fill gaps in LAA's evidence to sustain its objections.<sup>532</sup>

8.1.2. LAA's submission that the ES must be adequate because no Regulation 19 request has been made is flawed. If it was correct, there would be no need for evidence to be called as the ES could just be read. Gaps in the evidence have been highlighted, such as the BCMP, that make it impossible to correctly address the *Waddenzee* questions, or to have confidence in the absence of serious effect (SE)/adverse effect (AE). The objections and evidence of RSPB are environmental information that has to be taken into account and demonstrates why the information provided does not allow the SoS to reach the conclusions which he needs to reach before making a lawful decision to grant permission.<sup>533</sup>

8.1.3. It is fundamental to an assessment of compliance with the *Habitats Regulations 2010* for the evidence and the expert views to be based on the right questions. That means, amongst other things:

- i) asking the *Waddenzee* questions in the right way, not is there compelling evidence of a SE/AE but is it certain that there will not be such an impact;
- ii) asking the SE/AE questions by reference to the full impacts of the proposal including changes in bird control and not just noise disturbance;
- iii) understanding what SE/AE mean in terms of how one looks at plans or projects which harm part of the SPA/pSPA/pRamsar/SSSI, but may not directly affect all of it;
- iv) understanding the approach to, and legal consequence of, dislodging a species from one part of the SPA to another or sterilising or damaging part of the SPA;
- v) understanding the correct approach to fallbacks and their relevance; and,
- vi) understanding the need to define and assess the maximum parameters of that which the permissions would allow.<sup>534</sup>

8.1.4. The starting point for assessment of these proposals is the current position in terms of habitat and bird interest, and the nature and level of current aviation activity, including bird control.<sup>535</sup>

## 8.2. **Airport Operations**

8.2.1. At present the bird populations of the SPA/pSPA/pRamsar/SSSI live alongside a very low key operation at LAA. This comprises:

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<sup>532</sup> RSPB/6 Paras 5-6

<sup>533</sup> RSPB/6 Para 7

<sup>534</sup> RSPB/6 Paras 8-10

<sup>535</sup> RSPB/6 Para 11

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- i) A limited number of larger planes (greater than 5,700kg) amounting to less than 2 per day in 2010 with a vast majority of those being still small planes with very limited off site impacts;
  - ii) Very occasional flights by a Gulfstream or similar, such a rarity as to startle both RSPB's Area Manager and large flocks to the north, despite having the business centre and having promoted business flights for several years;
  - iii) No commercial passenger jets and no prospect of them being attracted without the runway extension;
  - iv) Occasional use by others such as night freight flights whilst Southend is improved, and repositioning flights for a short period now largely or completely stopped;
  - v) Limited actual hours of operation with the bird control logs demonstrating the exceptionally limited number of flights at, around, or before dawn and at, around, or after dusk;
  - vi) As a result of that mix of movements and the limited bird strike risk to which they give rise, very limited on site bird control activity amounting to a handful of short vehicle runs each day to scare on airfield birds away;
  - vii) With the exception of game birds to the north and buying up the field immediately to the west, non-existent off site bird control;
  - viii) No buffer zone required or created;
  - ix) No formal safeguarding and no objections based on safeguarding issues; and
  - x) No apparent habitat intervention in the surrounding area at any time in the past until the very recent acquisition of the field immediately to the west.<sup>536</sup>

8.2.2. This paints a different picture from that which LAA has assumed as the baseline by, for example, using the Gulfstream noise contour, when flights by that size of plane are so few as to make it an unrepresentative proxy for the current noise environment. About 99% of movements are by planes less than 5,700kg, just over the size of a small BE20 twin turbo prop for only 8 passengers, this figure has remained static since at least 2005.<sup>537</sup>

8.2.3. There were only 234 movements above that weight in 2009, considerably less than one per day and the same percentage as in 2005. 244 of the increase to 586 movements in 2010 were attributable to repositioning flights mainly of a single aircraft now stationed at Birmingham. There is no evidence of it returning and at best "it might come back". Even in 2010, there were only about 1.6 movements greater than 5,700kg per day. There

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<sup>536</sup>CD1.17 6 Para 3.5.6 and Table 3, CD11.10, CD12.30, 12.31, 12.35a & 12.35b, LAA/3E Appx 1, LAA/3F, LAA/4/A Para 5.47, RSPB/6 Para 23, RSPB/3A Para 10.10, Mr Maskens IC & XX by RSPB Day 11, Ms Congdon XX by RSPB Day 15, Mr Gomes XX by LAA Day 10

<sup>537</sup> CD1.14 p31, CD1.25c Table 2.2.4 (2005 data), CD4.4 Paras 3.7 & 3.10, CD16.15, LAA/3E App 1, LAA/102, RSPB/6 Paras 25-26

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is no evidence of any upward trend in the number of planes over 5,700kg since the substantial investment and upgrade works were marketed from 2006. Efforts to secure new business for the long term have evidently failed after short periods.<sup>538</sup>

- 8.2.4. The only passenger service, to Le Touquet, uses a plane of greater than 3,000kg but less than 5,700kg. That service is in decline in terms of the size of plane operating the route and the number of flights. The number of passengers has declined from a base of 2817 in 2005 to just 529 in 2009, about 0.1% of the number that would be carried under the proposals. Even including all movements above 3,000kg, there were only about 2 per day in 2010 and there is no upward trend in such movements.<sup>539</sup>
- 8.2.5. Even those movements over 5,700kg are dominated by aircraft at the smaller end of the size scale. In 2010 there were only about 114 movements, around 1 every three days, of planes bigger than a Gulfstream V, which is still much smaller than a B737 or A319. The Gulfstream has been repeatedly used as a benchmark against which to judge the acceptability of the proposals. Its noise contours are used to demonstrate that birds are tolerant of aircraft and that they breed within its 88db contour. However, there were only 22 such movements in 2010, about 1 every 15 days. In 2009 the total number of flights by all types of business jets, overwhelmingly concentrated in the smaller categories, was 92, around 1 every 3 days or so. The Gulfstream contours are hardly representative of the day to day environment created by current activities.<sup>540</sup>
- 8.2.6. Recently, a parcel service relocated from Southend due to works there and carried out night flights from Lydd. If LAA was an attractive location for such services, other than on a temporary basis, it is impossible to understand why no permanent operators have established there. The reality is that, LAA is used when all else fails. There is no documentary evidence of any long term intent by the operator to continue the service.<sup>541</sup>
- 8.2.7. On LAA's own information the picture is of:
- i) An airfield where movements are dominated by very small non-jet aircraft;
  - ii) A very limited number of larger planes (greater than 3,000kg or 5,700kg) amounting to no more than 2 per day;
  - iii) For planes at the larger end of the current use, movements of about 1 every three days;
  - iv) No evidence of upward trends. The only one relied on by LAA was from 2009 to 2010 but that very small change is explicable by reference to one off factors that have ceased and for which there is no evidence of continuing demand;

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<sup>538</sup> CD4.4 Paras 3.15 & 3.17, RSPB/6 Paras 27-28, Mr Maskens XX by RSPB Day 11, Ms Congdon XX by RSPB Day 15

<sup>539</sup> CD4.4 Paras 3.12-3.13, LAA/102 p3, RSPB/6 Paras 29-30

<sup>540</sup> CD4.1 p18, LAA/102, RSPB/6 Paras 31-33, Mr Maskens XX by RSPB Day 11

<sup>541</sup> RSPB/6 Para 34, Mr Maskens IC Day 11



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- v) Downward movement in business aviation flights between 2006 and 2009 and no evidence of a sustained or sustainable recovery since;
  - vi) Evidence of downward trends in passenger numbers, movements, and plane size;
  - vii) Movements outside normal hours, 19:00 to 08:30 hours, totalled only 244 in 2010, about two thirds of a movement per day. It is impossible to conclude that there are any substantial evening (including dusk), early morning (including dawn) or night flights.<sup>542</sup>

8.2.8. That is the baseline against which, as a matter of law, the applications have to be assessed. LAA has nothing like the level of activity it had in 1992 and any comparison between the circumstances at the time of the SoS's decision in 1992 and those pertaining now is meaningless.<sup>543</sup>

8.2.9. The airport has done all it can to make itself attractive for such uses within the constraints of the existing runway. It has marketed itself for business use with no current restrictions on hours of operations, claimed to be a major operational advantage over other business airports such as Biggin Hill. However, if LAA has the potential to grow substantially it has had that potential since at least 2006 and there would be some indication by now that it was being realised. There is no such indication.<sup>544</sup>

#### **Fallback Position**

8.2.10. The SoS has confirmed that fallbacks are not relevant at the SE and AE stage. That approach is correct for the reasons given by counsel for the SoS in *Britannia*. The judge's tentative view to the contrary in that case does not grapple with the clear words of the legislation and ignores the structure of the legislation under which existing permissions with all their realistic potential have to be reviewed to ensure compliance with the *Habitats Directive*.<sup>545</sup>

8.2.11. The fallback assessed in the ES was of 300,000 passengers in loud planes such as the BAe146. From 2007, RSPB highlighted the inappropriateness of that fallback and it has now been abandoned. That has a number of consequences including that:

- i) There is now no suggestion of a fallback that would take the airfield back to anything like the 1992 position. Things have moved on substantially since then;
- ii) There is no fallback with significant passenger transport movements. The level of commercial passenger traffic in any fallback would be about 0.1% of that now proposed, which would introduce hundreds of thousands of passengers to LAA. Given public safety concerns, this would have a dramatic impact on future decision making in respect of the justification for any necessary bird control measures;
- iii) The bird control for that fallback is not now necessary; and,

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<sup>542</sup> RSPB/6 Para 35, LAAG/10E p16, Mr Maskens XX by RSPB Day 11

<sup>543</sup> CD8.27, RSPB/6 Para 36

<sup>544</sup> RSPB/6 Para 37

<sup>545</sup> CD5.2, RSPB/6 Para 55

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- iv) The analysis of noise impacts in the ES has been overtaken by the abandonment of this fallback. That analysis concluded that there would be no moderate adverse impact to the south (compare that with the “moderate adverse” which it found to the east) because, and only because, of the comparison it made with the 300,000/BAE146 fallback. That fallback no longer exists. On the logic in the ES and its application to the current facts, there is no doubt that it would have found a “moderate adverse” impact just from aviation noise along the western corridor to the south.<sup>546</sup>
- 8.2.12. The new fallback, not assessed in the ES, is of increasing business and other non-commercial passenger uses. That fallback should be given no weight. It is legally irrelevant to the SPA/pSPA/pRamsar/SSSI analysis because there has been no Regulation 61 compliant process by LAA in respect of the “Plan” to develop business use. LAA could not carry out that plan or project now without carrying out a Regulation 61 compliant assessment of it.<sup>547</sup>
- 8.2.13. LAA has made clear what it would do in the absence of permission and that stance is inconsistent with the claimed fallback. In any event, the fallback is not put forward as a positive case that would occur, just that it “might”. The current “very high quality” facilities to meet the needs of business travellers and other users have been on offer for several years following substantial investment and have been heavily marketed. However, no substantial business, or other, traffic has been attracted. The recession does not explain this. The facilities were available at a time of massive growth in aviation, 2006 to 2008, but no growth was experienced at LAA.<sup>548</sup>
- 8.2.14. There is no substantial catchment for business aviation that would not be better served by airports elsewhere closer to the M25, especially Biggin Hill and Farnborough. LAA would be driven in the future to relying on business people who live in Sussex and Kent using LAA as their business aviation gateway. Those people currently live in the area and presumably know of the current offer at LAA. The extent to which they regard LAA as an appropriate location to meet their business aviation needs is reflected in the tiny number of business flights. There is no reliable evidence of demand for business aviation at this airport.<sup>549</sup>
- 8.2.15. The analysis then relies on the claimed advantages of LAA as against other business aviation facilities. Those advantages exist now, in particular the ability to land at night. The minute level of usage demonstrates what weight should be attached to this benefit. If night landings were enough to entice people from more convenient airports to here, that would be happening now.<sup>550</sup>
- 8.2.16. On LAA’s analysis, there is substantial current capacity at business aviation facilities far better related to major transport infrastructure and business areas than LAA. Even on the very optimistic assumptions used for the

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<sup>546</sup> CD1.17, pp 25-36, Para 3.5.6 Table 3.3, CD1.23i, RSPB/6 Paras 56-57

<sup>547</sup> RSPB/6 Para 58

<sup>548</sup> CD11.10 p28, LAA/4/A Paras 4.23-4, 6.5 & 7.7, LAA/4/C App B, RSPB/6 Para 59a-c, Ms Congdon XX by RSPB Day 15, Mr Maskens XX by RSPB Day 11

<sup>549</sup> RSPB/6 Para 59d

<sup>550</sup> RSPB/6 Para 59e

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continuing growth in business traffic it would be many years before this capacity was used up. Only when that capacity is exhausted might people contemplate landing at such a remote destination from their business needs. There is no realistic prospect in the short to medium term of business aviation growing substantially with the current facilities. There is no justification for looking to a fallback over a longer time frame.<sup>551</sup>

8.2.17. The 8,395 business jets assumed in LAA's fallback represents a 4,000% increase on the existing. Applying a 5% growth figure to the 195 existing business movements would result in a level of business aviation in 20 years of just 500 movements, about a 15<sup>th</sup> of the 8,395 assumed in the fallback. The fallback is thus wholly predicated on overspill from other airports. LAA did not seek to justify the 8,395 in the fallback scenario making clear that it was the same figure used for the development scenario. It is not accepted that in the no development world there is any realistic prospect of substantial growth in business aviation at LAA in the future. The remaining elements of the fallback are of very limited significance in terms of numbers of flights, and are not supported by market evidence.<sup>552</sup>

8.2.18. The implications of the fallback in terms of bird control measures and noise do not therefore fall to be considered. However, for the avoidance of doubt:

- i) It is plain that the extent and nature of bird control measures would be heavily influenced by the nature of the air traffic and the number of passengers. A key factor in what is ALARP is the potential number of casualties. Airlines and the regulators would require, and LAA would make, much greater efforts when commercial passenger jets carrying 100 – 150 passengers were operating than in the claimed fallback;
- ii) The vulnerability of a B737 is different from, and greater than, for standard business jets;
- iii) The evidence of NE's witness was that business movements could increase by 750 per annum without a requirement for a change in the non-continuous bird control regime; and
- iv) The noise contours, flight trajectory and height of planes at and around the SPA/pSPA/pRamsar/SSSI are very different for business jets than the larger of the commercial passenger jets proposed here.<sup>553</sup>

### 8.3. Ornithology

8.3.1. As a matter of policy the relevant site includes the pSPA and pRamsar and consideration of the effects on functionally linked land which may affect the SPA populations is also required. Unless expressly stated otherwise references to the SPA/pSPA include the pRamsar and SSSI.<sup>554</sup>

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<sup>551</sup> RSPB/6 Para 59f

<sup>552</sup> RSPB/6 Para 60-61

<sup>553</sup> RSPB/6 Para 62, Mr Maskens XX by RSPB Day 11

<sup>554</sup> CD5.23, CD6.5 Para 6, CD9.3 IR36.208, RSPB/6 Para 12, RSPB/106 Paras 17-18

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- 8.3.2. The *Conservation of Habitats and Species Regulations 2010* deal with environmental protection and should be construed in accordance with the *Directives*. The purpose is to provide a high degree of protection to relevant species and their habitats and the provision of SPAs is central to that purpose. The SoS is a competent authority and cannot give consent for any plan or project within Regulation 61 without complying with its terms.<sup>555</sup>
- 8.3.3. A plan or project is not defined in UK legislation but has been construed widely. If a development requires associated measures they are part of the plan or project, and in this case that includes associated bird control. Mitigation through conditions and Section 106 obligations are also part of the plan or project.<sup>556</sup>
- 8.3.4. The full extent of the plan or project has to be assessed and therefore the maximum parameters have to be known. Where bird control requires a BCMP tied in by a Section 106 Agreement, the maximum parameters of activity have to be considered and legal provisions imposed to ensure that the scope is limited to the maximum parameters assessed. Even if the BCMP were seen as a separate project, the two have to be considered now in combination in accordance with Regulation 61(1). It is not legally possible to put off consideration of the implications. This would be contrary to the purposes of the *Directive* and would introduce a new element, a planning permission and possibly development, into any subsequent decision making process on the BCMP. This would have the effect of salami slicing the consideration of impacts.<sup>557</sup>
- 8.3.5. Ramping up of bird control, to the level permissible under the BCMP, in the absence of any development would, in itself, be a plan or project and would have to be subject to a Regulation 61 compliant assessment by LAA as a competent authority.<sup>558</sup>
- 8.3.6. A conclusion of no SE could only be reached after consideration of all effects including in this case aviation noise, visual disturbance and disturbance and habitat change from bird control. It is impossible to conclude that there would not be any SE as the maximum parameters have not been defined and the Section 106 Agreement does not limit the potential bird control measures. *Waddenzee* sets out that if there is a chance that a plan or project would have a SE on the SPA then an AA must be carried out. Moreover, if there is any doubt as to the absence of SE then there must be an AA. Where a plan or project risks undermining a site's conservation objectives, as here, it must be considered to have a SE.<sup>559</sup>
- 8.3.7. SE is intended to sieve out those cases where it is obvious that there would not be effects. It would be inconsistent with the purposes of the *Directive* to set a high threshold to the question of significance. In addition, case law does not indicate that SE would only arise if the effects were over the whole area of the designated site. An effect on a small area can be significant and can constitute an AE on integrity. The argument that the rest of the SPA is

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<sup>555</sup> RSPB/106 Paras 4-6

<sup>556</sup> RSPB/106 Paras 7-13

<sup>557</sup> RSPB/106 Paras 14-15

<sup>558</sup> RSPB/106 Para 16

<sup>559</sup> CD9.1 Paras 41, 43-44 & 49, CD9.10 Para 78, RSPB/106 Paras 19-22

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sufficient to deliver the conservation objectives is not permissible. "Once a SPA has been classified it is not open to a competent authority to permit the destruction of protected habitat on the grounds that a sufficiency of habitat would remain".<sup>560</sup>

- 8.3.8. In the AA process "all aspects of the plan or project which can... effect [the site's conservation objectives] must be identified in the light of the best scientific knowledge in the field." Information has to demonstrate that all reasonable scientific doubt has been removed. In this case there remains a substantial gap in the information as the maximum parameters for the BCMP are not known. It is impossible to conclude, on the information available, that on any possible permutation of necessary on and off site bird control measures there could never be an AE on integrity. On this basis alone it would be unlawful to grant permission.<sup>561</sup>
- 8.3.9. The area around LAA is "enormously important all year round" for birds. This is recognised in the ES. It's mosaic of habitats comprising the SPA and pSPA to the south and east of the airfield, the extensive areas of functionally linked land beyond the SPA/pSPA to the west and north and its generally isolated tranquil location, with the sea bordering the area on two sides, combine to make it a haven of exceptional quality for breeding, wintering and migratory birds. It is amongst the most important locations in the UK for a wide range of species.<sup>562</sup>
- 8.3.10. Much of the information on the area's importance is agreed and LAA accepts that there are bird species using all available habitats on and around the SPA and the airport for roosting, feeding, hunting and nesting. The functionally linked land is also important. The importance is reflected in the wide ranging and expanding designations that apply to much of the area. There is considerable overlap between the various designations but their expansion over time should attract considerable weight. It is testimony to the importance and success of the area in its current environment.<sup>563</sup>
- 8.3.11. LAA seeks to downplay the importance by alleging:
- i) Inappropriate management such as coexistence of marsh harrier and terns;
  - ii) That the current species will decline because of climate change; and
  - iii) That the SPA has lost importance over the years.
- All these points are wrong.<sup>564</sup>
- 8.3.12. LAA's witness claimed detailed knowledge of terns but "struggled to think of any location where terns and marsh harriers coexist". The overwhelming weight of evidence demonstrates that marsh harriers do not predate terns and that tern colonies and marsh harriers live side by side in a number of locations such as Blakeney Point. Anecdotal evidence of a single tern chick

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<sup>560</sup> CD9.3 IR36.189, RSPB/106 Paras 23-25 & App 8

<sup>561</sup> CD9.1 Para 54, RSPB/106 Paras 26-28 and App 8

<sup>562</sup> CD1.23c p5, CD1.14 Para 11.4.40, CD1.14 Para 11.11, RSPB/6 Para 13, RSPB/3A Paras 5.31-5.37, RSPB/3/C Apps 1 & 2 Tables 1 & 2, Mr Deacon IC Day 2, Dr Day IC Day 8

<sup>563</sup> RSPB/6 Paras 15-16, RSPB/3A Paras 5.1-5.30, RSPB/4A p13 – 20 & Paras 5.18 & 7.11-7.12, RSPB/4A.1

<sup>564</sup> RSPB/6 Para 18

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being taken is no substitute for the mass of evidence of peaceful co-existence and reliance on it is unscientific.<sup>565</sup>

- 8.3.13. The reliance on the Climatic Atlas, which looks at possible population trends over the next 70 years caused by climate change based on modelling that is the subject of considerable caveats, to demonstrate a reducing population of existing species is:
- i) Misconceived in principle. Just because there is another long term threat to the birds does not make introducing commercial jet aviation acceptable. The question is what harm would the development cause to the SPA/pSPA now, not what would the value of the SPA be in x years;
  - ii) Misconceived in law as this approach would involve a wholesale rewriting of basic legislative requirements;
  - iii) Highly partial taking no account of the other side of the coin as some species would be forced north to the SPA/pSPA/pRamsar/SSSI by climate change. When a fair exercise is undertaken a completely different picture from that relied on by LAA emerges and there is "no evidence that the birds that might move out in future are any more important than those that may move in"; and,
  - iv) Omits consideration of key matters. If climate change is putting such pressures on birds, it is important to protect the most important habitats so that species put under strain by man's activities can be protected as far as possible.<sup>566</sup>
- 8.3.14. The terns left Dungeness in 1997 due, amongst other things, to mammalian predation during the breeding season by badgers and foxes. Since then the habitats have been managed and maintained for that very "flighty" species and there is currently nothing that would prevent them from returning. However, expansion of LAA, leading to visual and noise effects from larger jets, might discourage terns from re-colonising the Reserve and affect breeding bitterns and marsh harriers.<sup>567</sup>
- 8.3.15. In terms of losing species, "it is accepted that when species are declining they hang on last in the best place." It is clear that declining populations survived longer at Dungeness than they did elsewhere, which is testament to the quality of the SPA/pSPA/pRamsar/SSSI and confirms its importance to birds.<sup>568</sup>
- 8.3.16. Far from declining in importance over time, and since 1992, the SPA has seen new breeding species including, bittern, marsh harrier and purple heron. Habitats have improved, as a result of extensive management by the RSPB and others, and increasing designations such as the pSPA, pRamsar and extended SSSI reflect the success of the SPA and the extending range of its species.<sup>569</sup>

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<sup>565</sup> CD12.36, LAA/114, RSPB/6 Para 18a, RSPB100

<sup>566</sup> CD12.32 last three pages, CD12.38, RSPB/6 Para 18b, Dr Day IC Day 8

<sup>567</sup> RSPB/6 Para 19, RSPB/3A Paras 6.1 & 10.4-10.5, Mr Gomes IC Day 9, Dr Day IC Day 8

<sup>568</sup> LAA/7D Para 2.6, RSPB/6 Para 18c, Dr Day IC Day 8

<sup>569</sup> RSPB/6 Para 20, RSPB/3A Para 6.4. RSPB/4A Sect 5, NE/3A Para 79, Dr Day IC Day ?

- 8.3.17. Descriptions of the habitats and the species of most concern in the north-west part of the SPA/pSPA are agreed and include a wide range of important breeding and wintering species. The SCG refers to defined areas within the noise contours for aircraft movements using runway 21 and not to areas just beyond those contours. Functionally linked land used by many species lies within the contours and immediately beyond the contours to the west. There can be no doubt that even the area just within the contours is an area of exceptional importance for species associated with this SPA/pSPA and its conservation objectives. At its closest point that area is 270m from the end of the runway and the whole of the area is at a perpendicular distance from the southerly flight path of between 150-300m and 1km. Planes would be at a very low altitude, less than 1600 feet, for all of that boundary when landing or a significant part of it when taking off.<sup>570</sup>
- 8.3.18. The consequence of the level of aviation activity and the minimal level of bird control is that the environment around the airport is tranquil with very low ambient noise levels and with only very rare high noise level events. The mass of the aviation activity, small planes, do not make a substantial impact on the noise environment. Such is the current position that RSPB's Area Manager, who has been immersed in the area for many years, was startled by the noise from the Gulfstream V demonstrating how rare such events are and how much of a contrast they are with the current norm.<sup>571</sup>
- 8.3.19. LAA's ornithology witness assumed substantial noise impacts from the firing ranges and the game bird shoots to the north but there is no evidence of substantial noise impacts from those activities. Human disturbance is very limited. Public access to sensitive parts of the Reserve is strictly controlled and the neighbouring farmer does not allow public access to his land. Fishing within the SPA/pSPA is not as intense as LAA appears to have assumed. In the current circumstances, the bird interest and the current activities on the airfield can, and do, peacefully co-exist with the SPA/pSPA thriving.<sup>572</sup>
- 8.3.20. Both proposals are assessed together. Whilst the 500,000 permission would generate more noise events, and potential for disturbance, it would not be different in kind from the 300,000 runway only permission and there is no suggestion that it would require less bird control activity. There would be a dramatic increase from the current low levels in flights by planes of more than 5,700kg and the introduction of a significant number of movements by passenger jets from the B737 down.<sup>573</sup>
- 8.3.21. No conditions are proposed preventing operation at or around dusk or dawn or during the "birds night". The only limit would be between 23:00 – 07:00 hours. It is not suggested that the planes be limited to the quietest modern planes, B737/800 rather than B737/300, and the suggested conditions envisage use of the southern flight path along the western boundary of the SPA/pSPA.<sup>574</sup>

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<sup>570</sup> CD4.17, LAA/3C App 7, LAA/7G Paras 4.2 & 8.8, LAA/7J, NE/103, RSPB/6 Paras 21-22, Dr Day IC Day 8 & IC2 Day 39

<sup>571</sup> RSPB/6 Para 49, RSPB/3A Para 10.10, Mr Perkins XX by RSPB Day 20

<sup>572</sup> RSPB/6 Paras 50-51

<sup>573</sup> RSPB/6 Paras 63-64

<sup>574</sup> RSPB/6 Para 65

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- 8.3.22. There are two main issues. The first and foremost is the bird control requirements for the development proposals. The second is the aviation noise and visual disturbance associated with the development.<sup>575</sup>
- 8.3.23. The existing bird control measures at the airfield reflect the low level of aviation activity primarily by small, low risk planes. The bird control logs are the best, and only, documentary evidence, of current bird control activity. Those logs show that the current bird control effort lacks intensity. The bird control runs in the morning, sometimes after lunch, and in the evening are supplemented by runs at most 15 minutes before "high risk" movements. Such high risk movements are limited, only 18 in the whole of October 2010, and on many days there are none. The bird control logs show approximately 2 high risk movements per day. Bird control is nowhere near as continuous as it would have to be under the proposals.<sup>576</sup>
- 8.3.24. Save for the field now acquired to the west, there is no evidence of any off site bird scaring. Nor is there evidence of substantial bird scaring at the boundary to remove birds from the surrounding land, in particular under the flight paths to the south. No buffer zone is created or maintained to the south or north. Until very recently, there was no evidence of habitat management or any formal safeguarding. The airfield, professionally advised, professionally managed, and operating under CAA regulations, has for years operated this very low intensity bird control regime. The only inference is that it has been considered appropriate for the level of aviation activity, the nature of the planes using the airfield, and the lack of any substantial commercial passenger traffic. It is fit for purpose in the current circumstances.<sup>577</sup>
- 8.3.25. There is no evidence in the bird control logs that a combination of a CAA audit and the spotlight thrown on bird control by this Inquiry has led to a ramping up of activity and convincing oral evidence to the contrary. In any event, LAA is not allowed to carry out a plan or project such as a new and much more intense programme of bird control without going through the Regulation 61 process. There has been no 2010 Regulations compliant assessment of any ramping up of bird control activity to anything like that anticipated in the BCMP. The CAA audit has not been produced but it is plain that it was directed at safeguarding and not bird control.<sup>578</sup>
- 8.3.26. It is claimed that a substantial ramping up of activity to comply with current guidance is already necessary. It requires the assumption that LAA has been operating sub-standard for a prolonged period. Such a claim flies in the face of operations over many years which the airport's Operations Manager describes as appropriate. Guidance is not law to be applied irrespective of the circumstances of the case. It is flexible and to be applied by reference to what is reasonable on the facts. The claim relies on the proposition that any commercial passenger movements, even if very intermittently and in very small planes, necessarily triggers the full weight

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<sup>575</sup> RSPB/6 Para 66

<sup>576</sup> CD12.30, CD12.31, CD12.35a-b, RSPB/6 Paras 38-42

<sup>577</sup> LAA/6/A Para 1.4, RSPB/6 Paras 43-45, Mr Maskens XX by RSPB Day 11

<sup>578</sup> RSPB/6 Paras 46-47, Mr Deacon XX by RSPB Day 3



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of guidance and standards applicable to even the biggest commercial airports. This is a wrong approach to the guidance.<sup>579</sup>

- 8.3.27. The starting point is the bird strike risk posed to passenger jet aircraft in this location given that the airfield is adjacent to attractive habitats for hazardous birds. The hazard is largely common ground and the importance of managing the bird strike risk is agreed. It is agreed that the risk can be managed if there is bird control of sufficient frequency and intensity over a sufficiently wide area. The question is what would managing the risk in the new context mean for the ambit and contents of the BCMP and the consequent impact on the SPA/pSPA.<sup>580</sup>
- 8.3.28. That would depend on a careful assessment of the strike risk which needs to be avoided/mitigated and the steps to mitigate that risk. There are two main elements to the bird strike risk. The first is birds in the vicinity of the airfield and its approaches, whilst the second is overflying birds.<sup>581</sup>
- 8.3.29. The airfield and the surrounding area provides attractive habitat for a wide range of hazardous species such as waterfowl, geese, swans, lapwing, gulls, golden plover and corvids. It has many of the characteristics identified in CAP 772 as being particularly important in bird strike terms such as flight lines between roosts and functionally linked land and large open water bodies. Using a height of 1000ft as being the extent of the zone of strike risk would mean that planes are in the relevant zone all the way down the western boundary of the SPA/pSPA, and across a similar distance to the north. This is a huge area which hazardous species currently use to a substantial extent both on the ground and in the air.<sup>582</sup>
- 8.3.30. LAA's field and desk surveys are insufficient to provide an informed view of the strike risk. They do not cover all the relevant times of year nor do they cover large areas of the Romney Marshes. There are no studies of roost locations or distributions at night and no studies of winter or migrant flightlines. The use of WeBS data has been restricted to October–March, although many species are present in larger numbers outside this period. Not all WeBS counters include gulls so results for them are piecemeal and incomplete. No assessment has been made of birds using the airport which would include marsh and hen harriers. Consequently the bird strike risk for wintering birds will be flawed and this would lead to a larger scale of scaring activities than suggested in the BCMP. Two breeding bird surveys have been carried out but whilst the information is useful it is limited, dated and does not include significant changes such as the arrival of marsh harriers as a breeding species.<sup>583</sup>
- 8.3.31. The evidence on functional links between areas of concern is clear and supported by evidence from LAA. In respect of waterbirds, highlighted by CAP 772, there is evidence of them roosting in the mosaic of waterbodies and fringes of the SPA/pSPA to the south and east of the airfield and using the functionally linked land to north and west for feeding. That basic

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<sup>579</sup> RSPB/6 Para 48

<sup>580</sup> RSPB/6 Paras 67-69, RSPB/4A Sect 4

<sup>581</sup> RSPB/6 Paras 70-71, RSPB/4A Paras 4.2-4.3

<sup>582</sup> CD16.2 Paras 3.1, 4.6.1 & 5.1, RSPB/6 Paras 72-73

<sup>583</sup> RSPB/4A Sect 6

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pattern requires them to traverse the flight lines of planes in the zone, including for various species at night and for many in the hour either side of dawn and dusk. Similar patterns are evident in respect of a wide variety of species using a range of functionally linked land in addition to habitats in the SPA/pSPA. There are constant, unpredictable and at times, large-scale movements of birds in the area with the possibility of flocks of birds moving above or around the airport at any hour of day or night throughout the year. Viewing a map illustrates the point.<sup>584</sup>

- 8.3.32. RSPB's Vantage Point Survey work demonstrates the extent of the inter-relationship of areas. The number of birds using habitats close to the airfield results in an "astoundingly high" mass of bird activity in and around the airfield. No similar, or contradictory, studies which can be relied on have been submitted by LAA. NE has carried out a detailed analysis of the evidence on specific species in its case. RSPB has made many of those points and adopts NE's case.<sup>585</sup>
- 8.3.33. The BCMP is an integral part of the proposals, and its maximum parameters have to be considered and assessed now. The Section 106 Agreement contemplates the possibility of bird control activities having a SE on the SPA/pSPA but it is impossible to answer the SE and AE questions without a clear understanding of what bird control measures, their nature, intensity, frequency and location, may be required as a consequence of the proposals.<sup>586</sup>
- 8.3.34. CAP 772 makes clear that in order to define the extent of bird control, it is necessary to have appropriately detailed evidence as to the BSR and what can/should be done to mitigate it. Essential evidence is numbers of hazardous birds, their locations and flight lines which is lacking for LAA. There is no 13km survey available, and there are no accurate records of movements or numbers from LAA. No attempt has been made to set out maximum, minimum or central estimates of what would be required in order to mitigate the strike risk. LAA has not done that which CAP 772 identifies as basic steps and has therefore not even got to first base in assessing the level of bird control that would be required.<sup>587</sup>
- 8.3.35. The importance of this is that it is not possible to define, on current information, the level of bird control that would be required. LAA could not say what disruption of bird movements would be needed or how that would be done, nor what degree of scaring would be required to create the necessary buffer zones, but ruled nothing out. This is fundamental. LAA's own witness cannot ascertain the degree of disturbance to birds that would be required under the BCMP. It was assumed, no doubt correctly from the perspective of someone concerned with aviation safety and bird strike risk, that this work could all be done later. To be satisfied on the SE and AE questions the work has to be done in advance of permission. There is no reason why the work on upper parameters could not have been done at this stage.<sup>588</sup>

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<sup>584</sup> CD1.14 Sect 11.4, RSPB/6 Paras 74-75, RSPB/4A Sect 7

<sup>585</sup> RSPB/6 Paras 76-77, RSPB/4A Sect 7, Dr Allen IC Day 6

<sup>586</sup> RSPB/6 Para 78

<sup>587</sup> CD16.2 Chapter 3 Para 2.2, RSPB/4A Sect 6

<sup>588</sup> RSPB/6 Paras 81-82

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- 8.3.36. LAA's approach has led to the structure of the BCMP and the Section 106 Agreement. These provide no detail as to the intensity and frequency of the measures which might be taken under them, nor the maximum parameters of those measures. The BCMP sets out a range of possible on and off airfield measures. The list is accepted but encompasses a vast and unlimited array of potential permutations as to what might have to be done to disturb birds in an undefined area in order to reduce BSR in accordance with CAP guidance. Necessary bird control measures, for which there is no alternative and which are necessary for public safety, would have to be approved under the BCMP irrespective of the impacts even if SE or AE, by virtue of Section 16 of the *Wildlife and Countryside Act 1981* or alternatively under the IROPI formulation, even though there has never been an IROPI justification of this development.<sup>589</sup>
- 8.3.37. A BCMP submitted in accordance with the Section 106 Agreement would, amongst other things, have to set out proposed off site bird control measures likely to be deployed and their likely duration, scope and location, as well as details on all the other matters listed. It would put the flesh on the bones of the draft BCMP. The parties and/or the expert would have to approve the BCMP if it is in substantial compliance with the draft BCMP, but this provides no detail as to the frequency, intensity, nature and location of the bird control.<sup>590</sup>
- 8.3.38. Bird scaring can affect both target and non target species. It can reduce food intake as birds stop feeding and show alert behaviour or move away from feeding areas. Interruptions to feeding rates in hard weather, when moulting, or when feeding young can lead to weight loss, abandonment of breeding attempts or breeding failure. Birds would also expend more energy through disruption. The creation of a buffer zone would sterilise an area used by SPA species for feeding and roosting.<sup>591</sup>
- 8.3.39. Some scaring trials have been carried out but are inadequate as there are so many variables such as weather conditions, species, time of day or night, the seasons and other sources of disturbance. More trials over a longer period are necessary to be able to draw firm conclusions. Bird scaring cartridges did cause disturbance to a wide range of species over distances of up to 1000m. Large concentrations of species at a distance from the airfield might require scaring activities outside the airport boundary. The combination of scaring and aircraft movements was not assessed but needs to be as one would follow the other.<sup>592</sup>
- 8.3.40. On airfield scaring could affect species beyond the airfield but off airfield control activities are also anticipated. This could, if necessary, include controlling nesting of hazardous species or even shooting individuals where other measures fail, even though these might be species for which the SPA is designated.<sup>593</sup>

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<sup>589</sup> CD16.2 Chapter 1 Paras 1.1-1.3, 2.2-2.3 and Chapter 2, RSPB/6 Para 84

<sup>590</sup> CD17.23 Schedule 1 Clause 10.1.7, LAA/6C Appx 2, RSPB/6 Para 84a

<sup>591</sup> RSPB/4A Para 8.16-8.16.11

<sup>592</sup> RSPB/4A Sect 8

<sup>593</sup> RSPB/4A Paras 8.19-8.26

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- 8.3.41. The dispute resolution clause does not give the expert the ability to refuse to approve the BCMP if it was in substantial compliance with the draft and provides no guidance as to how the expert is to make his/her determination or the factors that he/she can take into account. He/she would have to approve measures to the extent that they are demonstrated to be desirable for public safety, including shooting of birds outwith the general licence. Remedial measures are not provided for at that stage.<sup>594</sup>
- 8.3.42. The next stage is monitoring of the BCMP, which includes a scheme of remedial measures to prevent significant adverse effects from the operation of the runway, presumably including any significant effects generated by the BCMP. That review would be submitted to the panel. If approved, and if relevant consents were obtained, the remedial measures would, if practicable, have to be implemented.<sup>595</sup>
- 8.3.43. Two points arise:
- i) These remedial measures are to compensate for impacts caused by the operation of the runway and the BCMP. They are not, and cannot be, measures to avoid the impact arising in the first place (compare the position in *Hart* where the measures were closely defined at the outset and assessment of them showed that they would prevent harm which would otherwise arise occur). The BCMP would require hazardous species being scared from particular locations to reduce strike risk. There would be impacts in those locations as that is the purpose of the bird control regime. It follows that the remedial works are compensation for harm not mitigation to avoid the harm, but that is at the IROPI stage of the analysis not the AE stage. LAA has not sought to satisfy the alternative solutions and IROPI requirements. The legal effect of this structure is to bypass the IROPI and alternative solutions requirements and is therefore unlawful; and
  - ii) The remedial measures may or may not be on the SPA/pSPA and, to the extent they are designed to remedy harm to the SPA/pSPA by measures off the SPA/pSPA, are in any event compensation (see *Dibden*).<sup>596</sup>
- 8.3.44. The remedial scheme is inchoate at this stage and cannot be assessed. Compare this with the SANGs in Thames Basin Heath, the recharge in *Dibden*, and the compensation package at *Bathside Bay*, all of which were the subject of evidence at an Inquiry. In *Bathside Bay* it was agreed to be appropriate, RSPB tested and assessed it and it worked. In *Dibden*, RSPB tested and assessed it and it did not and permission was refused on that basis. In any substantial application in Thames Basin Heath developers have to demonstrate precisely what their measures would be.<sup>597</sup>
- 8.3.45. The range of measures provided for and envisaged in the BCMP are dramatically wider than those currently undertaken or are now required to be undertaken with the current level of activity. Yet LAA in reaching its

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<sup>594</sup> CD5.12 section 16 (1)(i), CD17.23 Clause 11, RSPB/6 Paras 84b-c

<sup>595</sup> CD17.23 Schedule 1 Clauses 11.2.8 & 12.2, RSPB/6 Para 84d

<sup>596</sup> CD9.3, CD9.10, RSPB/6 Para 84e

<sup>597</sup> CD9.3, RSPB/6 Para 84f

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conclusions on SE and AE assumed that there would be no change in bird control activity therefore leaving out of the analysis all the consequences of increased bird control leaving a fatal hole in its case.<sup>598</sup>

- 8.3.46. These proposals would necessitate bird control measures of unspecified intensity, frequency, nature and scope over an undefined area with no upper limit on what may be done. That the measures have to be in “substantial compliance” with the draft BCMP tells us nothing. This is why the SoS cannot properly assess impacts on the information available and on the legal structure proposed and therefore cannot lawfully grant permission. Once permission is granted, a major new factor enters the planning equation, the safety of 500,000 air passengers. That is one reason why the assessment has to be done in advance.<sup>599</sup>
- 8.3.47. LAA has picked on a claimed comment of an RSPB witness as to the need for off site measures. The emphasis on this in refusing to provide further definition of the maximum extent of the bird control measures is misplaced for three main reasons:
- i) Such an approach is contrary to the evidence of another LAA witness, the SCG, the ES, the BHRA and the Section 106 Agreement. It is plain that LAA requires, and has given itself through the Section 106 Agreement, very substantial flexibility concerning off site measures;
  - ii) Even if bird control could be limited to on site that tells us nothing as to the intensity of the required effort or the effects. Disturbance effects from the bird scaring trials occurred at distances of up to a kilometre from the source of the bird control activity. That would take in large swathes of the SPA/pSPA and the required buffer would intrude into the pSPA. Even if the bird control activity was to be limited to within the airport boundary, the maximum parameters of that bird control would have to be specified at this stage and the impacts of that maximum assessed;
  - iii) If the position was that bird control could be limited to the airport then the Section 106 Agreement could provide that there would be no off site bird control. That is not on offer and would be wholly inconsistent with the BHRA and BCMP which recognise the likely need for off site bird control and the Section 106 Agreement which makes provision for such measures.<sup>600</sup>
- 8.3.48. Overall there is wide ranging bird activity which poses a bird strike risk. The current level of aviation activity necessitates only a low level of bird control activity but under the development scenario much wider measures would be required. Bird control would become continuous and the north west corner of the pSPA/SPA is well within the area where continuous maintenance of a buffer would be required. There would be a need for the southerly flight

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<sup>598</sup> RSPB/6 Para 85, Dr Armstrong XX1 by the RSPB Day 5

<sup>599</sup> LAA/6/C Appx 2, RSPB/6 Para 86-87

<sup>600</sup> CD1.14 p193 – 4, 198, CD1.23c p6, CD1.33d p13, CD1.45, CD4.5 Para 4.2.4, LAA/6/C Appx 1 p25 – 26, App 5, LAA/6D Paras 2.11 & 2.19, RSPB/6 Para 88, Dr Armstrong XX by RSPB & NE Days 5-6

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corridor, immediately to the west of the pSPA/SPA, to be kept clear of hazardous species.<sup>601</sup>

- 8.3.49. It is not possible at this stage to determine the extent, nature, frequency and intensity of measures necessary to reduce the risk ALARP because no studies have been done on movements, numbers and locations to allow a bespoke package of measures to be designed. The maximum or even the likely impact of scope of the BCMP measures is not defined and flexibility is retained in the Section 106 Agreement which effectively leaves this question for later, post-permission, consideration. That turns the statutory scheme on its head.<sup>602</sup>
- 8.3.50. The range of measures in the BCMP could be very wide and once permissions have been granted there would be nothing to prevent measures that are necessary for public safety. LAA would say such measures were essential and thus, even if causing AE, could be carried out under Section 16 of the *Wildlife and Countryside Act* or IROPI tests. The SoS therefore has to ask himself whether he can be certain, on the information available, that on no permissible permutation of the BCMP will there be an AE on the SPA/pSPA. There can be no rational basis for concluding that.<sup>603</sup>
- 8.3.51. In addition there is safeguarding. RSPB continues to be active in improving wetland habitats in the SPA/pSPA. This has contributed to the new species which now use the area but it is those habitats that are identified as a particular risk in the BHRA. The “no anticipated objection” approach does not apply to the SPA/pSPA and the Reserve. Whether or not safeguarding is required to be operated now, and it has not been operated historically, once commercial passenger jets were introduced LAA would have to take a much more rigorous approach to any similar developments in the future. It is more likely such objections would be sustained with public safety trumping other considerations. The increased air operations would, therefore, adversely impact on the ability of RSPB to make improvements on the reserve in the future, including as a result of harm caused by the airport. It seems inevitable that LAA would seek to reduce the numbers of potentially hazardous birds within the designated sites and on the functionally linked land.<sup>604</sup>
- 8.3.52. Any mitigation measures offered amount to very little. The SEI suggests that damage would have to be presented by others before any action would be taken. It sets a marker that LAA might contest that damage was due to aircraft. If there are adverse effects these need to be mitigated before expansion of the airport and cover damage to the bird population of the SPA and to the functionally linked land. There should be replacement for sterilised areas and compensatory habitat for land on the SPA that would suffer adverse effects.<sup>605</sup>
- 8.3.53. LAA will claim that if bird control measures are necessary that would lead to SE or AE then the Section 106 Agreement has mechanisms that would

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<sup>601</sup> RSPB/6 Para 89

<sup>602</sup> RSPB/6 Para 89

<sup>603</sup> RSPB/6 Para 89

<sup>604</sup> LAA/6C App 1 para 11.2.3a, RSPB/6 Para 90, RSPB/3A Paras 10.3 & 10.6, RSPB/4A Sect 9

<sup>605</sup> RSPB/4A Sect 11

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secure remedial works. Those provisions are inadequate. They do not secure, in a timely way or at all, the remedial works. They have insufficient loopbacks such that obligations could disappear if measures are not practical. They do not answer the basic point which is the need for maximum parameters to be determined and assessed at the outset.<sup>606</sup>

- 8.3.54. LAA's ornithology witness did not consider bird control measures in any detail as he considered that there was no requirement for any increased bird control. Consequently no account was taken of the impacts of increased bird control in LAA's assessment of SE and AE. Only disturbance from noise/visual was considered. There is no analysis of the likelihood of SE/AE from LAA on a correct understanding of the bird control measures that would be required. There is no expert evidence before the SoS on a correct factual basis as to the absence of SE and AE of the bird control measures and the noise issue combined. It is impossible for LAA to satisfy the Waddenzee formulation on its own evidence.<sup>607</sup>
- 8.3.55. It goes without saying that habitat management, buffer zones, bird scaring, and disruption of flight lines have the potential to adversely affect populations across the SPA/pSPA. The purpose of such measures would be to stop birds doing what they do now where they now do it. The extent of such adverse effect will depend on the detail which the SOS does not have.<sup>608</sup>
- 8.3.56. The data in the ES justifies the conclusion that the current activity at the airport does not significantly influence the existing noise environment. By contrast, the development scenario would significantly impact the  $LA_{eq\ 16\ hours}$ , and according to the Council's consultant would result in a "huge change in the noise environment at Lydd". That is before consideration of peak noise levels. The noise contours for a B737 have changed during this case, without explanation, and are not accepted. Even on LAA's evidence the noise contours for the several B737 flights a day would be much wider and higher than the highest experienced in the no development scenario, the extremely occasional Gulfstream, broadly an increase of about 9db but likely to be dependent on the assumptions made and the inputs into the model.<sup>609</sup>
- 8.3.57. There are no bespoke or directly applicable studies covering the circumstances or range of species at Dungeness. In those circumstances, the AA process requires one to consider the best scientific knowledge available. There has been no written rebuttal of the summary of the scientific literature by RSPB and no criticism of the Drewitt paper which pulls together all the academic literature.<sup>610</sup>
- 8.3.58. The available literature makes clear that aircraft can have an effect on birds and that this can lead to AIs. Literature on vehicle noise has shown that birds will nest and feed close to busy roads but that there are impacts

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<sup>606</sup> RSPB/6 Para 91

<sup>607</sup> RSPB/6 Paras 92-93, Dr Armstrong XX1 by the RSPB Day 5

<sup>608</sup> RSPB/6 Para 94

<sup>609</sup> CD1.41a, CD1.41b Para 4.2.3, SDC/102B App 4 Para 21, RSPB/6 Paras 95-97, RSPB/4D Para 5.4-5.9, Mr Perkins XX by RSPB Day 20

<sup>610</sup> RSPB/6 Para 98, RSPB/4A Section 10, RSPB/4C App IV tab 5

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ranging from poorer condition of wintering birds, reduced breeding productivity and changes in breeding behaviour. Aircraft noise and vision effects can have similar adverse impacts although this can vary between species and locations.<sup>611</sup>

8.3.59. The following factors emerge from that literature review in terms of disturbance from aviation:

- i) The literature demonstrates that lateral distance is a, or even the, key determinant of bird response with distances of 1 – 1.6km identified in a range of papers (up to 6km) leading to a proposed management response that planes do not fly within 1.6km of reserves or the habitats of important birds. All of the western corridor of the SPA/pSPA is within 1km of the southerly flight path;
- ii) The literature demonstrates altitude to be a significant factor, not limited to direct overflying, with management advice that planes do not fly at less than 1600ft above, or close to, protected habitats. The planes on any of the southerly approaches and take off routes would be well below this height whilst nearest to the SPA/pSPA;
- iii) In terms of peak noise levels, the scientific literature shows responses by different species in different circumstances at different peak noise levels from 60 – 65db. There is no scientific basis for the adoption by LAA of 85db in this case. Reliance on 85db without scientific justification and based on an apparent assumption that it was only military flights which had been demonstrated to cause disturbance is the opposite of a precautionary approach. Disturbance effects are not limited to military planes or to above 85db;
- iv) In addition, the difference in noise level between peak and ambient is also a significant factor. The difference here is stark, even on LAA's assessment; and
- v) Different species, even when closely related, show a different propensity to habituate.

None of those factors are analysed or assessed by LAA which simply looks to noise contours.<sup>612</sup>

8.3.60. All the above factors have been considered in RSPB's analysis. All the ingredients for disturbance effects (DE)/disturbance impacts (DI) are present here to varying degrees. Even the ES would have recognised a moderate adverse effect here but for the 300,000 BAe146 fallback. There is a *prime facie* case from the science that aviation noise will lead to bird disturbance, especially in the north-west area of the SPA/pSPA which is important.<sup>613</sup>

8.3.61. RSPB has not equated DE with DI but has considered the academic papers making the link and the factors that influence that link. The papers consider

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<sup>611</sup> RSPB/4A Paras 10.57, 10.64-67 & 10.73-74, RSPB/4F Sect 2

<sup>612</sup> RSPB/6 Paras 100-101, RSPB/4A Sect 10, Dr Day IC2 Day 39, Dr Armstrong XX2 by RSPB Day 38

<sup>613</sup> RSPB/6 Paras 102-103, RSPB/4A Sect 10



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factors such as feeding rates, breeding success and productivity in making the link between disturbance and DI. LAA has not considered any of those factors. There is limited direct research on DI from aviation disturbance but that does not mean that research in a non-aviation context cannot be relied on and the lack of research shows the need for further study.<sup>614</sup>

- 8.3.62. A particular concern is reed bed birds. There have been no studies of noise effects on those species that live in dense vegetation. LAA maintains that a light aircraft over Leighton Moss RSPB Reserve did not cause any detectable response but the Senior Site Manager cannot recall ever seeing one suggesting it is a rare event. The lack of detectable response is not surprising given the size of the reed beds which cannot be seen from one point. There is no evidence that "experience demonstrates that these birds are not disturbed by aviation noise and are highly tolerant of disturbance generally". LAA refers to bitterns at Valley Lakes that were probably breeding in 2010. Site staff at that RSPB Reserve state that bitterns have not bred at Valley Lakes for over 30 years. They did not summer or breed there in 2010 although birds did winter in the area. This does not demonstrate that there would be no AE at LAA.<sup>615</sup>
- 8.3.63. LAA recognised there was a gap in the information that needed filling. It sought to demonstrate that there was no correlation between growth in aviation and bird numbers in the vicinity but this was a simplistic exercise and cannot sensibly be accorded any weight in a scientific assessment of DI. However, the fact the exercise was done is telling. The presence of birds does not equate to lack of DI.<sup>616</sup>
- 8.3.64. LAA's logic is that the presence of birds equates to tolerance and lack of DE, which in turn equates to lack of DI. There is no scientific material to support that chain of logic. Indeed, if it had any merit it would obviate the need for studies of DE and DI. The thesis is directly contrary to LAA's emphasis throughout that DE does not mean DI and that it is DI that should be looked at. It follows from the papers on which LAA places such weight that presence alone tells one nothing or next to nothing about DE and DI. LAA's evidence on species specific impacts cannot be accorded any weight as it does not ask the right question.<sup>617</sup>
- 8.3.65. In summary, LAA's most recent evidence consisted of:
- i) Assertion of presence, which even where evidenced is only bland and general such as bittern somewhere at Valley Lake, which is a huge reserve split into three parts some of which are well away from the airport; terns at RAF Kinloss; Bewick's Swans at Derry; and bitterns breeding near runways;
  - ii) Reliance on different species that are only of scientific relevance if it could be demonstrated that similar species behave similarly;

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<sup>614</sup> LAA/6C App 4, RSPB/6 Para 104

<sup>615</sup> RSPB/4F Sect 4

<sup>616</sup> LAA/6C App 3, RSPB/6 Para 105, RSPB/4F Sect 3, Mr Deacon XX by the RSPB Day 4

<sup>617</sup> LAA/7/D, E & G, RSPB/6 Paras 106-107, Dr Armstrong XX2 by RSPB Day 38

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- iii) Reliance on the presence of a species at Lydd now, which is of no scientific relevance given the different circumstances that would pertain under the development scenario compared to now;
  - iv) Information from other people as to presence with no detail of location and no references;
  - v) No consideration of DE. No records of any systematic observations of any species reaction to significant noise events and not even details of casual observations in respect of most species;
  - vi) No consideration of DI, population trends or factors which would impact on population, which up to date literature demonstrates has to be addressed; and
  - vii) An assumption that if there is DE the birds can simply move elsewhere in the SPA without any analysis of the spare carrying capacity in the winter bottlenecks and assuming that the ability to move elsewhere means no impact on the SPA, which is wrong as a matter of law.<sup>618</sup>
- 8.3.66. Birds may tolerate particular locations because they have nowhere else better to go. Their continued presence simply indicates that there is no spare carrying capacity at better sites elsewhere. It says nothing about the success or long term sustainability of the population in that location. It is therefore impossible to move from "presence" to being satisfied in a Waddenzee sense that there will be no SE and no AE.
- 8.3.67. The removal of night flights is described as a "massive advantage", the cap on helicopter movements is claimed as a benefit, as is the predictability of movements, because they would reduce DI. Even if these were accepted as benefits, it is contradictory to say that the removal or reduction of flight movements would be a massive advantage but the introduction of flight movements would be of no significance. The reality is that the science recognises that in circumstances such as this the potential for DI from aviation disturbance is real.<sup>619</sup>
- 8.3.68. All the factors identified in the literature as relevant to DE are present here to a significant degree very close to the edge of the pSPA/SPA. The factors would be well within the parameters where the scientific papers advise against introducing aviation activity, 1600ft in terms of height, 1.6km lateral distance, or where the peak noise and noise over background is at a level where DE can be expected. There are a wide range of species, some very rare and/or secretive, and no directly relevant evidence that they rapidly habituate to, and cope unaffected with, disturbance from aviation. Applying a precautionary approach the SoS cannot be satisfied that there will be no SE on the information available. The next stage of the process is AA but on the scientific literature alone the SoS can have no confidence on lack of AE on integrity.<sup>620</sup>

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<sup>618</sup> RSPB/6 Para 108, Dr Day IC2 Day 39

<sup>619</sup> RSPB/6 Para 110, Dr Armstrong XX1 by RSPB Day 5

<sup>620</sup> RSPB/6 Para 111

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- 8.3.69. To make good its case on lack of AE, LAA had to produce evidence as to how species actually respond to DE and/or a scientifically and statistically valid exercise to demonstrate whether or not a correlation exists between disturbance and bird population (DI). Its case that there would be no impact is nothing more than assertion and the analysis has none of the attributes of a scientific assessment. Applying the correct legal approach to SE and AE, based on *Waddenzee*, it is plain that one cannot be satisfied that there will not be a SE from noise disturbance and there is plainly substantial potential, and therefore very real scientific doubt as to the absence of AE, for there to be adverse effects on conservation objectives of the SPA/pSPA by reason of the noise disturbance. The evidence comes nowhere near resolving those doubts.<sup>621</sup>
- 8.3.70. LAA rely on what they claim is the small area of land affected by high noise levels, the relatively limited number of plane movements involved, and the B737 test flight. LAA's noise contours are not accepted and the threshold of 85dB L<sub>max</sub> is not justified. A whole range of factors other than simply peak noise contours have been shown in the literature to be important factors. If one were to draw a 1.6km lateral separation, or contours by reference to exceedance over background or a 65db or a 70 db contour a wholly different picture would emerge.<sup>622</sup>
- 8.3.71. There is no evidence in the literature that DIs are necessarily avoided by relatively low frequency of events. Indeed, on the habituation approach, the fewer movements the less potential to habituate. The SoS is being asked to make the bold assumption that he can be certain that disturbance from x movements per day will not affect any of the conservation objectives of the SPA/pSPA. There is no possible basis on which to make such an assumption.<sup>623</sup>
- 8.3.72. The B737 trial occurred in February when bird numbers would be falling. Whilst RSPB's Area Manager did not notice any DE, he was looking towards the runway and away from the Reserve. The plane did not fly along the southern flight path and the characteristics of the flight in terms of load and point of rotation were very different from a flight to the south of Spain. The test flight was not designed to test impacts on the SPA. Had it been LAA could have carried out systematic observations and got the plane to mimic what would actually happen under the development scenario. This test flight is not evidence of a lack of DI on species in the SPA/pSPA.<sup>624</sup>
- 8.3.73. This highly protected area, currently characterised by low noise levels, very limited bird control and no evidence of adverse impacts of current aviation activity on birds, with the exception of the only recorded observation of the Gulfstream, would be subject to:
- i) A step change in the range of bird control activity both on and off the airfield. This would be of indeterminate frequency, duration, intensity and nature specifically designed to keep hazardous birds well away from the airfield with a need to disrupt flight lines, including of

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<sup>621</sup> RSPB/6 Paras 112-113

<sup>622</sup> RSPB/6 Para 114

<sup>623</sup> RSPB/6 Para 114

<sup>624</sup> RSPB/6 Para 114

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SPA/pSPA species, and the creation of a buffer immediately alongside and, given the range of DE from bird scaring, covering much of the north west part of the SPA as well as a ½km buffer around the remainder of the airfield with potential impacts on areas such as Lade Pit. Without a specification it is impossible to determine the impacts of that bird control, but on the information available it would be likely to have to be extensive and specifically directed at SPA/pSPA species and habitats in, and functionally linked to, the SPA. It is impossible to conclude that there will be no SE or AE on Integrity;

- ii) In addition there would be a number of new passenger jet movements of large planes at low altitudes, a very short lateral distance from the SPA/pSPA with high peak noise levels and significantly above background. All the factors important to DE would be present and the plane movements would be well within areas where advice in the science is that they should not be. It is impossible to conclude no SE on the scientific information available. The high hurdle in *Waddenzee* is not met.<sup>625</sup>

#### 8.4. Climate Change

- 8.4.1. All of the difference between the existing level of usage and that enabled by the development would be in addition to current aviation movements in the UK. For example, flights displaced from Gatwick would be replaced by other flights there, potentially by bigger, more carbon intensive planes. The proposal is, therefore, an additional carbon entrenching piece of infrastructure that would generate substantial levels of greenhouse gas.<sup>626</sup>
- 8.4.2. The ATWP, and policies based on and derived from it, are fundamentally out of date on climate change grounds. This is due to the disparity between the growth in aviation provided for in the ATWP and the level of growth that is consistent with wider climate change goals, as embodied in the *Climate Change Act 2008* and the 2050 Target. That position has now been adopted by the Government.<sup>627</sup>
- 8.4.3. LJ Sullivan, in refusing permission to appeal on London City airport, stated “the interaction between climate change policy and aviation policy is, in principle, an issue of wide public importance... any future decision maker dealing with a proposed increase in airport capacity will have to consider the Climate Change Committee’s December 2009 Report and any further reports, and the Statements of Government policy in March 2011.” This confirms the materiality of greenhouse gas emissions from flights to decision making on aviation expansion. The March 2011 position is clear. The ATWP is fundamentally out of date in the way it addresses climate change and future growth of aviation can only occur once the contradiction highlighted above is resolved.<sup>628</sup>
- 8.4.4. Despite LAA’s attempts to draw some comfort from the subsequent consultation process there is no comfort there on climate change issues and

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<sup>625</sup> RSPB/6 Para 115a-b

<sup>626</sup> RSPB/6 Para 116, RSPB/5A Para 1.1, Ms Congdon XX by RSPB Day 15

<sup>627</sup> CD5.14, CD5.24, CD5.36 p4, 2nd para, RSPB/6 Paras 117-118, RSPB/5A Sects 2-7, RSPB/106 Para 36

<sup>628</sup> RSPB/6 Paras 119-121, RSPB/106 Paras 33-36

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no indication that growth could occur at regional airports without consideration of climate change issues.<sup>629</sup>

8.4.5. The result of the above is that:

- i) The ATWP is out of date and is to be reconsidered, including a fundamental reconsideration of the level of growth consistent with wider climate change goals. The SoS may not proceed as if the 2011 Policy Statement had not occurred or on the basis that the ATWP remains the main source of policy. It has been overtaken by events on climate change grounds;
- ii) Greenhouse gas emissions from flights are a material consideration. It is no answer to that to say the emissions would be small as a percentage of UK emissions or of UK aviation emissions. That would always be the case with any particular infrastructure project. Climate change emissions from flights here are a major disadvantage. There would be a dramatic increase in emissions from aviation at Lydd, although the quantum has not been set out, and there is no current policy support for aviation growth bringing a very high percentage increase in emissions. The Government has made it clear that future growth is dependent on cutting emissions. Greenhouse gas emissions from aviation would be a very significant additional disbenefit of these proposals.<sup>630</sup>

## 8.5. **Landscape, Tranquillity and Noise (Quality of Life)**

8.5.1. An essential part of the visitor experience at the Dungeness Reserve is the sense of being in a wild place and of tranquillity more often associated with remote landscapes. Although there are modifications to the landscape by industrial or human development, most of these are peripheral to the reserve. The introduction of larger jet aircraft would tip the balance. A very loud jet taking off on 15 November 2010 disturbed a mixed flock of around 1500-2000 birds which circled for several minutes before settling. The noise from fully laden larger jets would have a direct impact along the western edge of the Reserve subjecting visitors to significantly higher noise levels than at present.<sup>631</sup>

## 8.6. **Conditions and Section 106 Undertakings**

8.6.1. RSPB has similar concerns as NE in relation to the proposed S106 Agreement and the BCMP and endorses the comments made by NE. Any additional points that RSPB has have been dealt with in the Ornithology Section above, particularly paragraphs 8.3.32-8.3.40.

## 8.7. **Conclusions**

8.7.1. This highly protected area is characterised by low noise levels, limited bird control and with no evidence of adverse impacts of aviation activity on birds. It would experience a step change in bird control activity on and off the airfield of indeterminate frequency, duration, intensity and nature. There

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<sup>629</sup> LAA/4/L, RSPB/6 Para 122

<sup>630</sup> CD5.36, CD5.38, RSPB/6 Para 123, RSPB/5A Sects 8-9

<sup>631</sup> RSPB/3A Paras 10.8-10.11

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would be a number of new passenger jet movements of large planes at low altitudes a very short lateral distance from the SPA/pSPA with peak noise levels significantly above background. There can be no confidence that there would not be AE on integrity and the high hurdle in *Wadenzee* would not be met. It would be unlawful to grant planning permission in those circumstances and, even if it weren't, permission should not be granted on the merits of the case.<sup>632</sup>

## **9.0 The Case for Lydd Airport Action Group (LAAG)**

### **9.1. Introduction**

9.1.1. LAAG was set up to oppose the large-scale development of Lydd Airport. It is an unincorporated association funded by approximately 3,000 members through voluntary donations, augmented by funds from environmental charities. Many of its members will be directly affected by the development through increases in noise, air pollution and accident risk. The only independent referendum, conducted by SDC, determined that two thirds of the local electorate were opposed to the proposals.<sup>633</sup>

### **9.2. Basis of Assessment**

- 9.2.1. Assessment of LAA's applications should be based on 2mppa. This stems from two directives:
- i) The Environmental Impact Assessment Directive 85/337EEC, as amended by 97/11/EC and 2003/35/EC on the basis that a planning application should not be considered in isolation if it is an integral part of an inevitably more substantial development; and
  - ii) Article 6 of Council Directive 92/43/EEC (The Habitats Directive) on the basis that the planning application should have been appropriately assessed in combination with the Airport's Master Plan.<sup>634</sup>

#### **Environmental Impact Assessment Directive**

- 9.2.2. LAA's evidence supports LAAG's contention that successful airports grow rapidly and, despite any adverse environmental impacts, the economic and social imperative for them to continue growing once they are established is extremely strong. The EIA regulations are designed to ensure that the adverse impacts are understood from the outset.<sup>635</sup>
- 9.2.3. Although LAA's intention to grow to 2mppa has been characterised as a pre-application aspiration, there are examples of statements relating to 2mppa made at the time of the application in 2006 and postdating its submission. A study by Cranfield University indicates that if LAA managed to achieve 500,000ppa it would be unlikely to make a positive operating profit. As companies do not budget to lose money, this suggests that the real aim is a throughput of 2mppa. The proposal would only create 140 new jobs at a throughput of 500,000ppa suggesting that SDC's enthusiasm for the

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<sup>632</sup> RSPB/6 Paras 115 & 124

<sup>633</sup> LAAG/6A Para 3.11, LAAG/132 Paras 2-4

<sup>634</sup> LAAG/132 Para 9

<sup>635</sup> LAAG/11A Para 35, LAAG/11D Paras 35-36 & 42, LAAG/132 Paras 10-11, LAA/4K

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development is due to the prospect of more jobs once phase 2 is underway.<sup>636</sup>

- 9.2.4. By only submitting a planning application for a throughput of 500,000ppa, the environmental baseline is weakened and the economic case for the airport strengthened. It is not suggested that development is being split to avoid an EIA or an AA in the future, but it is incorrect to assert that the EIA requirements would be met by submitting a future planning application for phase 2 with an accompanying ES. LAA maintains that phase 2 would only be feasible if phase 1 was a commercial success but there is no provision in the *Directive* for commercial considerations to determine the scope of an assessment. It would be equally possible for a development to be commercially successful triggering a second phase at a later stage and negating the purpose of the *Directive* which is to ensure permissions are granted in the full knowledge from the outset of the likely significant effects which would occur as the development proceeds.<sup>637</sup>
- 9.2.5. LAA's misconceived view of the application of the *Directive* begins with SDC's Scoping Opinion. This states the intention to develop the airport terminal in two phases for 500,000ppa and 2mppa and states "If the application that is submitted substantially differs from this, then the opinion of SDC and other consultees may differ as to what issues should be addressed within the EIA. It is recommended that if the proposals to be applied for do substantially change then a new scoping report should be submitted and a new scoping opinion sought". No new Scoping Opinion was sought, despite the application being truncated to cater for a throughput of 500,000ppa, as the issues are the same as for 2mppa.<sup>638</sup>
- 9.2.6. LAA sought to demonstrate through case law that a cumulative assessment could not be carried out because of the uncertainty about the nature of LAA's phase 2 terminal proposal. However, phase 2 is quantifiable because the information required to undertake an EIA is already available. LAA has provided a schedule of movements and aircraft types for a throughput of 500,000ppa and 2mppa. The flight procedures are common to both scenarios and the terminal has been designed in a modular fashion to facilitate development. Indeed, LAA has already provided a potential list of cumulative environmental impacts at 2mppa in its application.<sup>639</sup>
- 9.2.7. Another factor pointing to the necessity to assess a throughput of 2mppa is the infrastructure defined by the applications. The runway is adequate to achieve a throughput of 2mppa. The focus should be on the throughput of the terminal. LAA intends to use the existing terminal until the throughput reaches 200,000-300,000ppa and then build the new terminal. New terminals produce step changes in overall throughput capacity and LAA confirmed that the new terminal would sustain throughput in excess of 500,000ppa. LAA has not contested that throughput could also be increased by lengthening the hours of operation. The airport has a 24 hour licence and the proposed conditions limiting night flying could be withdrawn or

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<sup>636</sup> LAAG/4A Table 6.1, LAAG/11A Paras 21-34, LAAG/11B App A, LAAG/11D, LAAG/132 Paras 12-14, LAA/17A

<sup>637</sup> LAAG/11B App B, LAAG/11D Paras 40-41, LAAG/132 Paras 15-18, LAA/17A Para 2.11

<sup>638</sup> LAAG/132 Paras 19-20

<sup>639</sup> LAAG/11D Paras 22-23 & 44-51, LAAG/132 Paras 21-22

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modified over time, opening up the possibility that the 2mppa could be accommodated using the phase 1 terminal, helped by the overcapacity built into the design.<sup>640</sup>

- 9.2.8. SDC's Solicitor believes the proper assessment basis is 2mppa where the consequences are unknown and might range between 500,000ppa to 2mppa, since it would be possible that this would result if this application were granted permission. She assumes that if there were any concern that the current proposals might be physically capable of accommodating more than 500,000ppa this level of throughput could be capped by a condition. However, such conditions are not an acceptable way to comply with the Directive which makes it clear that relevant matters cannot be left to a later date or be dealt with by conditions.<sup>641</sup>
- 9.2.9. LAAG's interpretation of the *Directive* is supported by closing submissions for Npower Renewables Ltd at the Little Cheyne Court Wind Farm Inquiry. LAA was proposing an application for a runway extension and a new terminal to cater for a throughput of 300,000ppa which was clearly part of a wider scheme to expand to 2mppa as evidenced by the Master Plan and the request for the Scoping Opinion. The advocates stated "Under the EIA regime it is not possible to separate an overall scheme into segments in order, as Mr Stewart reminded the inquiry, either to seek to avoid crossing the relevant thresholds for either Schedule 2 or Schedule 1 development, or alternatively to undertake EIA on individual phases of development of less magnitude than the overall development".<sup>642</sup>
- 9.2.10. If the SoS does not require an assessment at 2 million ppa, and grants permission, objectors have the right to ask the UK Courts or the European Commission to quash any decision to grant permission.<sup>643</sup>

### **Habitats Directive**

- 9.2.11. Legal opinions by Matthew Horton QC and Bond Pearce were given to SDC in 2007. Mr Horton considers that the term "plan or project" should be given a very broad definition in the light of the objectives to achieve a high level of environmental protection and that the masterplan should be assessed for its cumulative impact. The Bond Pearce opinion has been strengthened by the RSS adopted in May 2009. RSS Policy T9 states that "Relevant regional strategies, local development documents and local transport plans will include policies and proposals that: iv) take account of airport operator masterplans produced in accordance with the Air Transport White Paper".<sup>644</sup>

### **9.3. Airport Operations**

- 9.3.1. The applicant has sought to portray LAA as a "standard" airport but has not disputed that it is the only one in the UK:
- i) with a nuclear power station restricted airspace within 5km;

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<sup>640</sup> LAAG/11D Paras 31-34, & 43, LAAG/132 Paras 23-25, LAA/4K

<sup>641</sup> CD2.9 pp36-56, CD9.5 Paras 63-80, LAAG/11D Paras 52-54, LAAG/132 Paras 26-27

<sup>642</sup> LAAG/11F, LAAG/132 Paras 28-30

<sup>643</sup> LAAG/11A Para 40, LAAG/132 Para 31

<sup>644</sup> CD2.9, Pages 6-8, LAAG/11A Paras 41-55, LAAG/11B App C, LAAG/132 Paras 33 & 34



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- ii) with a military danger area crossing the final approach track within 2.5km;
  - iii) with a runway width less than 45m proposing commercial operations by B737/A319 size aircraft;
  - iv) proposing commercial operations by B737/A319 size aircraft where only one runway direction is available for landing for the majority of the time; and
  - v) with a 5° offset ILS localiser and a 3.5° ILS glideslope.<sup>645</sup>

9.3.2. In suggesting that commercial operators would have no difficulty in flying approaches to Lydd given these constraints it is worth noting that:

- i) in order to get round the problem that there is insufficient room for even small airliners to make the circling final turn on to runway 03 when the Lydd range is active, it would be acceptable for them to "dip a wingtip" into the range danger area because that part of the range only contains domestic accommodation;
- ii) alternatively, airliners could aim to land further up the runway, thus giving them more room to avoid the range, but equally, reducing the margins of available landing distance;
- iii) in order to make use of the suggested technique for avoiding the range, pilots should deliberately disregard the only information available to them on the correct glidepath to guide them to the runway, the PAPIs;
- iv) on ILS approaches to runway 21, pilots should also ignore the guidance provided by the PAPIs and should follow a steeper approach path to enable them to make use of the full landing distance available.<sup>646</sup>

9.3.3. No evidence from the CAA, or from any existing or potential airline operators at the airport, has been produced to suggest that such practices, which are contrary to ICAO, European and CAA practice and recommendations, would be accepted by the authorities or operators.<sup>647</sup>

9.3.4. Manston airport, which benefits from one of the longest runways in the country, is also loss making due to a difficulty in attracting airlines. This suggests that runway length is not the issue. Southampton and Bournemouth airports are only 25 miles apart. Southampton has a shorter runway than LAA's would be after the proposed extension, whilst Bournemouth's runway is longer than LAA's would be after its proposed extension. Flybe, which has a major base at Southampton, has successfully exploited this situation. Around two thirds of the airport's traffic is carried on the Bombardier Q400, an aircraft suited to LAA's current runway. The shorter length of the runway protects Flybe from competition from airlines such as Ryanair which is based at Bournemouth and uses B737-800s that

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<sup>645</sup> LAAG/10E Para 2.34 & Table 2, LAAG/132 Paras 181-183

<sup>646</sup> LAAG/10A Paras 4.1-4.40, LAAG/10E Paras 2.11-2.22, LAAG/132 Para 184

<sup>647</sup> LAAG/10A Paras 3.21-3.27, LAAG/10E Paras 2.26-2.29, LAAG/132 Para 185

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require a longer runway. Southampton has more passengers than Bournemouth.<sup>648</sup>

- 9.3.5. LAA has operational constraints other than runway length. There is extensive restricted airspace in the vicinity and poor surface infrastructure makes LAA unattractive to airlines able to use its existing runway. Both Manston and LAA suffer from poor population catchment areas by comparison with Bournemouth and Southampton. They also face competition from ferries and the Channel Tunnel. These factors would remain if the runway was lengthened and LAA would still find it difficult to attract airlines.<sup>649</sup>
- 9.3.6. The active Lydd military range with its 4,000ft minimum height restriction is the most challenging feature to LAA's commercial success. The short distance between it and the threshold of runway 03 makes it physically impossible for some manoeuvres, such as a circling approach to runway 03, to be carried out by larger aircraft types such as the B737 and A320. It is common ground, that when the wind direction favours runway 03 and the Lydd military range is active, B737 or A320 type aircraft must land on runway 21, provided there is a tailwind of no more than 10 knots, otherwise they must divert to another airport. The constraint extends to Group 2 aircraft making commercial air transport movements, although LAA believes all Group 2 aircraft can undertake a circling approach on both the existing and extended runway when the Lydd military range is active and the winds favour runway 03, which is approximately 300 days per year.<sup>650</sup>
- 9.3.7. This means the modal split would be closer to 80/20 in favour of runway 21 rather than the 70/30 split used by LAA which approximates to the relative wind direction. Departures from runway 21 by both Group 1 and Group 2 aircraft when the Lydd range is active require a right turn which must be executed without infringing the Lydd range danger zone. Differences of opinion remain over the scale of payload restrictions required to enable this manoeuvre. LAA downplays the extent of tail wind landings by maintaining that under the 500,000ppa scenario a maximum of 438 Group 1 aircraft movements would be predicted to land on runway 21 with a tailwind component and that this would only represent 1% of total movements. However, it would represent 19/20% of predicted Group 1 movements.<sup>651</sup>
- 9.3.8. Whilst it is common ground that Group 2 aircraft can operate from the current runway length, LAA fails to appreciate that the other constraints faced by the airport render it unattractive to airlines at present, and that it is up to the airlines to judge whether services would be commercial in the context of the operating environment. London City Airport, which essentially has the same runway length as LAA's existing runway, has operational constraints due to its location yet is successful because it primarily serves high yielding business passengers. This means airlines can

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<sup>648</sup> CD4.4, CD16.16, LAAG/7A Table 2, LAAG/8D Paras 5.9-5.11 & Table 9, LAAG/132 Paras 80-83

<sup>649</sup> LAAG/10A Paras 6.1-6.3, LAAG/10E Paras 2.2-2.10 & Table 2, LAAG/132 Paras 84-86

<sup>650</sup> CD1.24C Para 3.2.5, CD1.34A App 3, CD1.41A Sect 16, CD4.4 Paras 3.19 & 4.9, LAA/3D Para 2.7, LAAG/10A Paras 3.38-3.40, 4.2-4.20, 7.1-7.25, LAAG/10K, LAAG/132 Paras 87-90 & 186

<sup>651</sup> LAA/3D Para 2.6, LAAG/4G Table 5.7, LAAG/10A Paras 7.20-7.21, LAAG/132 Paras 91 & 187-188

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afford to operate with restricted payloads which are required on some routes because of these constraints.<sup>652</sup>

- 9.3.9. There are two more crucial exemptions and special dispensations which LAA must win from the CAA before it can exploit its new runway. These are allowing a Runway End Safety Area (RESA) less than the CAA recommended length, despite the introduction of larger aircraft; and keeping the existing ILS configuration, which directs aircraft to the current runway threshold, even after the runway is extended, requiring pilots to make further manual/visual adjustments in the late stages of their approach. They are both without precedent and against ICAO guidance and there is no indication of CAA's willingness to grant them.<sup>653</sup>
- 9.3.10. LAA has stated that the runway 21 departure RESA would remain at 116m, but this falls short of the ICAO and CAA recommended minimum of 240m. This is because it is restricted by the rail line to Dungeness. Although accepted for current operations, the changes in types and levels of traffic using LAA after the runway extension could lead to the CAA determining that the RESA must conform to the standard length. This would force LAA to reduce the declared take off distances for runway 21 and landing distances for runway 03 reducing the advantages of a longer runway and providing a further constraint on the viability of commercial aircraft operations at LAA. Reference was made to Southampton Airport which has a smaller RESA than LAA at 95m because of the M27 but Southampton does not support B737s/A320s. Overcoming the runway length constraint would not improve the efficiency of the airport proving that the development would not accord with "the best use of existing airport capacity" policy in the ATWP.<sup>654</sup>
- 9.3.11. LAA maintains that the ILS localiser aerial does not need to be moved to accommodate the extended runway. In this case, the ILS localiser would not meet ICAO requirements for a runway threshold located at the northern end of the proposed extension. This could only be overcome by reducing the LDA to below 1799m limiting the availability of the extended runway. It is claimed that this would be overcome by a similar solution to the CAA approved procedure at Sumburgh Airport. However, the Sumburgh ILS meets the ICAO Annex 14 standard that the glideslope/localiser/final approach track intercept height must be at least 180ft above the elevation of the runway threshold. At LAA the height is only 161ft. To meet the 180ft intercept height LAA would ask CAA to raise the Reference Datum Point to 65.9ft but this would not conform to ICAO 10 recommendations. LAA must therefore displace the designated runway threshold which means that less than 1799m of the extended runway would be available, or move the localiser aerial. Since the localiser aerial is located either on or close to the SSSI and SAC, moving it could require additional assessment work.<sup>655</sup>
- 9.3.12. The environmental impacts of the RNAV flight procedures introduced in 2009 are not assessed in the ES as LAA maintains that the RNAV approach procedures to runway 21 would only be used as a back up to the ILS.

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<sup>652</sup> CD4.4 Para 3.19, LAAG/132 Paras 95-96

<sup>653</sup> LAAG/132 Paras 193-194

<sup>654</sup> LAAG/8D Para 8.1 & Table 9, LAAG/10E Paras 2.4-2.10, LAAG/132 Paras 195-197

<sup>655</sup> LAA/3D Para 5.4, LAAG/10A Paras 7.16-7.21 & 7.28, LAAG/10D App 27, LAAG/10E Paras 2.8-2.10 & 2.35, LAAG/10H, LAAG/132 Paras 92-94 & 198-201

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Whilst the ILS on runway 21 would be the procedure of choice, this does not mean that the RNAV procedures would not be used. They exist, are CAA certified and offer material savings in air miles so that there is no reason why airlines should not approve their use. LAA's attempt to refute evidence on the track-mile advantages of the RNAV procedure is counter-intuitive. LAA's reluctance to accept a condition which states that the use of the RNAV approach procedures to runway 21 must be confined to periods when the ILS is out of service, suggests that the procedures would have wider commercial use by airlines.<sup>656</sup>

### **Need**

- 9.3.13. It is accepted that this is a speculative proposal. LAA admits to it publicly and it is recognised in LAA's investment strategy and the conditions proposed. The conditions would require the runway extension to be commenced within three years and the terminal within ten years which does not indicate confidence in the demand for LAA's services, or its plan to renovate and use its existing terminal before building the new one. Whilst this stance is commercially prudent it is obvious that there is insufficient demand to justify investment in a new terminal.<sup>657</sup>
- 9.3.14. This framework gives LAA flexibility to test the market with the extended runway before going ahead with the new terminal with the view to minimising losses should the venture fail. Had there been a need for the development proposal the applications would have been reversed with a modern terminal to replace the old terminal to cater for 300,000ppa and an extended runway with an initial cap of 500,000ppa. This speculative approach to investment is not the norm. The development strategy adopted by Manston, whereby it wins airline business before embarking on an expensive expansion plan, is typical of a more rational approach to investment.<sup>658</sup>
- 9.3.15. The revised forecasts denote the speculative nature of the proposal. LAA is only able to mount a case for a throughput of 500,000ppa by stretching the forecast period to 2030. This signifies hope, rather than evidence of a need for the airport investment. No evidence demonstrates that any airline requires LAA's proposed development. LAA has marketed its facilities and its lack of success since it installed its ILS in 2006 is due to the fact that the proposition is unappealing. It is disingenuous to maintain that the state of the terminal has put potential customers off. Had there been demand, a conditional deal with an airline to improve or replace the terminal could have been negotiated. Trans Euro Air moved to LAA from Southend in 2009 but now appears to be in liquidation whilst a route from LAA to Jersey announced in 2009 has been scrapped due to lack of demand.<sup>659</sup>
- 9.3.16. Kent is well served by a wide range of transport options. It has two airports which are operating at a fraction of their existing runway and terminal capacities. The existing airline based at LAA has not branched out to other

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<sup>656</sup> CD16.5, CD16.6, CD16.12, LAAG/10A Paras 3.5-3.55, LAAG/10J Paras 1.1-1.3, 4.1-4.4, LAAG/13A, LAAG/132 Paras 189-192

<sup>657</sup> LAA/4D Para 3.9, LAA/7A Sect 2, LAAG/8D Paras 4.1-4.7, LAAG/123 p1, LAAG/132 Paras 100-101

<sup>658</sup> LAAG/7A Sect 3.7, LAAG/123 p1, LAAG/132 Paras 102-103

<sup>659</sup> LAA/4G Para 2.29, LAAG/7A Paras 3.3.2-3.3.3, LAAG/101, LAAG/132 Paras 104-107

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routes, indeed its service has been scaled down demonstrating how low the demand is. Manston, Kent's regional airport, is operating at a fraction of its capacity and has facilities that are far superior to LAA's, even after its proposed expansion. It is also operating at a significant loss indicating just how limited the need is for additional runway capacity in Kent. Manston can service both long and short haul routes. It does not have any of the operational constraints faced by LAA and has better supporting road and rail infrastructure. Moreover, it is not surrounded by protected habitats, or located beside a nuclear power station, which despite the Regulator's view, will be regarded by some airlines as unacceptable. There are ferry services and Eurotunnel, with new train services proposed to a wider range of European destinations by both Eurostar and Deutsche Bahn, reducing demand for short haul passenger and air freight services.<sup>660</sup>

### **Fallback Position**

- 9.3.17. If the proposed development is not permitted, LAA proposes scaling back the business to reduce losses and exploring alternatives using the 24hr licence, such as cargo, and diversifications, such as heavy maintenance. The same cocktail of "nasty" alternatives was suggested at the time of the last planning application in 1988. Then, these possibilities were considered to be contrary to the protective aims and the objectives of the development plan because of the adverse impacts on residents and the SSSI. Although permission was granted in 1992 for a runway extension, it was allowed to lapse. Operations were subsequently scaled down and there has been minimal night flying or diversification. LAA's subsequent activity has centred on supporting GA and it has co-existed reasonably well with local residents and the surrounding environment.<sup>661</sup>
- 9.3.18. If the runway extension had gone ahead there would still have been a poor performance over the last two decades as runway length is not the limiting factor at LAA. The restraint on London airport capacity should result in a better future fall back position than that experienced in the past. Passenger services are possible from LAA's existing runway using the smaller Group 2 commercial aircraft types but LAA's current fall back position is dominated by business jet activity, with similar movements under both the developed and fallback scenarios. It is accepted that there would be continued displacement to the shires, but not at anywhere near the rate claimed by LAA. The number of business jet movements per day would be appreciably below the 23/24 movements per day forecast for all scenarios including the fallback position.<sup>662</sup>
- 9.3.19. London would remain the main focus for businessmen and business jets. Lydd, because of its poor location, would continue to be a last resort airport and compete with Manston for local demand. Outside London, Farnborough is the premier business airport and is likely to continue to win material concessions for additional capacity headroom supported by more limited increases at other airports such as Biggin Hill. Longer term, as with the

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<sup>660</sup> CD16.16, LAAG/7A Para 3.6 & Tables 1, 2 & 5, LAAG/120 p3, LAAG/132 Paras 108-112

<sup>661</sup> LAA/4A Para 4.22, LAAG/8D App 2, LAAG/132 Paras 163-166

<sup>662</sup> CD1.41A App 16.5, CD4.4 Table 3.19, LAA/4G Table 5.7, LAAG/132 Paras 168-172

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developed case, any new runway in the London region would work against demand for business jets and other commercial activities at LAA.<sup>663</sup>

- 9.3.20. If it is assumed that LAA's fall back scenario is achieved in 2028, the same year that LAA's slow growth scenario for its developed case achieves 500,000ppa, the compound annual rate of growth of aircraft over 5,700kg, which largely represent the dominant business jets, is 24%. This in itself casts doubt on the fall back projections, since the growth is unrealistically high for such a marginal airport.<sup>664</sup>
- 9.3.21. Activities outside mainstream aviation such as maintenance services and training, including B737 training, have theoretically always been an option for LAA, but have not materialised and are unlikely to in the future. In terms of night flying, residents would not be worse off under the fallback situation as conditions can be changed. Economics indicate that LAA would need to exploit its 24 hour licence to attract business, similar to Manston which is lobbying for night flying to save the airport. Whatever the outcome of these applications there is a risk of night flying.<sup>665</sup>
- 9.3.22. LAA will survive with good management and realistic ambitions since there is a case for an airport supporting largely general aviation. At LAA there has been a reluctance to tailor ambition to likely demand leading to speculative development. That situation occurred in 1988 and is being repeated today.<sup>666</sup>

#### 9.4. **Ecology and Ornithology**

- 9.4.1. To prevent duplication these topics have been dealt with by other Rule 6 parties but LAAG supports and endorses their evidence.<sup>667</sup>

#### 9.5. **Nuclear Safety**

- 9.5.1. Although objections challenging Government policy or a regulatory body are not matters for the Inquiry, LAAG challenges the nuclear regulator's decision not to oppose LAA's applications. Their approval would create an unsafe situation by introducing large aircraft taking off, landing, and performing low level manoeuvres close to a nuclear site contrary to ONR guidelines. As British Energy noted in its letter to SDC "The large scale increase in air traffic around the site is a risk that should be sensibly avoided in the local and wider public interest".<sup>668</sup>
- 9.5.2. The majority of local people support nuclear power but, in the case of nuclear safety, the worst case scenario must be considered due to the longevity of the infrastructure and the severity of the outcome should an accident occur. ONR argues that the nuclear safety assessment should be made on 2mppa, the Masterplan intention, and EDF/British Energy conducted its safety assessment on that basis.<sup>669</sup>

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<sup>663</sup> LAAG/132 Paras 173-174

<sup>664</sup> CD4.4 Para 3.15, LAAG/132 Para 175

<sup>665</sup> LAAG/122 App 1, LAAG/132 Paras 176-177

<sup>666</sup> LAAG/11F Paras 7.7-7.8, LAAG/132 Paras 178-179

<sup>667</sup> LAAG/132 Para 8

<sup>668</sup> LAAG/3J Paras 8-9, LAAG/3B Letter 6 p3, LAAG/132 Paras 5-6, 202-203

<sup>669</sup> LAAG/3B App 1 Letter 1 p3 2<sup>nd</sup> Para & Letter 3 note 1, LAAG/132 Paras 205-207

- 9.5.3. It is a concern that nuclear safety was not a matter highlighted by the SoS. GOSE raised nuclear safety as a concern, having carefully analysed 14,000 letters and technical reports opposing the expansion plans, but this was edited out on the assumption that the nuclear regulator's view must be correct. However, the regulator was misinformed when deciding not to object and that decision has since been overtaken by events. No weight should be given to ONR's decision. Furthermore, ONR has persistently resisted disclosing the details of its quantitative safety assessment of Dungeness B. This can't be for security reasons as the information required to undertake the assessment is in the public domain. ONR has not complied with Article 8 of the Directive (2009/71/EURATOM) which states "Member States shall ensure that information in relation to the regulation of nuclear safety is made available to the workers and the general public".<sup>670</sup>
- 9.5.4. A comprehensive risk assessment requires a multi-disciplinary approach including a number of organisations. There is no single overview creating a potential for nuclear safety to 'fall through the gap'. ONR is not automatically alerted to changes that could affect nuclear safety. CAA approved new flight paths in 2009 but ONR's next review is not until 2014, a 5 year gap when safety might be compromised. In addition, the nuclear and aviation worlds treat go-arounds differently. To CAA they are a single aircraft movement, even if an aircraft goes around two or three times, but in terms of safety each needs to be considered separately as each could leave an aircraft pointing towards the nuclear site.<sup>671</sup>
- 9.5.5. The extent to which airport expansion would increase the risk of a large scale nuclear accident and whether this would be acceptable must be considered. A high level of risk would remain long after the nuclear power stations were closed. All parties agree that risk is defined as the probability of an event weighted by the severity of the consequences. As a large aircraft could crash onto the nuclear site, there must be absolute confidence in the integrity and completeness of any risk assessment and the ability of the various stakeholders to provide long term control of the situation.<sup>672</sup>
- 9.5.6. Even after the tragic events at Fukushima in Japan, LAA maintains that any additional risk to the Dungeness nuclear complex arising from future commercial operations of LAA would be acceptable, and that a severely damaging accident would be most unlikely to occur. LAA's witness has no expertise in radiological consequences of a large aircraft crashing onto a nuclear site, although his work had been looked at by colleagues. In contrast, LAAG's consultant has extensive academic and practical field experience over many years.<sup>673</sup>
- 9.5.7. ESR, ONR's technical adviser, specifically stated, in its 2007 report, that "The risk [of significant radiological release] relates to the impact of heavy military and commercial transport aircraft causing direct mechanical damage to the bioshield and fuelling machine." Whilst a member of ONR staff commented that "significant radiological release does not necessary mean

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<sup>670</sup> LAAG/3A Sect 6, LAAG/8B App 5, LAAG/132 Paras 208-211

<sup>671</sup> LAAG/3A Sect 5

<sup>672</sup> LAA/4A Part 1 & Para 187, LAA/15F App1 Para 7, LAAG/3A Para 24, LAAG/132 Paras 212-216

<sup>673</sup> CD/3.2 App 8 Para 4, LAAG/132 Paras 218-221

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severe” the consultants who did the work make clear that this particular assessment considers the risk of a large radiological release due to an aircraft greater than 5,700kg crashing onto the critical areas of the nuclear site.<sup>674</sup>

- 9.5.8. In respect of light aircraft, which represent 99% of current LAA activity, the ESR report states “Essentially this latter case is based on a light aircraft crash impact being insufficient to cause significant direct damage .....and any damage to other safety critical systems being sufficiently localised and subject to sufficient protection in order for a significant radiological release to be avoided.”<sup>675</sup>
- 9.5.9. The collision energy imparted relates to the mass and impact velocity of the aircraft. Approval of the proposals would introduce a step change in the ‘consequence’ element of the risk assessment as it would introduce regularly scheduled B737s and A320s into the aircraft mix compared to the light aircraft which dominate activity today. Despite this, there has been no analysis by ONR of the structural vulnerability of Dungeness A and B to an aircraft accident, nor has there been an analysis of the consequences of such an accident in terms of the potential number of deaths, both direct and indirect, and the extent of the geographical impact in the UK and elsewhere. This is unacceptable since both the Dungeness A and B designs predate any regulatory necessity to take into account the possibility of crashes of large commercial-sized aircraft.<sup>676</sup>
- 9.5.10. Similarly, ONR has failed to take account of the handling of intensely radioactive spent fuel at the remote railhead at Dungeness. The railway line passes 200m from the end of the runway, yet there has been no assessment of the train or railheads vulnerability to an aircraft crash or an assessment of the consequences, should such an event occur. In a letter to residents ONR explains that it did not evaluate the potential consequences of an accident because it viewed the probability of this event to be “so low”.<sup>677</sup>
- 9.5.11. The starting point of any risk assessment is to establish the magnitude of the consequences and from this determine the allowable frequency. If the outcome is too extreme, there may be a need to reduce the probability to zero. It is inappropriate to assume that the increasing level of accident damage severity is linked to the reducing risk of occurrence of accident frequency. Different flight scenarios would have different probability weightings and there is no methodology to differentiate these. ONR’s assessment is therefore dominated by flight frequency rather than true probability. In any event, the situation has changed as ONR has to assess the potential outcome of such an event at both Dungeness A and B following the disaster in Fukushima.<sup>678</sup>
- 9.5.12. In the absence of an assessment from the ONR, examples of consequence assessments from other sites show that the number of immediate deaths

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<sup>674</sup> CD13.9 p2, & first para, LAAG/4I Paras 57-59, LAAG/132 Paras 222-223

<sup>675</sup> CD4.4 Paras 3.15-3.16, LAAG/3A Para 26, LAAG/132 Paras 224-225

<sup>676</sup> LAAG/3A Sect 1 & Paras 62-67, LAAG/4A Paras 99-148 & Table 3, LAAG/116, LAAG/132 Paras 226-228

<sup>677</sup> LAAG/3B App1 Letter 2 p2, LAAG/4A Table 3 Scenarios 9 & 10, LAAG/4I Para 54, LAAG/132 Paras 229-230

<sup>678</sup> LAAG/3A Paras 62-67, LAAG/132 Paras 232-234



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could be measured in thousands and the number of long term deaths from cancer measured in tens of thousands.<sup>679</sup>

- 9.5.13. Dungeness B is scheduled to cease power generation in 2018 but could have a 5 to 10 year extension. In its response to the applications ONR dismissed Dungeness A on the basis that de-fuelling would be complete by March 2011 and would not overlap with LAA's development. The increased risk was considered to be negligible, a reasoning which is flawed as it fails to consider the long term hazard posed by these early reactors.<sup>680</sup>
- 9.5.14. Just before the Inquiry ONR wrote to LAAG stating "The risks have not been quantified numerically. Instead, the qualitative judgement on Dungeness A is based on the principle that risk at this station, in its current shutdown state is greatly reduced, compared to levels of risk at the station in an operational state (when risks were fully quantified)..... Further, Dungeness A, in its partially defueled, shutdown state, is judged to present less risk than Dungeness B, which is still operational and where the risk has been quantified".<sup>681</sup>
- 9.5.15. ONR now perceives that the older station presents a greater hazard than the active Dungeness B. This is because the decommissioning timetable has slipped. Approximately 50% of the radioactive fuel remains in the reactors and the more exposed fuel ponds remain full. LAAG concurs with ONR's more recent assessment due to the unstable nature of the intensely radioactive spent fuel used in the first generation British Magnox nuclear power stations. The SoS can have little confidence in ONR's comprehension of the case and should not determine the applications until a full nuclear safety assessment of Dungeness A has been provided.<sup>682</sup>
- 9.5.16. LAA's contention that by the time it reaches the throughput of its developed case there will only be a small residual risk is wrong. Firstly, commercial pressures could extend the operation of Dungeness B by up to 10 years. Secondly, even when shut down and with all of the spent fuel removed off-site, Dungeness A and B will continue to present a radiological risk throughout the extended 100 year or so decommissioning phase. This is due to the amount of radioactive and other hazardous substances on site, and the vulnerability of certain irradiated and contaminated parts of the plant to aircraft impact. These structures will remain a hazard until they too are removed from the site.<sup>683</sup>
- 9.5.17. Further, although both Dungeness A and B will remain hazardous after ceasing power generation and being fully de-fuelled, it is possible that Dungeness A will still be considered the greater hazard because of the very large amount of Wigner Energy stored in its twin cores, a feature that is not an issue at Dungeness B. If the Wigner Energy is released it stimulates the release of radioactive particles and residual fission products trapped in the graphite core. Such an uncontrolled release to the atmosphere would be

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<sup>679</sup> LAAG/4A Para 141, LAAG/132 Para 235

<sup>680</sup> CD13.4, LAAG/4A Part 1, LAAG/4H App 1, LAAG/132 Paras 236-240

<sup>681</sup> LAAG/4J App 9, LAAG/132 Para 241

<sup>682</sup> LAA/15F App 18, LAAG/132 Paras 242-245

<sup>683</sup> CD3.2 App 8 Paras 31-35, LAAG/4A Paras 19-75, LAAG/132 Paras 246-249

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sufficient to cause a severe radiological incident with the potential of causing over 100 deaths.<sup>684</sup>

- 9.5.18. The pattern of risk and hazard is likely to change significantly during the decommissioning period for both Dungeness A and B with some periods more hazardous than others, particularly when the reactor cores and operational radioactive waste silos are being adapted for removal. The bodies responsible for Dungeness A and B decommissioning have not determined a final decommissioning strategy for each power station. There is uncertainty over the timing of fuel removal from Dungeness, due to storage problems at Sellafield, and it is possible that considerable volumes of decommissioning waste will remain on site for the next 50-100 years.<sup>685</sup>
- 9.5.19. Thirdly, Dungeness C remains a possibility. The recent NPS statement on Dungeness C includes an invitation to file additional information with a view to ascertaining whether the environmental constraints could be overcome. An expanded LAA could jeopardise this opportunity for long term sustainable employment. If Dungeness C were to be approved, it is likely that construction would begin nearer the end of LAA's forecasting horizon. The new reactor would be designed with more structural resilience than Dungeness A and B, but it would be impossible to proof it against aircraft crash. Moreover, the presence of a new reactor would increase the probability of an accident because of the increased crash target area and the radiological consequences would be greater.<sup>686</sup>
- 9.5.20. The acceptability of the applications has been based solely on the probability of a crash occurring at Dungeness as a result of aircraft taking off and landing at LAA and determining whether this risk, coupled with the background or non airport risk, can be classed as insufficiently remote to be "acceptable". This has only been done in relation to Dungeness B, despite Dungeness A now representing the greater hazard.<sup>687</sup>
- 9.5.21. An understanding of the assessment criteria is necessary to comment on the probability element of risk. The assessment model is not fit for purpose and comparing its outcome with ONR's safety markers has no meaning. In practice, when the consequences could be so extreme one would never rely on a model that cannot accurately predict frequency. The only robust approach is to seek to eliminate uncertainty. However, LAA's own figures would lead to an objection when measured against the thresholds and guidelines that ONR has applied to this case.<sup>688</sup>
- 9.5.22. LAA argues that the probability is below a tolerability criterion of 1 in 100,000 which is its witness's personal interpretation of ONR guidelines and not endorsed. The ESR report clearly states a 1 in 10 million chance of a large radiological release per year was applied to its Dungeness B nuclear safety assessment. If the risks are greater than 1 in 10 million the emphasis is on actively seeking to reduce risk not increase it. This is consistent with ONR's safety guidance which says, where there is a choice,

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<sup>684</sup> LAAG/4D Para 54, LAAG/132 Paras 250-251

<sup>685</sup> LAAG/4A Footnote 31, LAAG/Paras 252-253

<sup>686</sup> LAAG/4A Para 197 & Footnote 28, LAAG/8A Para 8.3.2, LAAG/132 Paras 255-257

<sup>687</sup> LAAG/4J App 9, LAAG/132 Para 258

<sup>688</sup> LAAG/3H, LAAG/132 Paras 259-260

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“The option or combination of options which achieves the lowest level of residual risk should be implemented provided that disproportionate costs are not incurred.”<sup>689</sup>

- 9.5.23. In contrast, LAA applies a safety marker of only 1 in 100,000. This means asking the public to accept that they could be 100 times more likely to experience the outcome of a large aircraft crashing onto the nuclear site each year, than having the winning lottery ticket on a Saturday night. It is hard to see how these odds could be justified, particularly with the backdrop of Fukushima which demonstrates that large scale nuclear accidents can, and do, happen.<sup>690</sup>
- 9.5.24. A one in 10 million safety threshold is itself, too lax. This is because ONR failed to review and reduce the allowable frequencies in the light of the intolerable consequences and known deficiencies in its modelling, a requirement under paragraph 51 of its Numerical Targets guidelines. Letters from the Principal Nuclear Installations Inspector confirm that ONR regarded a large aircraft crash onto the Dungeness nuclear site as having the potential for its highest category accident resulting in more than 100 deaths. ESR should have provided a robust health warning when presenting its analysis to ONR, and recommended an adjustment to the thresholds to take account of the uncertainty in the methodology.<sup>691</sup>
- 9.5.25. It is important to understand what ONR misunderstood, or was not aware of, at the time it took its decision not to object. ONR’s 2008 briefing document states that expansion would only result in a 7% increase in the probability of a large radiological release derived from Lydd based traffic, compared with the ‘current situation’. It implies that this increment relates to the 2mppa of LAA’s masterplan. All parties at the Inquiry agree that LAA currently operates only 234 hazardous movements per year. Approval of the proposals would increase the probability of a large radiological release by around 35 times the current situation for the developed case, rising to over 100 times if LAA were to achieve its master plan. This step change means that the probability of a collision is well over a thousand times greater than ONR’s understanding at the time it took its decision not to object. Equally, for EDF/British Energy to suggest that the increased risk would be small, makes clear that they were labouring under the same misapprehension. This adds weight to British Energy’s view that this is an unnecessary risk which should be sensibly avoided in the interests of public safety.<sup>692</sup>
- 9.5.26. ONR states that the increase in the number of larger commercial aircraft would be offset by a significant decrease in the number of light aircraft and helicopters using the airport such that the overall risk to the Dungeness licensed site would remain unchanged. However, the 2005 baseline shows 54 movements a day by light aircraft whilst LAA’s noise evidence shows over 70 such movements a day. There were 1434 helicopter movements in 2005 including military. LAA now proposes a cap on helicopter movements

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<sup>689</sup> CD13.9 p2 4<sup>th</sup> sentence, LAA/15D Para 2.12, LAA/3H Para 2.6, LAAG/3I Para 4.3, LAAG/4P Paras 27-32, LAAG/132 Paras 261-264

<sup>690</sup> LAAG/132 Para 265-266

<sup>691</sup> LAAG/3B App 1 Letter 1, LAAG/132 Paras 267-269

<sup>692</sup> LAAG/3E Paras 9-15, LAAG/4H App 1, LAAG/4J App 9, LAAG/132 Paras 270-276

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excluding government and military flights. In any event, the ESR risk assessment is based solely on "heavy military and commercial transport aircraft" and does not mention business jets which are planned to grow. Light aircraft are irrelevant and were not included as they do not have sufficient impact to cause a significant radiological release. This implies that ONR does not understand the workings of its own technical advisor and misinformed the Department Of Energy on the scale of risk posed by the applications.<sup>693</sup>

- 9.5.27. ESR derived a crash rate by multiplying a 'crash rate per square metre' by an 'effective target size'. The choice of target size therefore has a huge impact on the crash rate predictions and has the potential to swing it well above any of the suggested safety markers. There are several factors which contribute to the effective target size. It is possible to deduce from the ESR reports that the target size applied is many times smaller than that used by all other contributors. It is not understood how ESR justifies this figure but it results in the presentation of an overly optimistic case.<sup>694</sup>
- 9.5.28. Despite a reference to skidding in ESR's 2007 report, no allowance for this phenomenon was made in the final assessment that ONR used to justify its decision not to object. ESR's report notes that even a conservative estimate of the potential skid distance has the potential to increase the target area, and hence probability of a large radiological release, by a factor of ten. Taking the full potential skid distance increases the target area still further. LAA accepted that quasi-skidding situations could occur where an aircraft flies low across the ground in an attempt to keep airborne. This would increase the potential for an aircraft in trouble to cover significant ground.<sup>695</sup>
- 9.5.29. The ESR 2007 report notes that skidding may be partially mitigated by the presence of non critical buildings on the site. However, it fails to point out that, whilst collision with a non critical building might arrest a skidding aircraft, this action could result in an equally devastating fuel fire. The ESR reports make no reference to fuel fires despite the Byrne model requiring these to be considered. Either way it requires a much larger target size to be assessed resulting in a higher probability of a large radiological release.<sup>696</sup>
- 9.5.30. The assessment was also confined to Dungeness B and excluded Dungeness A meaning the overall target was too small. ONR was misinformed at the time it took its decision as ESR failed to extend the target area to account for these factors.<sup>697</sup>
- 9.5.31. The basis of the Dungeness B safety assessment is the 20 year old Byrne model. This is crash rate based and relies on comparisons with background risk. The database used is small and gives no basis for persisting with low accident rates. ONR reasons that, if the incremental risk posed by development at the airport is small, it has no grounds to object, which is the

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<sup>693</sup> CD1.38 Para 4.5, CD1.41a Apps 16.4A & 16.5, CD4.4 Para 3.15 & App 4, CD13.9, LAA/5C Table NV05, LAAG/4C App 19, LAAG/4G Table 2.1, LAAG/4H App1 pp4-5, LAAG/10E Paras 7.2-7.7, LAAG/132 Paras 277-279

<sup>694</sup> LAAG/132 Paras 280-281

<sup>695</sup> LAAG/132 Paras 282-284

<sup>696</sup> CD13.9 Para 5.2.2, LAAG/3E Paras 64-66, LAAG/3H Para 2.10c, LAAG/132 Paras 283-286

<sup>697</sup> LAAG/132 Paras 287-288

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conclusion it reached based on ESR's technical reports. The background comparator is unreliable and has been overestimated whilst the more relevant airport risk is underestimated. Moreover, the methodology is incapable of accounting for the complex circumstances applicable at LAA and therefore seriously underestimates the possibility of an accident at Dungeness as a result of aircraft taking off and landing from LAA.<sup>698</sup>

- 9.5.32. If extreme events are to be discounted on probability alone, then the basis of that judgement must be absolutely indisputable. The Byrne model does not meet this requirement. ESR has repeatedly cautioned the regulator that the standard model is inadequate and unable to cope with the specifics of this case. Both its 2008 and 2009 reports recommend the development of a new model that does not rely on analysing historical crash rate data as this will always carry the same, inherent limitations.<sup>699</sup>
- 9.5.33. In the absence of a new model ESR attempts, in its 2009 report, to overcome these shortfalls by using a range of models. None of them are any better developed than the original. Indeed, ESR had previously dismissed them as inadequate. Moreover, ESR admits in its October 2010 report that the failure of the Byrne model to account for site specific factors means that its assessment may have underestimated the risk. However, ESR did not have the resource for any further numerical assessment.<sup>700</sup>
- 9.5.34. The Byrne model is incapable of dealing with non-aligned or curved flight paths. When the Lydd Range is active and the wind favours runway 03 the only available instrument approach to LAA involves a curved flight path. Furthermore, all the other instrument approaches to LAA require a final flight path which is not aligned with the runway.<sup>701</sup>
- 9.5.35. A cut off point 3.25 km beyond the runway means that the numerical assessment has failed to consider any landings on runway 21, putting them all to zero. ESR admits this is a limitation. Indeed, 1 in 6 crashes occur beyond this point. Since runway 21 would account for around 95% of commercial air transport landing movements at LAA, this means there has been no account of the risks associated with LAA's most active runway direction in ESR's risk assessment.<sup>702</sup>
- 9.5.36. Furthermore, in its 2007 report ESR states that if it can be proven that there are a higher number of go-arounds at LAA, then the standard model will underestimate the probability of a large radiological release. CAA's director of safety regulations confirmed that the combination of conditions at LAA is conducive to a higher number of go-arounds from runway 21. A fact accepted by LAA. This implies that the model would have underestimated the risk posed by go-arounds had they been counted.<sup>703</sup>
- 9.5.37. Worse still, ESR fails to recognise that by artificially putting all of the landings on runway 21 to zero, it has put all of the go-arounds to zero. None of these movements, which have the potential to carry the aircraft

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<sup>698</sup> LAAG/3A Paras 44-53, LAAG 3E Paras 67-79, LAAG/3G, LAAG/5A Para 6.1, LAAG/132 Paras 289-291

<sup>699</sup> LAAG/4A Para 187, LAAG/5A Sects 2 & 4, LAAG/132 Paras 292-293

<sup>700</sup> CD13.9 p15, CD3.10 Para 3.2.3, LAA/15F.1 p2, LAAG/132 Paras 294-295

<sup>701</sup> CD13.9 p15, CD13.10 Paras 3.2.1-3.2.2, LAAG/10A, LAAG/10E Paras 7.8-7.13, LAAG/132 Para 296

<sup>702</sup> LAAG/3E Paras 37-54, LAAG/132 Paras 297-298

<sup>703</sup> LAAG/3B App 1 Letter 4 p2, LAAG/3E Paras 47-54, LAAG/132 Paras 299-300

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closer to the nuclear site, have been considered. Go-arounds, particularly failed go-arounds, increase the probability of a nuclear accident as they have the potential to carry an aircraft closer to the power stations than a normal landing. If a crash were to occur, it would be more likely to be on to the nuclear site. A principle failing of the model is that it assigns the same probability weighting to all flight movements and has no way of numerically assessing this higher risk profile.<sup>704</sup>

- 9.5.38. The model cannot account for birdstrike, not even on a notional average basis as claimed by ESR, since the risks associated with the dominant runway 21 approaches are excluded. The 2010 ESR report that addresses the issue of above average bird strike risk at LAA is flawed. It relies on an estimate that tries to relate the probability of a crash at Lydd to the number of crashes due to birdstrike elsewhere in the UK. However, CAA states that "There is no proven mathematical model relating to the probability of a birdstrike incident at a given airport". If the hazard cannot be modelled it cannot be a subset of any other model. Despite this, ESR failed to make any attempt to understand the bird hazards in the vicinity of LAA.<sup>705</sup>
- 9.5.39. A thorough desk top analysis of all the available information on the types of hazardous birds and their movements in the vicinity of LAA and Dungeness should have been carried out so that it could relate bird movements to aircraft flight paths and investigate possible accident scenarios. ESR justifies its stance on the basis of the historic bird strike record at LAA. Whilst this is unexceptional, this is because 99% of current aircraft activity at LAA is accounted for by light aircraft which have low strike rates as they are slow and present a small cross section giving birds the opportunity to avoid them. This would not be the case for larger jet aircraft.<sup>706</sup>
- 9.5.40. LAA's ability to control birds outside its perimeter fence is limited. The airport is separated from the Dungeness site by the RSPB Reserve and elsewhere there are farmers who are hostile to LAA's development. NE makes clear that the western boundary of the Reserve, the SPA and pSPA contains a mosaic of habitats with a range of birds throughout the year, including birds with unpredictable behaviour. Even if LAA were free to "control" these birds, their unpredictability would make it very difficult.<sup>707</sup>
- 9.5.41. Tensions between an airport operator needing to control birds, and organisations wishing to preserve birds, particularly where European Habitats are concerned, could lead to safety compromises. This is because bird hazard management methods must be compatible with the objectives of the European designations. Indeed, the replacement text in the revised AA compiled at the Council meeting states that bird hazard management techniques would be curtailed to protect the SPA and that this would be written into the conditions.<sup>708</sup>
- 9.5.42. LAA accepts that the BCMP is not influenced by features outside the airport and the same techniques would be applied irrespective of whether there was

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<sup>704</sup> LAAG/3B App 1 Letter 4 p2, LAAG/132 Paras 301-303

<sup>705</sup> LAAG/3A Paras 90-97, LAA/15F.1 p8, LAAG/132 Paras 304-306

<sup>706</sup> CD1.33d Para 2.1.3, CD4.4, LAAG/132 Paras 307-308

<sup>707</sup> NE/3A Paras 213-220, NE/103, LAAG/3D, LAAG/132 Paras 309-310

<sup>708</sup> CD1.53 Para 4.3.11, LAAG/3A Paras 78-82 & 101-111, LAAG/132 Paras 311-313

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a furniture warehouse or a nuclear power station at Dungeness. This is unlikely to be the rigour compatible with maximising safety at Dungeness. ESR states that if its assessment of bird strike risk is incorrect, the Regulator would be forewarned by the crashes that take place near the airport and would be alerted to the problem before a nuclear catastrophe were to occur. This is gambling with human lives and the environment.<sup>709</sup>

- 9.5.43. In 1988 ONR's predecessor required an agreement to prevent movements involving a left turn other than those by aircraft on a visual circuit. Now all aircraft under 5,700kg would be allowed to turn left although the reason for the change is not clear. The perception that accidents would always be close to the airfield demonstrates that ESR has not accounted for integrated risk and the possibility that a chain of events, such as a failed go-around, a pilot diverting left to avoid the military range, bird strike and engine failure, could lead to an accident at Dungeness. Indeed, each of the ESR reports demonstrates this point. Risks are rationalised away rather than considering how they might interact with each other to create a situation where the total risk is greater than the sum of the parts.<sup>710</sup>
- 9.5.44. These factors underline the extent to which airport related risk has been underestimated in this case. LAA acknowledges that the Byrne model is unable to account for site specific factors but asserts that site specific factors would be unlikely to increase the probability of a collision more than 18 times, the figure that would take it over its own safety marker. This assertion does not stand up to scrutiny. LAA admits that it is not possible to assess the impact of site specific factors in a numerical assessment. It was unable to define what proportion of the risk is known and what is unknown. Indeed, neither LAA nor ONR know by what factor these site specific factors would increase the probability of an accident.<sup>711</sup>
- 9.5.45. ESR/ONR assert that Dungeness is more at risk from aircraft crashing during their en route phase than from large aircraft taking off or landing at LAA. However, ESR failed to take account of systematic biases in the Byrne model. The analysis is flawed as: all four of the data points in the background crash rate database for large aircraft have been wrongly assigned; ONR's model contains systematic biases that underestimate the ratio of airfield to background crash rates; and it fails to recognise that Lydd based traffic is subject to the unpredictable and unquantifiable risk posed by birdstrike which is not an issue for aircraft flying overhead.<sup>712</sup>
- 9.5.46. LAAG has undertaken new calculations for Lydd using accident rates based on broader UK and US databases. A case can also be made for increasing these rates to allow for bird strike and to account for go-arounds. The results demonstrate that an acceptable level of safety would not be achieved.<sup>713</sup>
- 9.5.47. Having considered the step changes in consequence and probability separately, the overall increase in risk must be assessed. Care must be

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<sup>709</sup> LAA/15F.1 p9, LAAG/132 Paras 314-316

<sup>710</sup> LAA/15F.1 pp5 & 9, LAAG/3A Paras 44-47 & 68-75, LAAG/10A Paras 6.12-6.19, LAAG/132 Paras 317-318

<sup>711</sup> LAA/15D Para 3.13, LAAG/132 Paras 319-320

<sup>712</sup> LAAG/3A Paras 48-54, LAAG/3E Paras 15-18 & 69-79, LAAG/132 Paras 321-323

<sup>713</sup> LAAG/5A Sect 5 and Para 6.3

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taken in respect of the claimed fallback position. History suggests that LAA's inflated fallback numbers are no more than a ploy to make the incremental environmental and nuclear safety effects look small. There would be some increase in activity of aircraft weighing more than 5,700kg under the fallback position but considerably less than that forecast by LAA, and there would be no B737 and A320 aircraft undertaking commercial transport movements.<sup>714</sup>

- 9.5.48. There would not be uncontrolled activity at LAA under the fallback position. Any excessive build up in airport activity, including B737 training, would trigger an AA under the Habitats Regulation due to possible adverse impacts on European designations and/or ONR's need for a revised safety case given the inherent dangers of training in large aircraft close to a nuclear power station. Even if LAA did achieve its forecast fallback position, the overall combined risk would be higher in the developed case. The modelling cannot differentiate between the outcome of a large Boeing 737 crashing onto the nuclear site, as opposed to a BAe 146 or a business jet. The bias towards large aircraft in the developed case poses a greater threat to public safety, not only because of the number of aircraft movements, but because of the higher consequences should an accident occur.<sup>715</sup>
- 9.5.49. In reality, ESR has no mechanism for managing problems long term. Government departments and other organisations have not shown co-ordination. New RNAV flight paths, which have the potential to increase the probability of a collision at Dungeness, were approved by the CAA without recourse to the ONR during 2009. Similarly, EDF/British Energy is not party to the bird hazard management proposals currently under discussion with the RSPB, NE and LAA.<sup>716</sup>
- 9.5.50. An example of an issue being overlooked is the railhead at Dungeness where intensely radioactive spent fuel, and possibly in the future radioactive waste, is dispatched. The railhead is ignored by ONR since it is not part of the licensed site, despite the handling of radioactive material. It is disregarded by the Office of Civil Nuclear Security, despite being a potential terrorist target, and ignored by the Department for Transport, despite severe potential consequences being highlighted.<sup>717</sup>
- 9.5.51. These problems could not be remedied at a later date. LAA's suggestion that mitigation could be provided through design, licensing, good practice or control is wrong. The manoeuvres posing a threat are a result of the close proximity of the sites. The restricted flying zone around the nuclear site offers no protection as it cannot physically stop an aircraft heading towards it. ESR's 2007 report states "Given the location and orientation of the runway relative to the nuclear site there are practical limits to the separation achievable during take off and landing operations". It concludes "In summary we identify no obvious scope for implementation of operational procedures that would mitigate the risk of aircraft crash at the Dungeness nuclear site".<sup>718</sup>

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<sup>714</sup> LAAG/324-326

<sup>715</sup> LAAG/132 Paras 327-329

<sup>716</sup> LAAG/10E Paras 7.15-7.16, LAAG/132 Paras 330-331

<sup>717</sup> LAAG/4A Table 3 Scenarios 9 & 10, LAAG 4D Footnote 9, LAAG/132 Paras 332-333

<sup>718</sup> CD13.9 p31, LAAG/132 Paras 334-337



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- 9.5.52. There has been no assessment of an airborne terrorist attack, which is likely to have more severe consequences than an airborne accident as terrorists would seek out the most vulnerable parts of the plant. ONR regards terrorist attacks as not “reasonably foreseeable”. This contradicts the Government’s opinion that “There is sufficient information in the public domain to identify possible ways terrorists might bring about a release of radioactive material from a nuclear facility.”<sup>719</sup>
- 9.5.53. ONR eventually produced a demographic siting assessment and concluded that it felt no need to change its position on demographics with regard to the applications. This conclusion is undermined as the assessment was based on a throughput of 500,000ppa as opposed to the 2mppa that British Energy used for its safety case for Dungeness B. Prudence should have dictated an assessment to 2mppa given the risks of Dungeness A due to fuel remaining on site, the operational life of Dungeness B, the continued decommissioning risks of both reactors even when fuel is removed from site, and the continued possibility of Dungeness C.<sup>720</sup>
- 9.5.54. Since the population commensurate with 500,000ppa is considered by ONR to be at the outer limits of acceptability, it was disingenuous of the Regulator to only make an assessment on a daily average population corresponding to 500,000ppa. It took no account of the inevitable, and likely sizeable, seasonal peaks that would occur at LAA; no account of daily scheduling peaks; and no account of the sizeable congestion scenario due to events such as the Icelandic volcanic ash incident.<sup>721</sup>
- 9.5.55. Due to the different characteristics of the remote railhead and outward railway track, and the presence of considerable quantities of intensely radioactive spent fuel, a separate assessment should be made for this system. This would result in a more significant uptake of the reserve capacity for future residential development in the Lydd and New Romney areas.<sup>722</sup>
- 9.5.56. Fukushima demonstrated that even if a reactor copes with an external event, other factors can cause a radiological release. Consequently all 143 nuclear power stations in EU Member States are to be subject to ‘stress tests’ which are to include events such as ‘airplane crash’. A progress report was due in mid August and a final report by 31 October 2011. The results are to be peer reviewed and a final report published in June 2012. ONR did not choose to provide further information on the relevance of this reassessment but LAAG considers that the SoS should not make a decision on these applications until the final report is published.<sup>723</sup>
- 9.5.57. The probability of a large scale nuclear accident due to Lydd based traffic has been grossly underestimated in the developed case and the background crash rate is overestimated. ONR was misinformed when it took its decision not to object to LAA’s planning application based on the safety assessment of Dungeness B and failed to discharge its duty as a Regulator by not

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<sup>719</sup> LAAG/4A Paras 105-132 & 190-193, LAAG/132 Paras 338-339

<sup>720</sup> LAA/15F App 18, LAAG/3B APP 1 Letter 1 p3, LAAG/127, LAAG/132 Paras 340-341

<sup>721</sup> LAA/15D Para 6.21, LAAG/127 Annex A, LAAG/132 Para 342

<sup>722</sup> LAAG/4D Paras 48, 65-67, 103 & Table 3, LAAG/132 Para 343

<sup>723</sup> LAAG/128, LAAG/132 Paras 344-348

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undertaking an assessment of all hazards at Dungeness and choosing not to disclose relevant information to the Inquiry. In any event, its position is outdated given its change of view on the safety status of Dungeness A and the regulatory repercussions of the Fukushima incident.<sup>724</sup>

9.5.58. ONR failed to follow the HSE's safety guidelines by not adopting a consequence based approach in the light of the high degree of uncertainty. As ONR's original recommendation cannot be relied on, it is necessary to look to the HSE. The relevant guidelines are:

- i) a precautionary approach erring on the side of caution where the safety of the public is concerned;
- ii) a consequence based decision in situations where the outcome is extreme and the probability of the event is uncertain. HSE guidelines state "where there is a high degree of uncertainty about likelihood it is assumed that the event will be realised by focusing solely on the consequences"; and
- iii) to set up situations which are inherently safe.<sup>725</sup>

## 9.6. Socio-Economic Matters

9.6.1. LAA and SDC argue that Shepway is a deprived area in need of regeneration with slow economic growth, high unemployment and long-term contraction of established industries. That fails to differentiate between the status of Romney Marsh and the other areas within Shepway. Unemployment on Romney Marsh, the area most likely to benefit from the airport, is considerably lower at 3.1% than in Folkestone where the rate is 6.8%. Within Romney Marsh there are also variations, with Lydd showing the highest unemployment level of 4.3% and New Romney Coast the lowest at 1.3%.<sup>726</sup>

9.6.2. No attempt has been made to put the proposals into context either quantitatively or qualitatively. It has been characterised as the answer to the employment needs of the area but no attempt has been made to outline other areas of employment that have helped compensate for the loss of the traditional industries, and will continue to do so. Nor has there been any attempt to assess other trends that could lead to increasing wealth in the area such as changing trends in the leisure industry, the growing impact of the retired population, and the rise in home working.<sup>727</sup>

9.6.3. The loss of Dungeness C would mean the loss of at least 400 highly skilled jobs on site as well as additional offsite employment, plus 1500 construction jobs. The latter compares to 320 construction jobs as a result of LAA's proposals. Despite the scaling down of employment as Dungeness A is decommissioned the nuclear site continues to be important. There is no explanation of why pockets of unemployment would be eradicated by an expanded airport when they have remained in place while the Dungeness

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<sup>724</sup> LAAG/132 Paras 349-350

<sup>725</sup> LAAG/3I, LAAG/3J, LAAG/132 Paras 351-353

<sup>726</sup> LAAG/8D Paras 3.1-3.11 & Table 2, LAAG/132 Paras 113-114

<sup>727</sup> LAAG/8D Tables 5, LAAG/8G Para 3.4, LAAG/132 Para 115

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complex was a materially larger on and off site employer than LAA would ever be.<sup>728</sup>

- 9.6.4. The low level of young people is highlighted by SDC. This is to be expected in a rural area. It cannot furnish jobs for all its young people, a factor common to other areas. Romney Marsh is in an inherently better position to retain a higher proportion of its young people than other rural areas as it has leisure and green tourism interests centred on the attractions of both the seaside and Romney Marsh itself. It also benefits from the proximity of Ashford where unemployment is considerably lower than in Shepway.<sup>729</sup>
- 9.6.5. Wider public needs have been overlooked. Romney Marsh has some of the most productive agricultural land in the UK, sandy beaches and at Dungeness some of Europe's most unique natural habitats. The creation of a regional airport would lead to urbanisation of the rural area over the longer term, compromising its ability to produce food and to provide leisure for residents both within and outside Romney Marsh. It is in the national interest to maintain Romney Marsh as a rural area.<sup>730</sup>
- 9.6.6. LAA's economic evidence has been revised in terms of the build up in passenger numbers over time and fleet mix. Although the timing is more realistic the fleet mix, which dictates the number of movements and thus the effects, is no more accurate than that portrayed in the original ES. LAA accepts that forecasts require changing every 2-3 years but has failed to account for the smaller aircraft replacement programme at Flybe, an airline suited to LAA, and the full operational constraints on larger aircraft at LAA. Weight should be given to all the evidence dependent on aircraft fleet mix produced in relation to LAA's applications, not just the evidence before the Inquiry.<sup>731</sup>
- 9.6.7. LAA's employment claims have not been proven but even if it achieved a throughput of 500,000ppa, its ability to generate employment depends firstly on the rate of employment per unit of output, which it is agreed has been declining due to the impact of low cost operators, and secondly on the adverse impact the development would have on employment in established businesses. SDC agrees with LAAG's assessment that direct employment would be around 350 jobs per million passenger throughput rather than LAA's 500. LAA's expansion has the potential to result in job losses that exceed the total employment generated by its development. It therefore has the potential to destroy wealth. Once the infrastructure is in place this could occur regardless of the throughput in the time horizon under consideration.<sup>732</sup>
- 9.6.8. It is assumed that LAA and Manston would grow in unison. However, Manston does not face the same constraints as LAA and has greater capacity. Airlines want the flexibility to introduce larger aircraft and Manston offers the longer runway. LAA suggests wooing airlines with route

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<sup>728</sup> LAAG/8A Sect 8.5 & Table 19, LAAG/132 Paras 116 & 152

<sup>729</sup> LAAG/8G Table 4, LAAG/132 Paras 117-118

<sup>730</sup> LAAG/132 Paras 119-120

<sup>731</sup> LAA/4A Para 5.36 & Table 5.6, LAA/5C Table NV01, LAAG/8D Paras 4.5-4.7, 5.12-5.15 & 8.0-8.1, LAAG/10A Paras 4.38 & 7.41, LAAG/132 Paras 122-125, Mr Perkins XX Day 20

<sup>732</sup> LAAG/8A Paras 5.5-5.5.2, LAAG/8E Paras 3.1-3.5, LAAG/8F Para 2.2, LAAG/132 Paras 126-129

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development subsidies but this is commercially unsustainable. In any event, airlines would weigh such incentives against the possible costs of pay load restrictions and diversions to other airports. Manston is owned by a company with the resources to match LAA and which also owns Prestwick Airport which would enable it to offer package deals. These factors suggest that Manston will remain the airport of choice for airlines. LAA's witness forecasts Manston employing 2000 people directly by the end of the decade with the help of night flying based on 2mppa. This compares with a forecast for LAA of 210 gross jobs by 2024 under the high growth scenario for a throughput of 500,000ppa.<sup>733</sup>

- 9.6.9. In terms of displacement from constrained London airports, it is Gatwick that has the dominant market share in LAA's catchment area. Gatwick has good motorway links to the relevant LAA catchment and LAA's prospects of competing successfully are poor. Gatwick has additional headroom created by the recession. Capacity could be increased by using larger aircraft, decreasing turnaround times, and winning increased night quotas. The policy not to add new runways in the London area could change with a change in Government due to pressure from interest groups. Indeed, the SoS accepts the likelihood of a new runway at Gatwick. The result of these factors is that LAA would gain some benefit from displacement but would continue to be a last resort airport. Any benefits would be likely to come later in the time span considered by LAA resulting in passenger throughput being lower than projected.<sup>734</sup>
- 9.6.10. Even if LAA achieved a throughput of 500,000ppa it would remain loss making and only generate 200/210 gross jobs by 2024/2028 under the lower and higher growth rate scenarios. This is equivalent to only 130/140 jobs, net of current employment, and represents a rate of job accumulation of 8 and 11 per year under the two scenarios. This compares with 300 jobs created by a new Sainsbury's supermarket in Hythe.<sup>735</sup>
- 9.6.11. LAA and SDC have not addressed the negative consequences of the development. There would be adverse impacts, particularly on caravan parks located under the flight path. Due to operational restrictions around 95% of the larger aircraft could approach on a flight path that tracks along the coast where the majority of the caravan parks are located. The prospect of things getting worse would reduce their attraction so that a decline could be immediate. Their contraction would have a multiplier impact on the rest of Romney Marsh because the people that holiday at these parks spend freely on local services.<sup>736</sup>
- 9.6.12. If LAA was established as a regional airport it would be viewed as a potential hazard replacing the constraints of the *Habitats Regulations* as a reason for Dungeness C not being approved. This situation could arise, either through the ONR, or should the ONR approve Dungeness C, from European intervention. Article 41 of the European Treaty would allow the

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<sup>733</sup> LAA/4A Paras 5.4-5.5 & 5.41, LAAG/8A Paras 6.0-6.2.3, LAAG/8D Para 5.15, LAAG/8E Sect 3 p6, LAAG/132 Paras 130-133

<sup>734</sup> LAA/4A Fig 5.1, LAA/4D Fig 4.1, LAA/111 Paras 10,11,16,18 & 27, LAAG/8A Para 8.1, LAAG/8D Paras 4.A1-4.A5, LAAG/132 Paras 134-138

<sup>735</sup> LAAG/8A Para 8.0, LAAG/132 Paras 139-140

<sup>736</sup> SDC/3A Para 8.4, LAAG/8A Para 8.1, LAAG/8E Paras 4.1-4.5, LAAG/132 Paras 141-143

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European Commission to assess the status of LAA as a hazard to the nuclear power station. If the Commission's view differed from that of the UK regulator this could lead to Dungeness C's withdrawal.<sup>737</sup>

- 9.6.13. Article 8 of the European Directive (2009/71/EURATOM) has only recently been incorporated into UK law. It obliges the ONR to be more transparent in its dealings with the public. This offers opponents of LAA's development the opportunity to seek redress in Europe over the ONR's lack of transparency over its decision not to oppose LAA's development. If LAA's development proceeds and a similar exercise occurs at the time an application for Dungeness C is submitted, any revelations over safety due to the ONR's failure to recognise LAA as a hazard could put the proposed development of Dungeness C at risk.<sup>738</sup>
- 9.6.14. Any assessment must allow for future possibilities given the longevity of the infrastructure and the Airport's ambition, so that even if LAA is not successful commercially in its first few decades, this does not mean it would be ruled out as a hazard and potential threat to Dungeness C. LAA's intentions are clear in its Masterplan. Its new infrastructure would give it the potential to realise its objectives over many generations. In recognition of these factors EDF/British Energy based its Dungeness B safety case on LAA's objective of a throughput of 2mppa.<sup>739</sup>
- 9.6.15. The imbalance between outbound and inbound tourists can't be dismissed on the basis of the redistribution of traffic between UK airports. LAA's expansion would facilitate growth in air travel generally. The Exchequer is concerned with the overall costs and benefits to UK plc not how employment is distributed within the South East. To focus only on inbound tourists is misleading, as is the inclusion of UK domestic visitors. Using data from LAA and adjusting for a 2:1 ratio in favour of outbound relative to inbound, there would be a loss of 23 jobs to overseas territories for a throughput of 500,000ppa. The deficit might be higher at LAA as traffic is likely to be outbound based as the airport is too far removed from major tourist and business centres. Of the 130-140 net jobs created at least 23 must be subtracted for the export of jobs overseas with further reductions due to the adverse impact on the leisure industry and the possible loss of 400 jobs from the abandonment of Dungeness C.<sup>740</sup>
- 9.6.16. LAA's benefit analysis of journey time savings takes no account of possible subsidies for car parking and/or attracting airlines with lower fares so that people would by-pass a closer airport and make an extended car journey to LAA. Similarly, LAA's assessment of the wider economic benefits is overstated. Kent has good connectivity for businesses as a result of the Channel Tunnel, the fast rail services, the motorway structure and its two underutilised airports.<sup>741</sup>

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<sup>737</sup> LAAG/8A Paras 8.3.4 & 8.4.2, LAAG/8B App 4, LAAG/132 Paras 144-147

<sup>738</sup> LAAG/8A Para 8.4.3, LAAG/8B App 5, LAAG/132 Paras 148-149

<sup>739</sup> LAAG/3B App 1 Letter 1 p3 2<sup>nd</sup> para, LAAG/8A Para 8.4.1, LAAG/132 Paras 150-151

<sup>740</sup> LAA/4D Para 5.19, LAAG/8A Para 8.2, LAAG/8B App 3, LAAG/8D Paras 9.4-9.11, LAAG/119, LAAG/132 Paras 154-157

<sup>741</sup> LAAG/132 Paras 158-159

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9.6.17. An external consultant's report for SDC states that LAA would not fundamentally alter the district's future economic direction or generate significant additional demands for employment land. SDC's Employment Land Review considers that the majority of spin-offs would be accommodated within the airport site, but the *Habitat Regulations* and ONR's demographic siting assessment constrain on site development and the ability to generate employment from additional on site businesses.<sup>742</sup>

## 9.7. Planning

9.7.1. Whilst the ATWP gives in principle support to smaller airports in the South East, LAA has not demonstrated that there is support for it after other selection criteria in the ATWP are taken into account. Environmental considerations are important at LAA as the airport is in one of the most ecologically sensitive areas in Europe and less than 3 miles from a nuclear power complex, where an accident could have significant consequences. The reference to LAA in the ATWP refers to the airport's ambition. It is not a policy direction and whilst LAA could contribute to regional development, it would only be through meeting local demand.<sup>743</sup>

9.7.2. The ATWP's foreword states "Our starting point is that we must make best use of existing airport capacity". The ATWP specifically refers to runway capacity in the south east "Our main priority is to make the best possible use of the existing runways at the major South East airports. Making best use of existing runways in the South East will provide some much-needed additional capacity."<sup>744</sup>

9.7.3. LAA's view that making 'best use' does not preclude the development of additional runway capacity is wrong as the context in the ATWP is airports that need increased capacity. The notion that "best use" must be read in the context of best meeting demand in terms of attracting airlines to operate services required locally is illogical. Whilst there is no sequential test, one is implied in the foreword's statement otherwise there would not be any point in making it. Lengthening runways and building new terminals add to capacity. The current terminal has a capacity of 300,000ppa and the runway capacity far exceeds this throughput, yet the airport's current throughput is less than 1000ppa. The ATWP identified that LAA has an estimated capacity of 125,000ppa. The highest utilisation of that estimated capacity since 1992 has been 3.7%. There is plenty of scope to make best use of existing capacity.<sup>745</sup>

9.7.4. The *Future of Air Transport* Progress Report states that "The first priority is to make the most of the UK's existing airports through a process of improvements and modernisations", which is wholly consistent with the aim of making best use of existing airport capacity. LAA could modernise its existing underutilised 300,000ppa capacity terminal, to better exploit its existing runway without adding to physical infrastructure. Claims that the inability of LAA to attract airlines is due solely to runway length defies

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<sup>742</sup> LAA/15D Para 6.21, SDC/3A Para 5.29-5.31, LAAG/8A Para 5.5.3, LAAG/8B App 2 Paras 3.2.9-3.9 & Conc, LAAG/127 Annexe A Para 6, LAAG/132 Paras 160-161

<sup>743</sup> CD5.24 11.98-11.99, LAAG/9A Sect 2, LAAG/132 Paras 72-73

<sup>744</sup> CD5.24 Foreward & Paras 11.6-11.7, LAAG/9A Sect 2, LAAG/132 Paras 74

<sup>745</sup> CD1.41A Para 16.1.2, LAA/4A Para 3.4, LAA/4D Para 2.25, LAAG/9A Sect 3.1, LAAG/132 Paras 75-77

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analysis. Consequently, overcoming this restraint would not accord with “the best use of existing airport capacity” policy in the ATWP.<sup>746</sup>

- 9.7.5. The new ATWP is only at the scoping stage and questions are being asked about the extent to which regional airports can absorb some of the demand from constrained London airports. It does not follow that all airports located in the regions will be given policy support as some will be deemed more suitable for expansion than others. Respondents to the consultations behind the transport section of the RSS will be giving broadly the same advice in the consultations for the new ATWP. There is, therefore, a strong possibility that Southampton and Manston will be the preferred regional airports in the south east since there were good reasons to support them over other airports. The restraint on further expansion of London’s airports was announced after the adoption of the RSS but this does not change the suitability of airports for expansion.<sup>747</sup>
- 9.7.6. The SoS in his decision on Little Cheyne Court Wind Farm states “Support for the Airport’s development is given in principle, subject to relevant environmental considerations. The White Paper offers no greater encouragement than that”.<sup>748</sup>

#### **The 1992 Call-in Decision**

- 9.7.7. The 1992 decision should not be a material factor in determining the current applications due to the scale of change since. Whilst the 1992 application was for a runway extension of essentially the same length as the current application, the previous scheme did not include a new terminal.<sup>749</sup>
- 9.7.8. There have been a number of operational changes since 1992. These include the introduction of offset ILS and RNAV procedures as a result of an increase in height restrictions above the Hythe and Lydd military ranges. Whilst LAA maintains that the RNAV procedure is a back up to the ILS, it reduces the distance and fuel used and could be chosen by pilots when weather permits. There is a new restriction around the nuclear power stations of 2nm radius and 2,000ft height, although the airport has been granted the dispensation that aircraft taking off and landing can fly within 1.5nm. The instructions to pilots relating to the use of the airspace above the military ranges has changed from “Active 08:00-23:59 local and when notified” to 24 hours a day. A new wind farm with 26 turbines has been established at Little Cheyne Court around 7.5 km from the airport.<sup>750</sup>
- 9.7.9. The low cost airline business was a fledgling industry in 1992. It has since burgeoned, improving productivity and reducing the number of jobs generated at airports per unit of output. These airlines also require access to 24 hour flying to maximise fleet utilisation which would be incompatible with the proposed restriction of night flying between 2300 and 0700 hours. The Channel Tunnel opened in 1994 and has provided competition with 250 million passengers in the last 16 years. This helps to explain the poor

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<sup>746</sup> CD5.25 Para 1.12, LAA/4D Para 2.28, LAAG/132 Paras 78-79

<sup>747</sup> LAAG/132 Paras 97-98

<sup>748</sup> LAAG/9A pp6 last 2 paras

<sup>749</sup> LAAG/6A Sect 4

<sup>750</sup> LAAG/6A Para 1.2 & Sect 3.2, LAAG/132 Para 42

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performance of both LAA and Kent International (Manston) airports and means that there is a reduced need for additional airport capacity in Kent. Manston changed from a combined RAF and civilian airport to wholly civilian in 1999 but has struggled and remains loss making.<sup>751</sup>

- 9.7.10. LAA maintains that the SoS gave appropriate weight to the potential classification of the SPA at the time of the earlier decision and concluded that any detrimental effect upon the birds would not be significant. However, LAA accepts that the SPA and SAC have been introduced since 1992. Since then legal protection given to the SPA has toughened and the applicable tests differ. In addition, areas designated as SSSIs on Romney Marsh were amalgamated and expanded in 2006, whilst a National Nature Reserve was created in 1998. There is also a proposed extension to the SPA and a proposed Ramsar site.<sup>752</sup>
- 9.7.11. Since the 1992 decision Dungeness A has ceased power generation and is being decommissioned whilst Dungeness B is due to generate until 2018 but may be given a 5 year extension. Neither the operator nor the Regulator objected in 1992 but in relation to these applications the new operator of Dungeness B has objected on crash safety grounds although the Regulator has not. There is also a greater awareness of airborne terrorism since the September 11, 2001 attacks in the United States, and an increased awareness of danger from external hazards to nuclear power stations, be they natural or man made, as a result of the recent Fukushima Daiichi nuclear incident. No weight can be given to the SOS's previous decision because there has been too much change in context.<sup>753</sup>

## 9.8. Other Matters

### SDC's Handling of the Applications

- 9.8.1. LAAG accepts that Council Members have the legal right to override their planning officers' recommendations, but not when that entails a blatant disregard for local people's views.<sup>754</sup>
- 9.8.2. This was not an ordinary application for SDC as the decision relied heavily on European legislation which is more robust than the legal framework normally encountered by Members. If the AA required under the *Habitats Regulations* determined there were adverse impacts, or LAA was unable to prove that there would not be any adverse impacts, on the designated sites then Officers were required to recommend refusal and Members had to vote against the applications.<sup>755</sup>
- 9.8.3. SDC did not act impartially when it agreed to give LAA more time to respond to the first Officers report. When the second Officers' Report maintained the refusal recommendation LAA's advisers devised a scheme that would enable members to vote in favour of the applications. That scheme, called Option 1, involved eliminating text in the AA prepared by SDC's consultants, which concluded that LAA was unable to demonstrate that there would not be any

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<sup>751</sup> LAAG/6A Sects 3.3 & 3.4, LAAG/119, LAAG/120, LAAG/132 Paras 43-44

<sup>752</sup> LAAG/6A Sect 3.6, LAAG/132 Paras 37-40

<sup>753</sup> LAAG/6A Sect s 3.7-3.8, LAAG/132 Paras 45-46

<sup>754</sup> LAAG/6B App 9, LAAG/125, LAAG/132 Para 48

<sup>755</sup> LAAG/132 Paras 49 & 50



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adverse impacts on the SPA. This was replaced with text from LAA's advisers which said there would not be any damage as a consequence of the development.<sup>756</sup>

- 9.8.4. At the Council meeting a motion to change the AA in the manner outlined above was introduced. A letter from NE containing important material was withheld. The reason given for this was that further papers would not be circulated on the night although SDC was aware that the CEO of LAA had circulated a letter to all Members. One of the five points made by NE's letter was that the advice given by LAA was incorrect and also contradicted the advice of SDC's legal advisors. SDC offered to explain the contents of the letter at the meeting, but it was only briefly mentioned along with other correspondence. Not all the five points were mentioned and one of those omitted was clarification of the incorrect information given to Members by LAA.<sup>757</sup>
- 9.8.5. At the meeting LAA's barrister opined that it was legally possible to change the AA to produce a composite document, provided Members were satisfied beyond reasonable scientific doubt that there would not be an adverse effect on the habitats in question. LAAG contends that this was not possible. Members are a group with no experience in the relevant subject. It takes expertise to appreciate that there could be scientific doubt and SDC employed consultants for this reason.<sup>758</sup>
- 9.8.6. Further, even had they been able to make the assessment, there was insufficient debate on the merits of the cases to allow Members to make an informed opinion. Had there been meaningful debate, with input from experts on both sides, it would have revealed that the replacement text was based on evidence that had been rejected by NE, RSPB, LAAG and SDC's own consultant. It is difficult to see how Members could conclude that they were satisfied beyond reasonable scientific doubt that LAA's development would not have an adverse effect on the SPA, its extension and the proposed Ramsar site.<sup>759</sup>
- 9.8.7. In addition, SDC did not consult NE on the composite AA created at the meeting before the decision was made by Members. This contravenes the *Habitat Regulations* and the composite AA cannot be used as a basis for supporting LAA's applications.<sup>760</sup>
- 9.8.8. SDC suggests that the opposition to the airport from NE has been whittled away since the meeting, proving that Members made the right decision. This is not the case. In the second Officer's report the SAC had already been eliminated as an issue but LAA had been unable to prove there would not be adverse impacts on the SPA, pSPA and pRamsar. This was the issue before Members and remains the issue. Although it is now accepted that there would not be adverse impacts on some features of the SSSI, this was

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<sup>756</sup> LAAG/6B Apps 6A, 6B, 7 & 8, LAAG/12A Paras 2.2.1-2.2.2, 3.2.1-3.2.4, LAAG/132 Paras 51-52

<sup>757</sup> CD2.5 pp15, 72-73, & 91, LAAG/12A Paras 4.1.1-4.3.2, LAAG/12B App 11, LAAG/132 Paras 53-56

<sup>758</sup> CD2.5 pp138, LAAG/132 Paras 57-58

<sup>759</sup> LAAG/3A Paras 131-134, LAAG/10A Paras 5.1-5.10, LAAG/12B App 7A, LAAG/132 Paras 59-61

<sup>760</sup> LAAG/10A Paras 6.1-6.3, LAAG/12A Paras 6.1-6.3, LAAG/132 Para 62

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only after LAA had agreed to provide satisfactory replacement habitat. The development's impact on the bird features of the SSSI remains an issue.<sup>761</sup>

- 9.8.9. LAAG's nuclear case has revealed that the ONR has changed the safety status of Dungeness A and failed to disclose the long term vulnerabilities of the Dungeness site to a major nuclear accident. It is disingenuous of ONR to rule out an accident on the grounds that the probability of it occurring was, in its opinion, acceptably small without providing an indication of the nature of the consequences should one occur. This meant that Members were not aware of the scale of risk they were assessing. HSE's own regulations state that when there is great uncertainty about the likelihood of an accident, it should focus on the consequences.<sup>762</sup>
- 9.8.10. The SoS should not give weight to SDC's decision to support LAA's planning application since Members were not fully informed on any of these matters. The decision was unlawful and signifies the worst side of localism.<sup>763</sup>

### **Security Fencing**

- 9.8.11. LAAG maintains that there is a need for security fencing, whether or not the proposed development proceeds, and that this should be assessed with the current applications as it has the potential to cause adverse effects on the surrounding designated sites. The need for an AA should be considered.<sup>764</sup>

### **9.9. Conditions and Section 106 Undertakings**

- 9.9.1. In the interest of fairness and safety the following matters should be addressed. The 10 year lead time allowed before the new terminal is built, is unreasonable and cannot be justified given the speculative nature of the development.<sup>765</sup>
- 9.9.2. The RNAV flight procedures should have been taken into account in the noise and pollution studies, particularly as they would be used and the approach paths will lead to more noise at the local secondary school, the Marsh Academy. LAA maintains that the approach paths would only be used as a back up for the ILS. A condition to this effect would ensure that flight activity concurs with the original ES and the evidence.<sup>766</sup>
- 9.9.3. In respect of conditions related to nuclear safety, there needs to be a restriction on the number of movements of larger aircraft. In 1988 these recommendations involved restrictions on the use of flight paths and on movements based on the weight and nature of the aircraft, the latter being incorporated into the SOS's decision. Today there are no conditions proposing movement restrictions based on aircraft weight and type, despite a briefing note from the HSE to DECC stating that "The latest proposed expansion of operations will also require caveats on flight paths and flight mix to be put in place".<sup>767</sup>

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<sup>761</sup> LAAG/132 Paras 63-66

<sup>762</sup> LAA/15F App 10, LAAG/3J pp2 & 4, LAAG/132 Paras 67-69

<sup>763</sup> LAAG/132 Paras 47 & 71

<sup>764</sup> LAAG/124

<sup>765</sup> LAAG/105A, LAAG/126 Para B1, LAAG/132 Paras 358-359

<sup>766</sup> LAAG/122 Para 1, LAAG/126 Para 5, LAAG/132 Paras 360-361

<sup>767</sup> LAAG.132 Paras 362-364

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- 9.9.4. It is implied that the reduction in the number of movements from 56,000 in 1988 to the 40,000 in the current conditions will improve safety. The reduction is irrelevant from a nuclear safety perspective as any reduction would be accommodated by reducing light aircraft movements that are irrelevant to the nuclear safety case. This means the population remains equally exposed, and indeed, potentially even more exposed, to the aircraft types which could cause a catastrophic accident.<sup>768</sup>
- 9.9.5. The ONR is at its tolerance with respect to the demographic siting assessment at a throughput of 500,000ppa. A condition should be imposed on LAA restricting activities on site outside the direct commercial possibilities defined by the planning application. This would cover activities such as large maintenance facilities and airline head offices which could involve large numbers of employees.<sup>769</sup>
- 9.9.6. In terms of the S106 Agreement it would not adequately address problems that would arise from increased use of the C24 Camber Road. The report from the Airport Consultative Committee should be required to give aircraft movements by reference to types of aircraft. In terms of Greatstone School, most movements are currently by light aircraft and consequently the threshold should be lowered to 5,700kg. A house purchase scheme has been mooted but is not covered in the Agreement.<sup>770</sup>
- 9.9.7. Helicopter movements that could be noisier than aircraft would not be adequately controlled by the measures in the Agreement and conditions. As most are by military helicopters the proposed cap would allow for an increase in helicopter movements. In addition, the proposed helicopter flightpaths would route them over Lydd and the coastal towns.<sup>771</sup>
- 9.9.8. Conditions should also control night flying by locking in the restricted hours to the lease of land. Whilst there are a number of monitoring initiatives, the survey periods/intervals are inadequate to provide protection given the increase in air traffic over time. Training should be removed from the definition of Emergency and Governmental Activity as it is a commercial, rather than an emergency, activity and for the avoidance of doubt operational management aspects should be included in any planning permission for both the runway and the terminal.<sup>772</sup>
- 9.10. **Conclusions**
- 9.10.1. The planning applications have the potential to destroy wealth, the environment, and the lives of many people. Both applications should be refused.<sup>773</sup>

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<sup>768</sup> LAAG/132 Para 365

<sup>769</sup> LAAG/132 Para 366

<sup>770</sup> LAAG/105A, LAAG/126

<sup>771</sup> LAAG/105A, LAAG/126

<sup>772</sup> LAAG/122, LAAG/126

<sup>773</sup> LAAG/132 Para 367

## **10.0 The Case for CPRE Protect Kent**

### **10.1. Introduction**

10.1.1. The applications were called in partly due to the considerable concern of those who live in the area and who would suffer if permission were granted. CPRE is concerned with the protection of the quality and extent of the English countryside for the enjoyment and well-being of everyone. This part of Kent is one of the most tranquil in the South East of England but the proposals would mean the tranquillity of the whole area, including the Kent Downs AONB, would be dramatically harmed by noise and disturbance.<sup>774</sup>

### **10.2. Airport Operations**

10.2.1. Almost all existing short-haul airline operators could use Lydd now. The runway, at 1505 metres, is 306 metres longer than that of London City Airport but no airline operator is interested in using Lydd, even with a lengthened runway. When the firing range was operational all jets would have to use runway 21, even with a tailwind, resulting in a higher groundspeed on touchdown. This would create greater noise and be undesirable to airline operators. Jets landing would be wheels down, flaps down and engine under power, would cause very high noise locally, including to a school. Aircraft taking off would use maximum power with the same effect on the level of noise. When jets were landing or taking off, private and GA aircraft would be held circling the airport, adding to local disturbance, although those on a downwind leg would be asked to circle over the sea. The extended runway would be suitable for pilot training on jet aircraft giving rise to environmental problems, but without the employment benefits. The airfield management would look to promote this in the absence of an airline operator.<sup>775</sup>

10.2.2. Manston has one of the longest runways in the country but has been unable to attract many operators. Several businesses have failed and the airport is still attempting to find the right formula. Its access to London and the south east is far superior to that of Lydd. It is on the extension of the M2 and has a dual carriageway to within a short distance of the airport. Railway stations nearby are on the new high speed Javelin train link and plans for a station on the high speed link that would be within walking distance of the airport are being considered. Manston already has the facilities that Lydd would have to build and has considerable capacity. Government at all levels is keen for Manston to succeed whilst Lydd is not on any priority list and its access would always be poor and unattractive.<sup>776</sup>

### **10.3. Socio-Economic Matters**

10.3.1. LAA has invested over £30m in the airport without attracting any operator. It is hoped that the runway extension and the terminal building, at a cost of a further £20m, would attract operators but none have shown interest so far. Whilst it is claimed that this is usual in the aviation industry, companies

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<sup>774</sup> CPRE/2

<sup>775</sup> CPRE/4A Sects 2, 5 & 6, CPRE/8A Para 2.4, CPRE/11A, CPRE/104 Paras 6.1.1-6.1.5

<sup>776</sup> CPRE/5A Sect 3, CPRE/5C Para 3.3, CPRE/104 Paras 8.2.1-8.2.4

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generally do not expand unless there is business to warrant it. The 1992 call-in permission was never implemented, which suggests that the aspiration then to 'kick start' the airport failed. There is no reason why, in the context of an even more competitive market today, Lydd would be more successful than it was in the early 1990's, especially given the track record of near-by Manston.<sup>777</sup>

- 10.3.2. Local people, KCC and SDC have been promised jobs but have been misled. Originally LAA quoted 2,000 jobs but now estimates that between 200 and 300 jobs would be created. These would be over a period as the airport grows and dependent on operators being attracted.<sup>778</sup>
- 10.3.3. Moreover, there has been no research into job losses, which may well be more than those created. Many local businesses have written to say how they would be affected by the airport expansion. These include holiday and caravan parks, and homes for the elderly. All make it clear that with the extra noise and disturbance people will not visit, or remain, in the area. Their businesses would be badly affected and they may even have to close with the resultant loss of jobs. One witness at the evening session of the Inquiry ran two local businesses, one of which was game bird shooting in an area close to the airport, and confirmed that if the expansion was to take place he would close his businesses and his employees would lose their jobs.<sup>779</sup>
- 10.3.4. Evidence has been given about the deprivation in Shepway. Although this is a problem, it is not as bad as in some other areas in Kent. Thanet is easily the most deprived area in the South East as recognised by the announcement of an enterprise area. If the argument is between the expansion of Manston or Lydd then Manston's claim would be the greater.<sup>780</sup>

#### 10.4. **Climate Change and Flood Risk**

- 10.4.1. CPRE disagrees with the SoS's conclusion in the Farnborough decision that emissions of carbon attributable to aircraft in flight are more properly dealt with in the forthcoming EU Emission Trading Scheme, but in light of it did not present its evidence on greenhouse gas emissions orally, but asked that they stand as written representations.<sup>781</sup>
- 10.4.2. *Planning and Climate Change: Supplement to PPS1* explains that tackling climate change is a key Government priority. It is also an objective of the *Climate Change Act 2008*. This is reflected in RSS Policy CC2. The proposal would increase passenger capacity at Lydd with an inevitable increase in greenhouse gas emissions. There is no case for expansion as it would not achieve the balance between reducing CO<sub>2</sub> and economic growth.<sup>782</sup>
- 10.4.3. Aviation is a particular concern due to its rapid growth and because aircraft emit carbon dioxide and other gases high in the atmosphere where they have a greater effect. CPRE's concern about being locked into high carbon

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<sup>777</sup> CPRE/104 Paras 8.1.1-8.1.3 & 2.5.2

<sup>778</sup> CPRE/104 Para 8.3.1

<sup>779</sup> CPRE/104 Paras 8.3.2-8.3.4

<sup>780</sup> CPRE/1C, CPRE/104 Para 8.3.5

<sup>781</sup> CD9.22, CPRE/6D Paras 1.1 & 2.8

<sup>782</sup> CPRE/1A Paras 4.38-4.46

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infrastructure forms the basis of its objection. Some figures have been provided but no quantitative assessment has been done as LAA does not know at this stage which routes and which fleet mixes would be commercially sustainable.<sup>783</sup>

- 10.4.4. No scientific evidence has been produced to justify the claim that because Lydd is nearer to population areas in Kent and Sussex it would save journey times, and hence CO<sub>2</sub> emissions. This is simplistic and fails to take into account likely destinations from LAA. Whether or not Lydd was closer, it would not be used unless it provided flights to desired destinations. Gatwick, which has a large number of destinations, is close enough to be a strong competitor and, outside of congestion periods, is easily reached within an hour by those living in Kent.<sup>784</sup>
- 10.4.5. Whilst it is claimed that there would be lower emissions at Lydd than at a more congested airport such as Gatwick, passenger numbers would grow gradually and there may be many years with partially filled aircraft. The whole flight KgCO<sub>2</sub>e/passenger/year associated with occasional stacking at a major airport is likely to be insignificant compared to that from regular flights with low occupancy rates.<sup>785</sup>
- 10.4.6. In terms of the airport and the terminal design, it is critical that energy and water usage and light pollution are minimised. If approved the building should be an exemplar and achieve BREEAM rating of 'Excellent' or 'Outstanding'.<sup>786</sup>
- 10.4.7. Preventing inappropriate development in high flood risk areas is also a public concern and a Government priority. Serious floods have highlighted the vulnerability of major infrastructure and the need to prevent the disruption of their functions. Coastal flooding is a threat to the airport and although flood risk management has improved, public funding is under pressure and risks are increasing due to climate change.<sup>787</sup>
- 10.4.8. On the basis of an updated FRA many concerns in relation to sea level rise and flood risk have been addressed. Three issues remain:
- i) The level of risk to be assigned to the potential impact of climate change;
  - ii) The relevance of the Dungeness 'C' decision; and
  - iii) The need for a contribution towards the maintenance and improvement of flood defences.
- 10.4.9. Flood Zones are defined in PPS25. The EA online flood map shows much of the site, including the area for the new terminal building, is within the 1 in 200 year undefended floodplain. SDC's Strategic FRA shows the airport wholly within Flood Zone 3a which means it has a 1 in 200 annual probability of sea flooding in any one year. The airport is at risk of flooding

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<sup>783</sup> CPRE/6B

<sup>784</sup> CPRE/6D Paras 2.1-2.6, CPRE/104 Paras 7.1-7.3

<sup>785</sup> CPRE/6D Para 3.10

<sup>786</sup> CPRE/6D Para 3.12

<sup>787</sup> CPRE/7F Para 1.3

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if there is a breach of the coastal defences and that risk is expected to increase significantly over the likely lifetime of the development. The Pitt Review following the 2007 Flood indicates that risk from sea level rise may have been underestimated.<sup>788</sup>

- 10.4.10. Climate change is a major cause of rising sea levels, the effects of which will be serious in the local area. Increased winds will cause higher waves and a greater likelihood of flooding. Romney Marsh is one of the top 10 areas in the UK in terms of flood risk.<sup>789</sup>
- 10.4.11. SDC's Strategic FRA recommends a design life of 60 years for commercial development. Assuming an opening year of 2015 for the terminal, 2075 should be used for reference. As the updated FRA uses the year 2115 there is an overestimate of 40 years. The 2115 UKICP02 forecast lies within the upper quartile spread of UKCP09 H+ +. The assessment of future tidal flood risk is therefore robust. The lack of objection from EA, subject to conditions, provides reassurance that if technical analysis was undertaken based on a UKICP02 sea level 570mm lower than in the Strategic FRA, the proposals to mitigate flood risk would continue to be acceptable to EA, and the flood hazard maps would show a reduced level of hazard for the airport. The proposal complies with current planning policy but CPRE remains concerned about the impact of a catastrophic flood event and long term climate change.<sup>790</sup>
- 10.4.12. The crest of the flood bank at Romney Sands is only 6.5 metres AOD and "insufficient to stop overtopping during extreme high tide events". Flooding already occurs sometimes at Greatstone and sea levels continue to rise. The most worrying situation is at Lydd Ranges, only three miles from the airport, where the defences are only sustained to a 1 in 5 year standard that is totally unsatisfactory. A storm surge up the English Channel would overcome the existing defences at this location and it will be at least 8 years before any scheme will be in place to protect this area.<sup>791</sup>
- 10.4.13. Sea levels are rising exponentially. It is assumed that flood waters would rise slowly following a breach but water might pour swiftly through a rapidly widening breach. Increased storm activity could increase wave heights by 8% by 2200. To protect Romney Marsh a flood defence at least 13 metres high extending a minimum of 50 kilometres and costing billions would be necessary. This may not be affordable. Indeed, some areas have already been downgraded by allowing 'managed realignment'.<sup>792</sup>
- 10.4.14. Looking specifically at the airport, flooding would be exacerbated by a rising water table. A 2008 report by Royal Haskoning noted that rising sea levels would lead to extended high tide events allowing water penetration through the permeable Denge Gravels to extend further inland. The ES acknowledges that ground water levels at the airport are high and the most recent Water Level Management Plan for the area envisages maintaining high water table levels. Winter rains would increase levels and impede

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<sup>788</sup> CPRE/7A Paras CPRE/7F Paras 1.9, 1.11.1-1.11.2, 1.16 & 1.17

<sup>789</sup> CPRE/9A Sect 3 & Paras 4.1-4.3

<sup>790</sup> CD48 Para 3.1, CPRE/7G

<sup>791</sup> CPRE/9A Para 4.5

<sup>792</sup> CPRE/9A Paras 4.6-4.11, Dr Meaden XE by SDC Day 18

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surface water drainage. A single flood event has an average cost of 10% of the value of the property but is higher for those who have to evacuate their properties. Insurance for low lying properties is going to be harder to find and more expensive.<sup>793</sup>

- 10.4.15. Concerns about the airport are reinforced by the Government's decision not to shortlist Dungeness for a further 'C' nuclear power station. Coastal processes and flood risk were raised as major concerns, despite the majority of the site being in Flood Zone 1. EA stated that at the strategic level the nuclear site could potentially be protected from flooding but that there would be difficulties in doing so. The Government applied a sequential test to recommend nuclear sites and it would be consistent to do the same for the airport. It is material that defending the airport site from sea level rise and storm surge may become increasingly difficult and unsustainable.<sup>794</sup>
- 10.4.16. The airport benefits from publicly funded sea defences and should be required to make a contribution to the on-going flood risk management on Romney Marsh. Whilst it is not mandatory for proposals that do not require a material change to on-going flood risk management to make a contribution, it is encouraged.<sup>795</sup>

## 10.5. **Landscape, Tranquillity and Noise (Quality of Life)**

### **Quality of Life**

- 10.5.1. Those who live and work in the area speak of the special ambiance of Romney Marsh, and visitors are impressed by its tranquillity and remoteness. Dungeness has the largest shingle beach in Europe and the landscape is the setting for a rich and varied heritage. The area is often referred to as a gift from the sea and it attracts artists, photographers, fishermen, walkers and cyclists. The extensive area of the Kent Downs AONB is also enjoyed by walkers for its tranquillity. The landscape that writers and artists have evoked is still recognisable today and the Marshes' literary heritage is an important asset that should be preserved. The area contains numerous medieval churches and the archaeology of the area, including the 'listening ears', is exceptionally rich. Derek Jarman's garden has become a magnet for visitors. These attributes would be affected by the expansion of the airport and the jets it would attract.<sup>796</sup>
- 10.5.2. Visual impact is only one factor. Noise pollution, changes in landscape character, and physical, biological and social factors must also be considered. The proposal would substantially change the landscape in its holistic sense and little could be done to mitigate the changes. The expansion would affect more than just one landscape character area and LAA presents a negative and inaccurate description of the built environment around the airport by being selective in identifying characteristics. Little is made of the cultural and historic environments and the impact on them. Noise from the firing ranges is occasional, rarely loud, and not an annoyance. The Ranges increase, rather than diminish, tranquillity. A

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<sup>793</sup> CPRE/9A Para 4.4

<sup>794</sup> CPRE/7A Sect 5

<sup>795</sup> CPRE/7A Sect 6, CPRE/7F Para 1.20

<sup>796</sup> CPRE/1A Paras 4.12-4.26, CPRE/3A Sect 2, CPRE/104 Paras 3.1.1-3.1.2



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significant increase in aircraft movements would have a number of material effects, including increased movements across the surrounding area and the AONB.<sup>797</sup>

- 10.5.3. There are a number of vulnerable locations in the vicinity, including towns, the sea front, holiday parks, schools, nursing homes and golf courses. Persistent loud noise is known to cause stress, particularly in the young and the elderly, reducing their general wellbeing considerably. This could put a burden on local doctors and hospitals. Flood lighting from the airport can be intrusive and further lighting would damage the night-time character of the area. Airport activities such as de-icing and habitat management could affect water quality.<sup>798</sup>
- 10.5.4. The exposed location means that the air quality is generally good but deposition of nitrates and unburned fuel would have a detrimental impact on homes, gardens, grazing land and golf courses in the area and those with respiratory diseases or asthma would have their conditions exacerbated. If the area were to be affected by extensive jet aircraft noise, people would not find it so attractive for holidays. Plane spotters would not come in the numbers necessary to replace the loss of those seeking tranquillity. Local residents have expressed concerns and the attendance of approximately 200 at an evening session of the Inquiry, and the results of a referendum in May 2007, demonstrate that the majority in Lydd and New Romney are against airport expansion.<sup>799</sup>

### **Tranquillity**

- 10.5.5. Tranquillity mapping has evolved since its inception in the early 1990s. It is a rational, technical, approach to the personal, subjective, experience of the countryside. There were weaknesses in the 1990s tranquil areas mapping work and a new approach was developed in response to statements in the *Rural White Paper 2000*. The early threshold based analysis of tranquil areas was superseded by a GIS based approach incorporating national data sets and based on a relative scale in maps published in 2006/2007.<sup>800</sup>
- 10.5.6. The maps are based on 44 positive and negative factors with parameters applied consistently to each 500 metre square across England. The factors, and their weighting, were determined by public consultation. Assessments are based on national data of the presence or absence of factors in and around specific squares. All locations are treated in a standardised way and the results for any location depend on the underlying factors and data.<sup>801</sup>
- 10.5.7. Claims that the mapping does not account for local factors such as fencing or gravel workings misunderstand the granularity of the national mapping. Tranquillity maps are an indicator developed to support planning decisions in a consistent and transparent way. It is a complex methodology that enables commonly appreciated aspects of the countryside, and/or the human

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<sup>797</sup> CPRE/3C

<sup>798</sup> CPRE/4A, CPRE/8A Para 2.10

<sup>799</sup> CPRE/3A Para 3.1, CPRE/4A Para 2.8, CPRE/8A, CPRE/104 Paras 3.1.3-3.1.4

<sup>800</sup> CPRE/2A Paras 3.1-3.2, CPRE/104 Paras 4.1.1-4.1.2

<sup>801</sup> CPRE/2A Para 3.3, CPRE/104 Paras 4.1.3-4.1.5 & 4.4.2

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- experience of it, to be factored into such decisions. This is why it is increasingly recognised in public policy at all levels.<sup>802</sup>
- 10.5.8. LAA does not accept that tranquillity is a policy issue but SDC Officers, in two reports to the Planning Committee, rejected the applications on grounds of both noise and tranquillity. The proposals fail to satisfy saved LP Policy SD1 and RSS Policy CC1 for these reasons, amongst others. Policy recognises that tranquillity is a characteristic of the countryside and a reason why people visit and enjoy it. This is clear from the *Rural White Paper* which has equal weight to the ATWP on which LAA places great weight.<sup>803</sup>
- 10.5.9. The *Rural White Paper* sets out overarching policy providing context for subsequent national, regional and local planning policy. When PPS1, PPS4, PPS7 and the RSS, which post-date the *Rural White Paper*, all refer to protection of the countryside, tranquillity must be one of the features that needs to be protected, even if the word 'tranquillity' is not used in individual policies. To dismiss tranquillity as a policy consideration because the word is not specifically included in planning policies is untenable.<sup>804</sup>
- 10.5.10. In the preamble to the *Dover District Core Strategy's* countryside policies, protection is required due to "...the erosion of the countryside as a physical resource and also to its inherent tranquillity which can be reduced or spoilt through impacts such as noise and light pollution". The word tranquillity is not mentioned in the subsequent countryside policies but it is clear from the supporting text that tranquillity is part of the character of the countryside that they seek to protect.<sup>805</sup>
- 10.5.11. Whilst the LP makes no specific reference to tranquillity, saved LP Policies SD1 and CO1 should be seen in the same way. Indeed, in the draft *Core Strategy* the need to "maintain the sense of openness and tranquillity of the countryside and undeveloped coast" is a specific aim. It is clearly the case that SDC, like neighbouring Dover District Council, sees tranquillity as a feature of its countryside that needs to be maintained.<sup>806</sup>
- 10.5.12. The draft NPPF is only at consultation stage and should only be afforded limited weight at this stage. However, the need to protect tranquillity is recognised in paragraph 173.<sup>807</sup>
- 10.5.13. The reports to the Planning Committee did not consider that the impact on tranquillity, together with noise, was a reason for refusal that could be sustained on its own. CPRE disagrees. The rise in passenger numbers, from the current 3-4,000ppa to 500,000ppa, would inevitably have a significant detrimental impact on the character of the countryside and the associated disruption to tranquillity that would arise visually, and audibly, from more frequent, and noisier, aircraft movements. The proposals would be contrary to saved LP Policies SD1 and CO1.<sup>808</sup>

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<sup>802</sup> CPRE/104 Para 4.1.8

<sup>803</sup> CD1.48, CD1.51, CPRE/1A Paras 4.7-4.11, CPRE/104 Paras 2.4.3-2.4.5,

<sup>804</sup> CPRE/1A Para 4.12-4.20 & 4.27-4.31, CPRE/104 Para 2.4.7

<sup>805</sup> CPRE/1D Paras 7.7-7.8, CPRE/104 Para 2.4.8

<sup>806</sup> CD7.12, CPRE/1D Para 7.9, CPRE/104 Para 2.4.9

<sup>807</sup> CPRE/102 p3, CPRE/104 Para 2.4.6.

<sup>808</sup> CPRE/1A Para 5.28 & 5.29, CPRE/1D Paras 3.38-3.49, CPRE/104 Para 2.4.10

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- 10.5.14. LAA has sought to undermine tranquillity as a concept contrasting it with earlier, less complex, work from the 1990s but has not challenged the consistency or rigour of the national work. LAA's case includes an assessment of landscape and visual aspects, from a witness who considers that tranquillity generally relates to noise rather than visual disturbance, and noise evidence that makes no attempt to consider the methodologies used to assess tranquil areas or tranquillity. The impact of aviation and induced traffic noise on tranquillity falls between the two.<sup>809</sup>
- 10.5.15. The thrust of LAA's case is that an area with a power station, firing range, security fencing, former gravel workings, and airport could not be considered a tranquil area. LAA fails to account for positive factors that can outweigh even significant negatives such as power lines. Any square in the mapping has a 360 degree view and the impact of such features is weakened by the wider surroundings, which in this case include the absence of major road traffic noise, remoteness, the presence of open farmland, shingle, and beach that all contribute towards tranquillity. The impact of specific features, positive or negative, is averaged for each square. Not all such factors can be accounted for in national mapping work, but where features cannot be accounted for this is done consistently so that comparisons stand, although there may be variation at a more detailed level locally.<sup>810</sup>
- 10.5.16. The most significant negative tranquillity factor is constant road traffic. Dungeness power station may be a dominant presence but it is largely silent and generates little traffic. Power stations were not mentioned frequently enough by the public to require separate listing as a factor. Any list of factors would need to be considerably longer if it were to account for individual types of building. Whilst this detail of analysis would be desirable, it would require an extraordinarily detailed data set that is not available at a national level. Demanding such detail would be unreasonable.<sup>811</sup>
- 10.5.17. Tranquillity maps show that Romney Marsh is nationally significant for its high levels of tranquillity, despite recognised disturbance factors. These are not major and are outweighed by the many positive aspects. The expansion to 500,000ppa would increase road traffic and regular instances of high noise levels and visual impact from jet aircraft significantly damaging the tranquillity.<sup>812</sup>
- 10.5.18. LAA relies on noise measures related to the onset of community annoyance, the 57dB level, but noise analysis within the tranquillity methodology is based on noise levels modelled as they decline to an ambient level. Paragraph 18 of PPG24 states "Authorities should also take into account the fact that the background noise level in some parts of suburban and rural areas is very low, and the introduction of noisy activities into such areas may be especially disruptive". This requires a judgement to be made having regard to the particular nature of the area affected. Lydd airport is in a rural area where background noise is very low. This is what makes it

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<sup>809</sup> CPRE/2A Paras 3.3-3.5, & 4.5, CPRE/104 Paras 2.2.1-2.2.4

<sup>810</sup> CPRE/104 Paras 4.3.1, 4.5.1-4.5.3

<sup>811</sup> CPRE/104 Paras 4.5.4-4.5.5

<sup>812</sup> CPRE/2A Paras 4.1-4.4, CPRE/104 Paras 4.1.3-4.1.5

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attractive to visitors. Mapping also depends on an assessment of the quality of noise. Bird song can be very loud, as can wave roar, but neither are cited as disturbance factors. Indeed, research indicates that bird song contributes to tranquillity.<sup>813</sup>

10.5.19. The complexity of the tranquillity methodology contrasts with the simplicity of the concept. Most people have an understanding and experience of tranquillity. It is generally understood, and clear from surveys, that it is valued. Romney Marsh and the Dungeness peninsula attract many visitors for their remoteness, stark beauty and tranquillity. The increased aircraft activity that would arise if these applications were permitted would be especially disruptive, not least because of the noise impact on Greatstone Primary School. The Marsh and the South Downs AONB would be affected and an area that is the most tranquil in the south East would be lost.<sup>814</sup>

### **Noise**

10.5.20. Greatstone Primary School has in excess of 320 children, aged between 4 and 11, with 63 staff. It also has a nursery section that feeds the primary school with approximately 50 children from the age of 2 and a staff of 12. Both the primary and the nursery schools have excellent OFSTED reports. The school, a prefabricated structure, was built in 1973 and extended in 1995 and 1997. It has outdoor teaching areas and a large playing field.<sup>815</sup>

10.5.21. The school would be 600m from the end of the proposed runway extension. There is no evidence of any school in England which is as close, or closer, to a runway. Increased noise levels would make it more difficult for children to concentrate or hear instructions outside. Aircraft would cause distractions and could cause health and safety issues when controlling or supervising children. There would also be an increased health hazard due to additional pollution from jet engines. Prior to the opening of the Inquiry no inspection, either by LAA or SDC, had been carried out to determine the construction of the school buildings. Nor had KCC, the education authority, authorised an inspection. An inspection was eventually arranged, on 20 April 2011. Whilst it included representatives from LAA and SDC's planning, environmental health, and building control sections, there was no-one from KCC.<sup>816</sup>

10.5.22. The report was promised "sometime towards the end of May/early June" but was not produced until 3<sup>rd</sup> August 2011, after the Chairman of the Governors had given his evidence, and was not made an Inquiry document by LAA. It could be concluded that both LAA and KCC were not prepared for the situation at the school to be considered. The report identifies several weak points in the building, including the roof, which acts as a sound box increasing the noise level. In addition, there are a number of roof lights which are not soundproofed. Whilst the extensions are constructed of double skinned block work with a cavity, most of the 1973 walls only have ship lapped wooden cladding.<sup>817</sup>

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<sup>813</sup> CPRE/1D Para 3.25, CPRE/104 Paras 2.4.11-2.4.12 & 4.5.1-4.6.2

<sup>814</sup> CPRE/2C Paras 3.1-3.2, CPRE/104 Paras 4.7.1-4.7.3

<sup>815</sup> CPRE/10A, CPRE/104 Paras 5.1.1-5.1.2

<sup>816</sup> CPRE/10A Sect 3, CPRE/104 Paras 5.1.3, 5.3.1-5.3.3

<sup>817</sup> CPRE/10C, CPRE/104 Paras 5.2.1-5.2.2, 5.3.4-5.3.5

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## 10.6. Transportation

- 10.6.1. LAA's traffic flows have used an "adjusted flight profile" to smooth the flight pattern to 1 flight per hour, except for 2 at 09.00 hours. Leeds/Bradford has been used for comparison, but has a very high peak and has 83% of passengers travelling less than 60 minutes to the airport. By contrast, the majority of Lydd passengers would be at or over the 60 minute target. This makes the comparison invalid and unrealistic. Highways Authorities have only been satisfied because of the reduced traffic flows arising from the "adjusted flight profile" but at 500,000ppa peak traffic flows could be double those anticipated. In addition, the effect of construction traffic cannot be properly estimated without any knowledge of the appointed contractor or source of materials.<sup>818</sup>
- 10.6.2. Lydd is in the most remote area in the South East. All passenger and staff movements would be by motor vehicle, mostly private cars and taxis, with maybe some 10% by bus. The airport is not connected to a main sewer and the proposal would generate significant lorry movements between the site and the treatment works at New Romney. Staff and service vehicles cannot be presumed to avoid peak traffic times and the effect of the extra traffic on the narrow access roads to Lydd could be considerable, making life stressful for local people and passengers. The effects of the peak morning flows, particularly through Rye, Hastings, Ashford, Folkestone and Dover that are already congested, have not been submitted but would be considerable. A particular concern is the C24 through Camber to Rye. It is difficult to see how signage would dissuade people from using this route and satellite navigation systems are likely to guide people that way.<sup>819</sup>
- 10.6.3. The proposed shuttle bus to Ashford would have a very low occupancy, making it non-viable and likely to be dropped. Moreover, the journey time from Ashford station to the airport would be greater than suggested as LAA did not appreciate that the domestic high speed Javelin train stops at the domestic station in central Ashford and not the international station.<sup>820</sup>
- 10.6.4. Car parking requirements cannot be estimated without knowing whether the airline operation would be scheduled or holiday charter. Parking levels are likely to be far higher than proposed and lead to car parking on the road leading to the airport causing further congestion and a block to service vehicles, including those required for an emergency.<sup>821</sup>

## 10.7. Planning

### National Policy

- 10.7.1. The ATWP remains the Government's only guidance on aviation policy. However, there have been significant changes since it was published in 2003. Firstly, the *Climate Change Act 2008* has set legally binding targets for emissions, which were not taken into account by the ATWP. Secondly, there has been a deep economic recession that will inevitably affect

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<sup>818</sup> CPRE/5A Sect 8, CPRE/5C Paras 2.1 & 3.19, CPRE/104 Paras 6.2.1 & 6.2.7

<sup>819</sup> CPRE/5A Paras 8.4-8.5, CPRE/5C Paras 2.2-2.3, 3.11-3.15, & 3.26, CPRE/8A Para 2.9, CPRE/104 6.2.2-6.2.4

<sup>820</sup> CPRE/5C Paras 3.17-3.18, CPRE/104 6.2.5

<sup>821</sup> CPRE/5A Para 8.7-8.8, CPRE/5C Para 3.24, CPRE/104 6.2.6

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assumptions about demand and aspirations for growth. Thirdly, the new Government has made it clear that it does not support all of the ATWP's content.<sup>822</sup>

- 10.7.2. The Government has published a scoping document for its 'sustainable framework for UK Aviation'. The scoping report is material and expresses serious concerns with the ATWP stating "While some elements of this white paper might still be relevant, many of its provisions are no longer fit for purpose. They fail to recognise the importance of addressing climate change and give insufficient weight to the local environmental impacts of aviation." The foreword goes on to say that the "previous government got the balance wrong" in supporting new runways in the face of local environmental impacts and mounting evidence of aviation's growing contribution towards climate change. There is every indication that developing aviation policy will be significantly different to that promoted in the ATWP by the previous Government.<sup>823</sup>
- 10.7.3. Whilst the ATWP envisaged reducing pressure on major airports through the expansion of smaller airports making better use of existing capacity, the Government now sees this as being achieved by the promotion of High Speed Rail connections. The *National Infrastructure Plan*, published in October 2010, promotes the continued development of the HS rail network and connections between the north and south to further reduce journey times so that a large proportion of domestic airline travel on these routes transfers to the train, reducing carbon emissions and releasing airport capacity. HS2 is being pursued, and in Kent HS1 already provides a quick and easy link between London, the south east and much of mainland Europe, the very market that an expanded Lydd airport would be aiming at.<sup>824</sup>
- 10.7.4. It is clear that the weight to be attributed to the ATWP should be diminished, particularly in regard to its proposals for an increase in airport capacity.<sup>825</sup>

### **Regional Policy and Sub-Regional Strategies**

- 10.7.5. Great emphasis is placed on the support given to the expansion of smaller regional airports by the ATWP. The RSS, and other sub-regional and county level strategies, also support the expansion of airport capacity, including at the smaller airports, as they were prepared in the context of the ATWP. However, regional policy and sub-regional strategies provide a local interpretation of the application of national aviation policy. These create a three-tier hierarchy of airports.<sup>826</sup>
- 10.7.6. RSS Policy T9 deals with the first two tiers with Gatwick and Heathrow at the top and Southampton and Kent International at Manston as second tier airports to be enhanced as airports of regional significance. Paragraph 8.30 of the supporting text, and not the Policy itself, deals with the third tier. It

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<sup>822</sup> CD5.24, CPRE/1A Paras 3.2-3.9, CPRE/104 Paras 2.2.1-2.2.2

<sup>823</sup> CD5.36, CPRE/1D Sect 2.1, CPRE/104 Paras 2.1.3-2.1.6

<sup>824</sup> CPRE/1A Paras 3.11 & 3.12, CPRE/104 Paras 2.1.7-2.1.8

<sup>825</sup> CPRE/104 Para 2.1.9

<sup>826</sup> CPRE/1D Paras 2.16-2.18, CPRE/104 Paras 2.2.1-2.2.2

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recognises that smaller airports “could play a valuable role in meeting local demand and contributing to regional economic development”. Whilst development is supported, expansion is not proactively promoted.<sup>827</sup>

- 10.7.7. The strategic approach in the RSS is taken forward in plans and strategies primarily put together by KCC. An analysis of these indicates that it is the expansion of Manston that is being proactively promoted, not LAA. The most recent documents, *21st Century Kent*, the *East Kent Sustainable Community Plan*, and the LEP bid demonstrate a shift in emphasis from support for aviation expansion towards the role of HS rail, and the linking of Manston to it. This reflects the introduction of the HS1 services and the dramatic changes in journey times that has achieved, and the change in circumstances since the ATWP was published. This undermines the case for expansion at LAA.<sup>828</sup>
- 10.7.8. Whilst CPRE’s analysis of the strategy documents has been criticised, its conclusions were not challenged. The strategic emphasis in Kent is firmly on Manston rather than LAA given its closer association with the HS rail network. No firm evidence has been presented to demonstrate that LAA would be complementary to Manston. No operators are signed up to LAA and it is impossible to say that it would not offer routes and services offered by Manston. Both airports would be in direct competition for the same airlines and routes. Expansion of LAA would undermine the more strategic priority to develop Manston as Kent’s premier airport.<sup>829</sup>

### **Local Policy**

- 10.7.9. Saved LP Policy TR15 supports expansion of LAA subject to no significant impacts, particularly on wildlife. However, LP paragraph 1.2 makes clear that the LP was prepared in the context of the Kent Structure Plan 1996, which predates the ATWP, not the Kent and Medway Structure Plan 2006 as SDC states. This places question marks over the weight to be attached to Policy TR15. The Policy gives no guidance as to what expansion of the airport might comprise. Paragraph 11.41 of the supporting text refers to 1 to 2mppa, but does not explain what would be needed to achieve this. There is no mention of an extended runway or a new terminal. The Policy is open ended and only the existing airport is shown on the Proposals Map. It is difficult to see how “the matter of the potential effect of the Airport expansion on neighbouring uses has been considered in detail in the plan-making process”, as claimed by LAA, is possible given the lack of detail in the LP.<sup>830</sup>
- 10.7.10. LP Policy SD1 is a key policy that seeks to ensure sustainable development. Proposals must comply with all the environmental criteria. If the expansion would detrimentally affect the nature conservation interests it would not comply with criterion d). There would be an impact on tranquillity and on the amenity of local residents therefore breaching criteria c) and k). This non-compliance would bring criteria i-iii into play. SDC’s report to

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<sup>827</sup> CD7.1, CPRE/1A Paras 3.18-3.19, CPRE/104 Para 2.2.3

<sup>828</sup> CD11.20, CD11.26, CD11.27, CPRE/1A Paras 3.23-3.48, CPRE/1D, CPRE/104 Para 2.2.4

<sup>829</sup> LAA/4D, CPRE/1A Para 3.22, CPRE/104 Para 2.2.5

<sup>830</sup> CD7.5, CPRE/1A Paras 3.49-3.51, CPRE/1D Para 4.5, CPRE/104 Paras 2.3.1-2.3.3, SDC/4A Para 3.4, LAA/14/D Para 8.105(a)

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Committee did not consider that there was any overriding economic or social need and the proposal would not comply with LP Policy SD1. LP Policy TR15 does not make an allocation and so does not take precedence over LP Policy CO1. The criteria in CO1 echo those in SD1 and the proposal would also breach Policy CO1.<sup>831</sup>

10.7.11. A new development plan policy on LAA is evolving through SDC's *Core Strategy*. Whilst a strategic policy is suggested in a preferred options document, there is no strategic policy relating to the airport in the draft proposed submission *Core Strategy*. The draft indicates that the applications were considered under saved LP Policy TR15. Paragraph 5.118 explains that, whatever the outcome of the applications, the *Core Strategy's* spatial strategy for Romney Marsh will remain applicable. Proposed Policy SS1 provides the District Spatial Strategy but makes no mention of the airport in respect of Romney Marsh. The proposed submission *Core Strategy* was formally published on 29<sup>th</sup> July 2011. The approach towards the airport remains as in the draft. If the applications are unsuccessful, the Council is content that its economic development objectives for the Romney Marsh area can be achieved without any reliance on airport expansion.<sup>832</sup>

10.7.12. The Council is 'going wobbly' on the airport, as the approach in the draft *Core Strategy* is silent on its role, and even if the current applications were approved it does not support the airport's aspirations to expand to 2mppa as in the current LP. This is also LAA's view expressed in its representations on the preferred options of the *Core Strategy*. LAA wanted the pro-expansion LP Policy TR15 rolled-forward to the *Core Strategy* but this has not been done.<sup>833</sup>

### **Other Policy Considerations**

10.7.13. The expansion of the airport must be acceptable in planning policy terms and must not have adverse impact on the environment that cannot be mitigated. CPRE relies on the evidence of NE and RSPB that there would be significant impact on the internationally important nature conservation interests that surround the site, and for that reason alone the applications should be refused.<sup>834</sup>

### **The 1992 Decision**

10.7.14. LAA sees the 1992 call-in decision as the "back drop" to the current applications. The decision was made 19 years ago based on the prevailing policy context and requirements of the time. Much has changed in the intervening years. CPRE's analysis of the changes is unchallenged and little weight can be given to the 1992 decision.<sup>835</sup>

10.7.15. Moreover, whilst the 1992 decision related to a 296m runway extension, similar to that now proposed, it did not include the 150 metre starter extension or a new terminal to facilitate 500,000ppa. This is significant as it means that the previous application could only have been assessed in the

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<sup>831</sup> CPRE/1D Paras 3.38-49

<sup>832</sup> CD7.6, CD7.12, CPRE/1A Paras 3.52-3.54, CPRE/104 Paras 2.3.4-2.3.5 & 2.3.6

<sup>833</sup> CPRE/1D Para 4.9, CPRE/1F App 5, CPRE/104 Para 2.3.6

<sup>834</sup> CPRE/1A Para 4.3, CPRE/104 Para 2.4.1

<sup>835</sup> CPRE/1D Paras 3.8-3.11, CPRE/104 Para 2.5.1, LAA/14A Para 7.21



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context of the capacity of the existing terminal, a maximum of 300,000ppa. The 1992 decision relates to a very different proposal.<sup>836</sup>

## 10.8. Other Matters

### SDC's Handling of the Applications

10.8.1. SDC's AA had been published prior to a specially convened Development Control meeting. However, during the meeting the AA was amended to form a new AA document. No one had the opportunity to satisfy themselves that the integrity of the SPA would be protected beyond reasonable doubt. The applications should not have proceeded if the revised AA was flawed.<sup>837</sup>

## 10.9. Conditions and Section 106 Undertakings

10.9.1. Concerns remain about 'Emergency and Governmental Activities' which have the potential to generate a significant amount of noise at night causing disturbance to residents in Lydd and Greatstone. A condition should be attached to any terminal building permission requiring a contribution towards coastal defences. Both applications, if allowed, should have a condition relating to noise and air quality monitoring notwithstanding provision in a Section 106 Agreement. The Section 106 Agreement should also contain provisions for monitoring long term informal parking in Lydd, which would be a disbenefit to local residents, require full payment rather than a contribution towards works on the C24 Camber Road, and extend the radius for community and recreational projects for environmental improvements from 5km to 10km from the airport.<sup>838</sup>

10.9.2. The efforts of SDC and LAA to accommodate the school's concerns in a Section 106 Agreement are recognised, and some have been adequately met. However, despite realistic considerations being given under clause 16 of the Agreement, there are still some outstanding issues. The most significant of these is that the sums for mitigation might not be sufficient. The report states that the nursery block, outside teaching area, and the playground "cannot be reasonably protected from the effects of noise". The consequence of this and the other outstanding matters is that the school would suffer serious detrimental impacts should the proposals go ahead. This could extend to the loss of the nursery facilities at the school, disadvantaging some 50 pre-school children. For this reason alone the application should be refused.<sup>839</sup>

## 10.10. Conclusions

10.10.1. If these applications were to be approved, this quiet corner of South East England would be changed irrevocably. Whilst endorsing NE's and RSPB's views that there would be a significant impact on an important area of nature conservation, it is people who would suffer most. Significant impacts on the quality of life of local residents have not been resolved. The noise, pollution, and increased traffic would destroy the character and solitude of the area and the noise impact on Greatstone School is a matter of grave

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<sup>836</sup> CPRE/104 Para 2.5.2

<sup>837</sup> CPRE/4A Para 2.11

<sup>838</sup> CPRE/101

<sup>839</sup> CD17.28, CPRE/10D, CPRE/10E, CPRE/101, CPRE/103, CPRE/104 Sect 5.4

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concern. The applications should be rejected to preserve the area for those who enjoy the wildlife, the landscape, and the tranquillity of Romney Marsh and its very special environment.<sup>840</sup>

## **11.0 The Case for Kent Wildlife Trust**

### **11.1. Introduction**

11.1.1. Dungeness is recognised as being important for biodiversity. However, broad measures, against which impacts on habitats or designated sites are judged, cannot be used as a basis for assessing impacts on individual species of concern. Putting species of concern under increased pressure would be contrary to policy for the long-term conservation of wildlife. When the Inquiry opened, KWT considered that the full impact of the proposals had not been properly assessed and that as a result they had the potential to impact negatively on many species recognised as being at risk.<sup>841</sup>

### **11.2. Ecology**

11.2.1. KWT did not specifically raise any issue in respect of alleged impacts on the SPA, SAC or SSSI but did raise concerns about protected species that inhabit those designated areas. The area is known to support a number of species listed in the UK Red List as 'Near Threatened', 'Endangered' or 'Critically Endangered', as well as several species listed in the UK BAP and Section 41 list of Species of Principal Importance in England. Surveys have been carried out and an ABAP could provide protection and enhancement for vascular plants, lower plants and invertebrates.<sup>842</sup>

11.2.2. The 801 metres of ditch length that would be realigned under the runway extension proposal did not originally provide suitable habitat for Great Crested Newts but did provide habitat of value to aquatic invertebrates, although medicinal leech are not present. The ditches have been redesigned and mitigation would include a longer length of ditch, some 1300 metres in total, which would support aquatic invertebrates.<sup>843</sup>

11.2.3. An ABAP would be produced with the involvement of key wildlife stakeholders, including KWT and NE and would provide for a baseline survey, annual monitoring against it, and annual review of the targets for maintaining or enhancing the site populations. An expert panel would review the ABAP habitats and species and provision would be made for the panel to remove or add species up to a maximum of seven. Outcomes would be included in, and reported by, the Environmental Management System. KWT accepts that the ABAP is acceptable and that its delivery could be secured.<sup>844</sup>

11.2.4. In respect of key moth species, an approach to assessment has been agreed and an annual monitoring programme would be carried out starting before construction and continuing for 10 years with an annual report being made available. Additional mitigation would be provided by requiring internal and

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<sup>840</sup> CPRE/104 Sect 9

<sup>841</sup> KWT/2

<sup>842</sup> CD4.3 Section 8

<sup>843</sup> CD4.3

<sup>844</sup> CD4.13

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external lighting to be minimised between 23:00 and 07:00 and any security lights linked to movement sensors, dimmed to minimum intensity, and hooded to prevent light spillage. As a result KWT considers that the proposals are acceptable in terms of lighting impacts on moths.<sup>845</sup>

### 11.3. Air Quality

11.3.1. KWT agrees with the contents of a Supplementary SCG between LAA and NE, subject to additional monitoring as set out in Appendix 1 to a SCG between LAA and KWT. Should the monitoring identify any deleterious change the potential causes would be investigated. Changes in a single year would not trigger a requirement for remedial action but change recorded over more than one year would require remedial action that should be instigated within six months of identifying the need.<sup>846</sup>

11.3.2. In the light of these SCGs, KWT agrees that nitrogen deposition would be within acceptable levels and would not affect the integrity of the SAC or substantially damage the interest features of the SSSI. The proposal would, therefore, be acceptable in terms of Air Quality.<sup>847</sup>

### 11.4. Conditions and Section 106 Undertakings

11.4.1. A Section 106 Agreement would make provision for the ABAP panel and the provision and monitoring of the ABAP. The proposed Environmental Management System would be required by suggested conditions 6 and 10 relating to the runway extension and terminal building respectively.<sup>848</sup>

11.4.2. A Section 106 Agreement and the proposed conditions capture not just the substance but the words of the SCGs agreed between KWT and LAA in respect of lighting impact on moths (suggested conditions 15.1, 15.2 and 24 and Annex 9 relating to the runway extension and condition 23 relating to the terminal building).<sup>849</sup>

11.4.3. In terms of Air Quality, an Air Quality Management Strategy (AQMS) and Air Quality Monitoring and Action Plan Strategy (AQMAPS) would be required by a Section 106 Agreement and provision would be made for monitoring and any remedial action should monitoring indicate it was necessary.<sup>850</sup>

### 11.5. Conclusion

11.5.1. During the course of the Inquiry KWT agreed a number of SCGs as a result of which its evidence was not presented verbally, or tested in cross-examination. Those parts of the evidence relating to the possible impact on biodiversity and the view that the proposed mitigation would be ineffective were withdrawn, although the rest of the evidence was retained to demonstrate the need for the implementation of the measures set out in the SCGs.<sup>851</sup>

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<sup>845</sup> CD4.14

<sup>846</sup> CD4.9, CD4.10

<sup>847</sup> CD4.10

<sup>848</sup> CD17.28, CD 17.24

<sup>849</sup> KWT/101, CD17.24, CD17.25, CD17.28

<sup>850</sup> CD17.28

<sup>851</sup> CD4.3, CD4.10, CD4.13, CD4.14, KWT/100

## 12.0 The Cases for Interested People and Organisations

- 12.1. 5<sup>th</sup> July 2011 was specifically set aside for interested people and organisations to make their representations. Fifteen people spoke at the morning session held in the Council Chamber in Folkestone whilst 29 people spoke at an evening session held at the Marsh Academy in New Romney.
- 12.2. **Damian Collins MP** emphasised that Shepway, and Romney Marsh in particular, needs investment and jobs as it is more deprived than the surrounding areas with a third of young people out of work. At a time when the future of the power stations is uncertain, the opportunity of investment at the airport should not be thrown away. The HSE has stated that an expanded LAA would not be a risk to the power station. Whilst LAA is located close to nature reserves, that is not unusual. The airport is not new, having been active since the 1950s, and granting planning permission would give the Council greater control over matters such as noise and air quality. By providing additional capacity it would take pressure off other airports in the region. Consideration should be given to the fact that the proposals are supported by the Council, the local MP and local people. The Government's *Plan for Growth* indicates that there should be a presumption in favour of economic growth and sustainable development.<sup>852</sup>
- 12.3. Kent County Labour Party and Folkestone and Hythe Constituency Labour Party support the proposals and were represented by **Maureen Tomison**. Regeneration, prosperity and job creation are the key issues as many people are claiming benefits or have left the area to find jobs. In a poll by a local radio station the vast majority were in favour of the expansion of the airport. The proposal would create jobs and bring in investment. The lack of decent transport is a problem for an area trying to encourage tourism. The boost given to Ashford by Eurostar could be replicated at Lydd. Flying from LAA to the continent would lead to less fuel being used as many passengers travel north before flying back south.<sup>853</sup>
- 12.4. **Friends of Lydd Airport Group (FLAG)** seek to counteract LAAG. FPs are not set by the airport but approved by the CAA. LAAG suggests that the ONR has got it wrong in not objecting to the proposals but have not provided any scientific evidence to prove its case. EDF's objection is invalid as it intends to sell its site for Dungeness C. Claims of nitrogen fall out cannot be monitored as farmers use nitrogen fertiliser and there are busy FPs overhead unrelated to LAA. Gravel extraction and turf farming affect habitat and there are water sports and go-karting in the area. 90% of the RSPB Reserve, and much of the wider Marsh, is man made and the visitor centre, car park and boardwalks all affect habitat. There is likely to be more wildlife on the Ranges despite the shooting, explosions and helicopters coming and going. Whilst there were objections to the Little Cheyne Court windfarm in terms of birds, the area has not been strewn with the bodies of Bewick's Swans as was claimed as wildlife adapts to its surroundings. There has already been an Inquiry into the expansion of the airport and no new evidence has since been brought to the table.<sup>854</sup>

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<sup>852</sup> ID/8 AM1

<sup>853</sup> ID/8 AM3

<sup>854</sup> ID/8 AM7

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- 12.5. Local resident and Chairman of the Romney Marsh Business Association, **David Wimble** can remember the airport in the 1970s and the building of the power stations. When the airport was bought local people were excited by the prospect of new jobs. Objectors say these would be menial but they would still be welcome. A poll by a local radio station indicates that locals want the airport, although other polls have produced other results. This could be interpreted in many ways depending on when the polls were open. Whilst there is sympathy for those who have moved to Lydd for a quiet retirement, there has been an airport there for over 55 years. The proposals might not work but for a few hundred metres of concrete that would not be visible it is worth a try. Whilst there might be Great Crested Newts present they do not pay the mortgages of local people.<sup>855</sup>
- 12.6. **Ted Last** has lived and worked in the area since 1969 and considers that the variety of bird life is a result of man's interference with nature through gravel extraction. Lydd is a 'hidden pocket of deprivation' with low median wages, high unemployment and poor health. There is, therefore, a need for employment, particularly as Dungeness A is being dismantled, Dungeness B has only a few years to run, and Dungeness C is at best a distant prospect.<sup>856</sup>
- 12.7. The Chairman of the Supporters of Lydd Airport and Director of LyddAir, **Robin Gordon**, moved to Gatwick in search of work and his most important memory is of how proud people were of their jobs and skills. In 14 years at Lydd he has seen something of the same effect. Airports are driven by the base carrier and LAA needs to have facilities operable by its potential customer airlines. The bread and butter aircraft are B737s and A320s. In essence airport planning is geographical happenstance as 70% of UK flights arrive from or depart to the South East. The biggest issue at Lydd is surface access but without demand it will not improve. If the runway is extended but the airport does not prosper there would be little environmental impact. If the airport prospers there would be a close relationship between economic development and environmental impact but the aviation industry is flexible and efficient and will operate ever more efficient aircraft in terms of noise and fuel efficiency.<sup>857</sup>
- 12.8. The proposals are supported by **Councillor Carole Waters** who has lived on the Marsh for 33 years and in Lydd under the flightpath for 14 years. It is a special place that needs protecting but the environmental concerns can be managed and Lydd is in desperate need of jobs. It is the second most deprived area in Kent and jobs are needed for young people.<sup>858</sup>
- 12.9. **Tim Crompton** owns the George Hotel in Lydd. His life has been unaffected by attending the school at the end of the runway and, as a young man, living a road away from the perimeter fence. He would like to see the area prosper but is worried by the lack of prospects. Small regional airports create jobs and prosperity that have to be weighed against harm to wildlife and plants. There used to be more flights but the Marsh is still there. Flora

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<sup>855</sup> ID/8 AM9

<sup>856</sup> ID/8 PM1

<sup>857</sup> ID/8 PM3

<sup>858</sup> ID/8 PM5, Cllr Waters Day 33

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fauna and birds are protected but no one looks out for the young of the human race. The Council has tried to do that and Councillors in favour of the expansion were (re)elected recently despite the claim that local people are against the airport. Despite the scare stories of objectors you do not see scorched earth when you fly out of Gatwick with its hundreds of flights and it would not be like that from the 8 or 9 flights a day proposed at LAA.<sup>859</sup>

- 12.10. **William Meade** was born in Lydd 15 years ago and wants a future without having to leave the area. The future and increased prosperity lies with the Airport.<sup>860</sup>
- 12.11. **Brian Oxley** believes that the triennial festival emphasises the value of Shepway for the Arts. Many artists have painted in the area which is ecologically sensitive. The proposal would bring noise pollution, particularly for those under the flightpath. It would alter the character of the area and affect the AONB adversely. The proposal would provide profit for a few at the expense of the many.<sup>861</sup>
- 12.12. **Mrs Molloy** points out that Kent already struggles to provide hospitals and services for the existing population and feels that the lack of resources would mean an expanded Airport could not be accommodated. The area includes an AONB with farms, churches, and hamlets that attract tourists. Noisy polluting planes would pass over these. Water and sewerage systems are overdue renewal and water shortages present a problem. Climate change has led to homes flooding. High skilled jobs would bring in more people with demands for housing. Manston airport is well served by roads and the Channel Tunnel is already there with capacity to expand. Another airport is not needed.<sup>862</sup>
- 12.13. Whilst people within a one hour drive might travel less, **Rodney Watts** maintains that if flights are displaced from Gatwick then many more people would have to travel further. Some from Kent would still go to major airports to transfer to long haul flights. In any event, not all airlines would be able to use LAA, even with a longer runway, and the need for increased air travel is being challenged. What would happen if there was an engine failure or similar with the Ranges in operation? The developer might pay for some improvements but local people would have to pay for the ongoing maintenance, additional backup services and the effects of damage due to air turbulence. Some new jobs would be created, albeit seasonal and part time, but the new Sainsbury store at Hythe has created the same number of permanent jobs. Airlines, passengers and the developer have a choice whether to use LAA. Residents would have no choice.<sup>863</sup>
- 12.14. **Shepway Environment and Community Network** was originally a Rule 6 party but neither produced, nor cross-examined, any witnesses. It seeks to protect the natural features of the area and the designation of the wider Romney Marsh area as a National Park. It maintains that the capacity of the

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<sup>859</sup> ID/8 PM9

<sup>860</sup> Mr Meade Day 33

<sup>861</sup> ID/8 AM2, Mr Oxley Day 33

<sup>862</sup> ID/8 AM4

<sup>863</sup> ID/8 AM5

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land to absorb growth has gone with rising populations and that the Dungeness peninsular and surrounding area is crying out for a thriving tourist industry. The intrusion and civil engineering needed to provide infrastructure for the expanded airport would put paid to that. Aviation is in the first rank of activities to wreak havoc as recognised by the Climate Change Committee. Rather than reducing, CO<sub>2</sub> emissions have remained roughly the same and expanding air travel would exacerbate the problem.<sup>864</sup>

- 12.15. There is no passenger demand for facilities at LAA in the view of **Peter Ford**. Several types of jet could use LAA now if there was demand. Manston, which is some 54km from Lydd, has one of the longest runways in Britain, and has excellent road and rail connections, but demonstrates there is little demand. LAA is an unsuitable location close to an RSPB Reserve, protected habitats, and a military firing range. It is far closer to a nuclear installation than any other airport in Britain or France, and expanding it would pose an unnecessary and avoidable risk of a catastrophic accident.<sup>865</sup>
- 12.16. **Lynne Beaumont** was an SDC Liberal Democrat councillor until May 2011 and has concerns about the process at the meeting when the Council voted in favour of the applications. Councillors with no expertise in environmental issues cut and pasted two assessments together and came to a view contrary to that of Officers and professional consultants by balancing the environmental issues against the need for employment. There is a need for jobs on Romney Marsh but the future is green tourism.<sup>866</sup>
- 12.17. Councillor Alex Phillips presented the views of **Keith Taylor MEP**. The proposal would adversely affect designated sites close to the airport in one of the most sensitive wildlife habitats in the UK. There would also be an increase in greenhouse gas emissions. The risk of a crash into the nuclear power station should also be fully examined. Whilst it is claimed that there would be a positive economic impact on the community, both Manston and Lydd are operating at less than 1% of their potential capacity. There is no economic case for expansion that would damage current and future investment in tourism. Finally, the proposal would have an adverse impact on the quality of life of those living on the Dungeness peninsular with increased air and noise pollution and serious health impacts for local communities.<sup>867</sup>
- 12.18. **John Hinchliffe** does not believe that there is a demand for the air services envisaged given the failure of similar services at Manston, which has better infrastructure and access. The proximity to the nuclear power station is an unacceptable risk given the high likelihood of bird strike, and atmospheric pollution would damage the ecology of the area. The claimed employment opportunities are unrealistic. Unemployed skilled personnel such as pilots and aircraft engineers are not numerous in Shepway and unskilled jobs would be likely to be contracted out leading to the lowest pay rates.<sup>868</sup>

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<sup>864</sup> ID/8 AM6

<sup>865</sup> ID/8 AM8

<sup>866</sup> ID/8 AM10

<sup>867</sup> ID/8 AM11

<sup>868</sup> ID/8 AM12

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- 12.19. **Tony Bingham** is a planner living in Ashford who has worked for SDC and the Planning Inspectorate. The proposals accord with some aspects of saved LP policies such as employment generation and airport expansion. However, they significantly offend against others including those that provide for sustainable development and ecological and landscape protection. The Council's report does not weigh the impact of the proposals against the provisions of the relevant policies. The proposals fail to recognise the exceptional character of the Marsh and the unique landscape of Dungeness mentioned in saved LP Policy CO14. Large jets moving at speed along a concrete strip with attendant noise would not be compatible with policies that provide for the protection of the countryside such as CO1. Measures would be required to protect against fuel spillage, pollution from surface water run-off and safe disposal of aircraft de-icing fluid to comply with Policy CO13.
- 12.20. It is illogical to assume that the introduction of planes such as a B737 would not affect adjacent designated wildlife sites. Given their proximity to the runway any harmful impact could not be overcome or mitigated by conditions or an Agreement. A suggested condition relates to bird scaring. Whilst this might be common at commercial airports, it would not be acceptable on land adjacent to protected wildlife habitats. The proposals would be contrary to saved LP Policies TR15 and CO8 to CO11. Intensification of use of the access to the airport would result in unacceptable additional hazards to road safety on the A259 and would fail to accord with the provisions of LP Policy TR11. CPRE contends that parking provision would be inadequate. If this were the case the proposal would be contrary to Policy TR12. Whilst a travel plan has been submitted, the Section 106 Agreement refers to updated travel plans that are not part of the application, may not be open to public scrutiny, and may differ from the original travel plan. It is questionable whether this accords with Policy TR13.
- 12.21. The runway extension, a concrete slab of some 9,400m<sup>2</sup>, would not be a feature with a high standard of design and would not retain the vast expanse of flat rural grassland that is an important landscape feature of the Marsh. The proposals would be contrary to LP Policies BE1, BE16, CO1, CO4 and CO5. It seems likely that a more sophisticated runway approach lighting system would be needed requiring a land take about 1km beyond the end of the runway necessitating a further planning application. The proposals would have an undue impact on wildlife in the protected areas and views of the night sky, contrary to the aims of LP Policy U15 b) and c) that seek to control outdoor lighting.
- 12.22. In terms of sustainability, Lydd is in one of the remotest parts of Kent and very poorly served by the highway network. There is no alternative to road transport as it is not connected to the railway system. The development would cater for 500,000 passengers, possibly rising in the future, and there would be some 639 parking spaces. In the light of the likely substantial traffic movements, the proposals cannot be seen as other than unsustainable and contrary to LP Policy SD1, particularly a), c), d), e), f) and k).



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- 12.23. In terms of conditions relating to the runway extension, there is no reason to alter the normal three year time period for implementation. Conditions 2, 13, 14, 15, 16, 17, 18, and 19 require the approval of details by SDC in consultation with NE, and in one case also with RSPB. The risk is that as the Council supports the applications it might approve details to which EN objects. Details should be approved prior to planning permission as failure to approve details could lead to the situation where permissions granted could not be implemented. Condition 7 would control hours of work but contradicts condition 24. If construction work should stop by 18:00 hours to protect local residents then so should flights. Conditions 20, 21 and 24 are tied to the number of movements and a further condition requiring a log of such movements to be maintained and submitted quarterly to SDC would ensure compliance. These comments would apply equally to corresponding conditions suggested in relation to the terminal building.
- 12.24. It is appropriate to consider any alternative sites if that would overcome or mitigate harm that might be caused. Manston to the north has a long runway capable of accommodating any aircraft flying today and its use would obviate the need to extend the runway preventing environmental harm. Moreover, Manston is accessible by means of motorway and A roads and there is a proposal to provide a railway station. It would be significantly more sustainable than Lydd.
- 12.25. Aircraft safety is also important. The approach to runway 03 crosses or runs close to the Lydd Military Ranges whilst that to runway 21 does the same in relation to Hythe Ranges. Aircraft on the latter flightpath would be at risk of a strike from ricocheting small arms fire whilst those on the former would also face the added risk of mortar fire, albeit at minimum charge, with trajectories that can attain the altitude of aircraft descending. These likely hazards further militate against the grant of planning permission.<sup>869</sup>
- 12.26. The jobs created would be drained from elsewhere just to transport people in the least sustainable way possible, in the view of **Claire Williams**. Flying causes about 30% more emissions than driving, and 50% more than taking the train. Apart from sites designated for wildlife, the flightpaths would fly over beautiful areas that provide holidays for those on low incomes. Development should work with the area's assets by encouraging sustainable tourism.<sup>870</sup>
- 12.27. **Colin Brown**, who lives close to the end of the runway, considers that there is a significant risk of bird strike due to the flocks of geese in the area. Although there might be methods of scaring them away, that would only further erode the quality of life. There is already noise pollution from larger jets and light pollution. Both would get worse. Planes would also be closer to Greatstone Primary School and more frequent. In addition, however small the perceived risk to the nuclear power station is it would increase from more flights by larger aircraft and any incident would be severe.<sup>871</sup>
- 12.28. **David Watts** also lives near the end of the runway. Those living there would be subject to a horrific experience, whilst the Councillors who voted
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<sup>869</sup> ID/8 AM13, ID/7 812

<sup>870</sup> ID/8 AM14

<sup>871</sup> ID/8 AM15 & DVD

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for the proposals mostly live miles away. Noise would cause considerable stress and a newspaper article indicates that living under flightpaths can lead to a 30% greater risk of heart attack. In addition, the combustion process is not complete and the planes passing over would produce not just CO<sub>2</sub> and water vapour but also pollutants such as nitrogen oxide, carbon monoxide, hydrocarbons and soot. The hazard would be reinforced by the low altitude of the planes preventing dispersion. All mechanical things fail some time adding another danger. The human rights of the few to live without avoidable danger and damage to health should be respected.<sup>872</sup>

- 12.29. The effect of noise and air pollution on the pupils of Greatstone School and local residents is a concern of **Valerie Jarvis**. This would lead to a reduction in visitors resulting in tourism job losses. Referendum results show a resounding 'no' to airport expansion. Dungeness C was ruled out due to environmental considerations and the same should apply to the airport. The LDF indicates that quality of life should be maintained. The road infrastructure already barely copes with traffic levels and the proposal would increase congestion in an area that should be preserved. Whilst a compensation scheme for those suffering property devaluation was mentioned nothing more has been heard.<sup>873</sup>
- 12.30. **Pat Davis** lives in Greatstone and considers that the Councillors who voted in favour of the expansion did not have the qualifications to make an important decision contrary to the advice of Officers and consultants. The decision is contrary to all reason and common sense. The airport may have been busier in the past but the planes are different and the area more populated. Emissions and noise would pollute the area and permanently damage the RSPB Reserve and designated habitats. This would lead to a loss of visitors and prosperity. The additional flights mean that there would be a greater risk of a plane crashing onto the power station. Greatstone School would be close to the end of the runway and the noise and pollution would affect the children. There is a promise of jobs but generally they would be menial and would not justify destroying the peace of the large proportion of residents who are elderly.<sup>874</sup>
- 12.31. **John Harrison** considers that the Council bent over backwards to help the applicants and that Councillors' did not approach the decision with an open mind. An increase in operations would increase the risk of a plane crashing into the power station and the lack of objection from ONR is in contradiction of its own ALARP principles and guidelines. More movements mean a greater risk of accidents, and bird strikes would also be more likely. Finally, although LAA pooh-poohed the '60 seconds to disaster' slogan, a terrorist might have gained control of a landing aircraft, the pilot himself might be a terrorist, or having gained control of a taking-off plane a terrorist could turn it round back to Dungeness. The risk of an incident would be increased by the proposals.<sup>875</sup>

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<sup>872</sup> ID/8 PM2

<sup>873</sup> ID/8 PM4

<sup>874</sup> ID/8 PM6

<sup>875</sup> ID/8 PM7

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- 12.32. **Ken Dixon** objects to the increase in noise and pollution that the proposal would bring leading to reduced property prices. It would also affect the flora and fauna and industrialise an internationally important area of conservation. Mr Dixon runs two businesses. The first is a construction company employing 45-55 people. The area is not deprived and the low paid jobs at the airport after the construction stage would be outweighed by the loss of businesses affected by the expansion. His second business is a game bird shoot on land surrounding the airport which employs a number of local people and uses local suppliers. Future investment in this business has already had to be re-appraised following the Council's decision on the applications.<sup>876</sup>
- 12.33. The increased use of jets is the reason for **John Atkins** objection. The latest engines still do not achieve 100% combustion and spray pollutants into the atmosphere affecting the environment. Additional noise would make sitting in the garden impossible. There would be no objection to the use of propeller powered aircraft as they use different fuel. The development of Manston would affect less people as its flightpaths are mainly over the sea.<sup>877</sup>
- 12.34. **Robert Ball** used to live near Heathrow and was woken by the noise of night flights. Tiredness makes you irritable and a danger to others when driving to work. Whilst initially there would be no commercial flights at night there is no mention of cargo flights and at Heathrow the terms of a Section 106 obligation were broken. Allowing the proposals would ignore the referendum vote that was overwhelmingly against the expansion. Residents' quality of life would be affected for the sake of business but jobs would not be created. Manston has not led to Thanet booming. Politicians side with business but business caused the financial problems. Eroding residents' quality of life is not a price worth paying.<sup>878</sup>
- 12.35. The environment is a concern of **Trevor Boulden** a biology teacher and local resident of 23 years. Manston has not been successful and the environment and quality of life should not be sacrificed for the sake of a dubious economic venture. Whilst a few jobs would be created, around 7-8 a year more would be lost. SDC's referendum in 2007 had a 35% turnout and 66% voted against expansion. Dungeness is a sensitive educational resource with designated sites of importance. Children love finding newts or leeches and the rare birds such as Marsh Harrier, Bittern and Purple Heron should be fully protected. Birds should not be replaced by B737s. Kent is already overdeveloped and a line should be drawn in the sand.<sup>879</sup>
- 12.36. **Kate Chesterman** used to live near Leeds/Bradford airport. She has sympathy for the economic needs of the area but it has a unique role as a gateway to Europe and London. This puts pressure on the County and the quality of life. Local people are exhausted by the development that has taken place and there has to be a more creative way of improving the economic situation.<sup>880</sup>

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<sup>876</sup> ID/8 PM8

<sup>877</sup> ID/8 PM10

<sup>878</sup> Mr Ball Day 33

<sup>879</sup> ID/8 PM12, Mr Boulden Day 33

<sup>880</sup> Ms Chesterman Day 33

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- 12.37. **Mal Gray**, a resident of Lydd, used to organise concerts and festivals for up to 120,000 people a day. The main problem with the proposal would be the lack of infrastructure. There is no train service and public transport is unsuitable. Even if a shuttle bus were provided, Ashford International station could not handle the additional people. At the busiest times on local roads there are 2,500-3,000 cars, roughly one every 2 seconds, and more cars would lead to more accidents. The cats eyes and white lines are not maintained. At 30% of capacity the airport would cost taxpayers around £2,500 a day for police and other services and if the airport reached 50% of the proposed 500,000 this would at least double. The entrance to the airport and Hammonds Corner would need improvement but even then if there were an accident on the A2070 or A259 there would be long delays. There have been at least 8 such accidents this year and Government figures show a major accident where someone is hospitalised costs between half to a million pounds, another bill for the taxpayers. The proposal would cost local people millions with a return of pennies.<sup>881</sup>
- 12.38. **Wendy Nevard** has been associated with the area since 1955 and has lived nearby since 1983. The reasons for objecting have not changed since the last proposal. The airport used to show respect to local people but there has only been one test flight and that was horrendous. The airfield is a postage stamp and lacks adequate safety margins. Despite the MP's view, the noise at Greatstone School would not be OK, even with quieter aircraft. When there are air shows there are tailbacks to Old Romney. The airport's real intentions are not known and this could be the thin end of the wedge. Stansted shows how airports grow. The proposal would concrete over the Marsh and desecrate the County eroding the quality of life. Whilst more employment is needed that is the fault of local Councillors.<sup>882</sup>
- 12.39. **Julia Paguin** points out that most residents are against the airport expansion. There is a lack of infrastructure but there are birds, which caused a plane crash in New York. She is the 5<sup>th</sup> generation of her family to live in the area but all have worked elsewhere and returned later. The 130-140 jobs the airport would generate would be outweighed by the loss of jobs in tourism due to people not wanting to holiday under a flightpath. If money were put into education local youngsters could move away to work and then return in retirement. The proposal would adversely impact on lives and the beauty of the Marsh with no benefit to the area.<sup>883</sup>
- 12.40. Retired solicitor **Mark Skilbeck** has lived in the area since 1972. The Marsh has 14 medieval churches that were not subject to 'Victorian Restoration' and add significantly to the attraction of the landscape. It is common sense that the proposal would have an adverse effect on the local area and environment. Given the existence of Manston a new Regional Airport is unnecessary.<sup>884</sup>
- 12.41. **Christopher Lepine** lives under the flightpath and believes the airport would be economically marginal and so would need to operate 24 hours a

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<sup>881</sup> ID/8 PM15

<sup>882</sup> ID/8 PM16 Ms Nevard Day 33

<sup>883</sup> ID/8 PM17, Mrs Raguin Day 33

<sup>884</sup> ID/8 PM18

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day. The Inquiry should not be seduced by the Section 106 Agreement restrictions as these could be relaxed in the future.<sup>885</sup>

- 12.42. **Rosemary Boucherat** from Rye is concerned that the proposal would affect the atmosphere in Rye that attracts visitors. She has been to Cornwall and seen the effects of development around Lands End and is concerned about the future of the area around the airport.<sup>886</sup>
- 12.43. **Peter Aviss** is opposed to the runway extension as he lives under the flightpath, already hears planes, and is severely affected by jets. He is also concerned about the road infrastructure as it is already difficult to get out of Greatstone or Littlestone if there is an accident. **Sally Aviss** knows that children care about the environment and quality of life. She teaches at Greatstone School which is in a vulnerable position. Planes can be seen and heard but do not disturb the children's concentration at present. That would not be the case with jets. Experience indicates that even triple glazing does not stop noise disturbance. SDC should put its efforts into pursuing Dungeness C, which would generate far more jobs than the airport. Politicians have signed up to agreements relating to global warming but the proposals would add to global impacts, increasing CO<sub>2</sub> emissions not reducing them, and destroying the area and its pure air. Birdstrike is also a real fear as it is impossible to say where they would fly. The Marsh should be preserved for its heritage and tranquillity and the strength of local feeling should be recognised.<sup>887</sup>
- 12.44. **Mark Duberry** moved 11 years ago for a better life. He worked for a global carrier and knows freight carriers work at night. Night flights are deplorable and even small jets can be heard in the early hours. The proposals would have a detrimental impact and local people should not have to suffer a reduction in house price or be unable to sell.<sup>888</sup>
- 12.45. **Joan Castle** moved from Greenwich for peace and quiet but even small jets going over are horrendous. There is lots of wildlife around but it wouldn't stay if the proposal went ahead.<sup>889</sup>
- 12.46. The poor infrastructure, making it difficult for emergency services to get around, is a concern of **Pauline Pogson**. If the roads were widened to keep traffic moving villages, property and fields that contribute to the character of the area would be affected.<sup>890</sup>
- 12.47. **Rob Ryan** spoke at the meeting when the Council made its decision. The Government has abandoned large airports but Councillors have not listened and are going a different way. They should listen to their leaders and follow policy.<sup>891</sup>

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<sup>885</sup> ID/8 PM19 Mr Lepine Day 33

<sup>886</sup> ID/8 PM20 Ms Boucherat Day 33

<sup>887</sup> Mr & Mrs Aviss Day 33

<sup>888</sup> Mr Duberry Day 33

<sup>889</sup> Ms Castle Day 33

<sup>890</sup> Ms Pogson Day 33

<sup>891</sup> Mr Ryan Day 33

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- 12.48. **Mr Pearce (?)** from Lydd believes the airport is a white elephant and reinforces the points made about infrastructure. It is a considerable distance to the nearest hospitals.<sup>892</sup>
- 12.49. **Dave Schmitt (?)** believes that the process the Council went through was not democratic and has complained to the Ombudsman. Despite claims that the proposal would be good for the British economy the airport has sought to hide the facts for a number of years.<sup>893</sup>
- 12.50. **Gill Moore** is from North Kent but supports the people of the Marsh. Biodiversity and habitats are protected by law and there is a concern about climate change. The Dungeness area is beautiful and should be preserved.<sup>894</sup>

### 13.0 Written Representations

#### 13.1. Introduction

- 13.1.1. Over 3,000 responses were received at application stage from individuals, town and parish councils, statutory authorities and other organisations and groups. These are summarised in the Officer's Report to Committee dated 24 September 2009. Approximately 88% object to the proposals with 12% supporting them. The issues raised by both supporters and objectors are similar to those raised at Inquiry stage, and by the main parties at the Inquiry.<sup>895</sup>
- 13.1.2. 902 written representations were received at Inquiry stage. The vast majority, 883, object to the proposals. 14 support the expansion of the airport and 5 neither support nor object. Of the 5, one was from the **Folkestone and Hythe Constituency Labour Party** stating it wished to be represented at the Inquiry, which it was. The **CAA** indicated it was responsible for licensing the airport but that its safety process is separate from, and independent of, the planning process, **HSE** confirmed it had no objection to the proposal and **NATS** confirmed that the proposal did not conflict with its safeguarding criteria. Finally, **Andrew Mier** asked if any tests had been done to assess noise in Fairlight whilst **J Stephens** complained about LAA comments that LAAG had organised and orchestrated protests.<sup>896</sup>

#### 13.2. Supporters

- 13.2.1. Of the 14 letters/e-mails in support, Folkestone and Hythe Constituency Labour Party, FLAG and Damien Collins MP all spoke at the Inquiry. The overwhelming reason given by other supporters is the creation of jobs and benefits to the local economy. One supporter points out that the airport has existed since soon after the war and has not affected birds whilst three maintain that wildlife adapts to its surroundings.<sup>897</sup>

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<sup>892</sup> Mr Pearce? Day 33

<sup>893</sup> Mr Schmitt? Day 33

<sup>894</sup> Ms Moore Day 33

<sup>895</sup> CD1.48 Sect 5

<sup>896</sup> ID/7 Reps 77, 316, 606, 847, 870 & 872

<sup>897</sup> ID/7 Reps 344, 467, 475, 484, 572, 574, 609, 610, 714, 838, 839, 869 & 899

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- 13.2.2. **Kent County Council** is a statutory consultee and has a community 'well being' power under the *Local Government Act 2000*. There has been no major new policy document since the ATWP. Whilst growth has reduced since its publication, future growth is still predicted. The National Policy Statement on airports has not been produced but the ATWP needs to be reviewed, particularly in terms of tackling climate change. The reduced support for additional runway capacity at Heathrow, Gatwick and Stansted means an increased opportunity for regional airports to provide services to meet demand.
- 13.2.3. The Kent and Medway Structure Plan (SP) was the overarching strategic document until superseded by the RSS. SP Policies TP24 and TP25 supported the expansion of both Manston and Lydd subject to environmental safeguards. This remains KCC's position and is reflected in *Unlocking Kent's Potential and Growth Without Gridlock*. However, it is recognised that the designated sites pose a specific test. Lydd is not mentioned in the RSS, as it is considered to be of local rather than regional importance, but that does not preclude growth. There are distinct differences between the two airports such that certain sectors would favour one over the other.
- 13.2.4. The local economy is weak and underperforming with few large employers, a high level of out commuting and a high level of deprivation relative to the rest of Kent and the South East. Expansion at LAA would help diversify job opportunities and skills. Using evidence from other airports the forecast increase in direct jobs is a reasonable assumption. The combined increase of 64 to 190 jobs would be modest but positive. Some in-migration of specialist occupations would be on a small scale and there would not be an adverse impact on the labour or housing markets. Other new developments in Shepway would be well served by an expanded local airport. Benefits would also be felt in the wider area of South East Kent, particularly Ashford, and East Sussex. Ashford is seeking to attract employers in the knowledge sectors, typically those who value access to air travel as a location factor. East Sussex County Council and Rother District Council support the proposals in principle on the basis of the social and economic benefits.
- 13.2.5. There are around 7,200 tourism jobs within a 40 minute drive of LAA and it is estimated that the proposals would generate an additional 12,500 tourists pa at 500,000ppa. This would generate 16 indirect jobs and 18 induced jobs based on CAA numbers from Bristol and Bournemouth airports. Some passengers using LAA would stay more than one day in Kent and the economic benefit would be felt across the county. There would be associated business opportunities and social and economic benefits to the local population. The estimated 12,500 tourists could generate between £1,593,750 and £3,762,500. Whilst there are concerns that the providers of accommodation and attractions such as the AONB, which trade in part on the tranquillity of the environment, could lose popularity, the impact would be limited as the number and frequency of aircraft movements would be modest compared to other UK airports.<sup>898</sup>

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<sup>898</sup> ID/7 Rep 839

### 13.3. Objectors

- 13.3.1. The 883 objections to the proposals predominantly raised the same issues as are raised by the main parties who appeared at the Inquiry. By far the most significant matter raised, by 732 objectors, is the effect on ecology with 275 objections also mentioning ornithology. The socio-economic effects and nuclear safety were the next most popular topics of concern with 476 and 427 objections respectively. Noise/tranquillity was mentioned by 384 and the effect on air quality by 334 objections. Transport infrastructure was raised by 175 objections. Airport operations, flood risk and planning were also mentioned. **British Energy** acknowledges that the increase in risk is extremely small and would not compromise current or future activities at the site but is duty bound to resist any increase in risk however small.<sup>899</sup>
- 13.3.2. In addition to the national, strategic and local planning policies referred to by CPRE, the **Kent Downs AONB Executive** makes reference to two other documents. The *Kent Downs Management Plan 2009-2014* includes two policies that refer to tranquillity, SDT6 and GNR5, and a number of commentaries do likewise. Considerable weight should be given to these. In addition, *Government Guidance to the CAA on environmental objectives relating to the exercise of its air navigation functions* indicates that where it is possible to avoid overflights of AONBs below 7,000ft without adding to environmental burdens on more densely populated areas it makes sense to do so.
- 13.3.3. Reference is made to 4 case histories: Suffolk Coasts and Heaths AONB: Suffolk Coastal DC Local Plan First Alteration; Sussex Downs AONB; Wealden DC (APP/C1435/A/88/089129); Exmoor National Park call in decision (SW/P5366/A/220/2); and, North Wessex Downs AONB: Wiltshire Council (APP/Y3940/A/09/2117723). These demonstrate the case for assessing aviation development of all sizes for its impact on tranquillity. The issues at Lydd are not unique and should be given great weight.
- 13.3.4. Tranquillity mapping has been carried out consistently across England and reflects positive and negative factors. Noise and visual intrusion from aircraft detract from tranquillity. The Kent Downs AONB is one of the more tranquil areas in the region and valuable for that scarce quality. Flightpaths that would be used by larger aircraft using LAA with a longer runway would pass over some of the most tranquil parts of the AONB and the noise from these would be significant. Over the Lympne escarpment and possibly to the north the noise impact at ground level of such an aircraft overhead, or nearly overhead, would exceed 57dB. This is the threshold accepted by the Government as the onset of significant community annoyance if experienced on a continuing basis. The low background noise levels would compound this and the impact on tranquillity would damage the experience of the AONB.
- 13.3.5. There would be less impact on the AONB if the additional aircraft movements were handled through Manston, which already has a longer

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<sup>899</sup> ID/7 All Reps not already mentioned in footnotes



runway. The ES does not give sufficient reasons for not promoting Manston as an alternative. In view of the impracticality of mitigating the effects of aircraft landing and taking off and passing over the AONB the case for examining alternatives is reinforced. The Officer's report to SDC is in line with the AONB Executive's advice and the applications should be refused.<sup>900</sup>

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<sup>900</sup> ID/7 Rep 840

## 14.0 Inspector's Conclusions

*[The references in square brackets are to paragraphs in this report]*

### 14.1. Introduction

14.1.1. LAA has been an operational aerodrome since the 1950s. It has scheduled flights to Le Touquet, and a number of helicopter movements, albeit that most movements are by GA. The site is in a sensitive location given its proximity to the Dungeness SAC, the Dungeness to Pett Level SPA, and the Dungeness, Romney Marsh and Rye Bay SSSI. There are also pSPA and pRamsar sites nearby and the wider area includes the Dungeness NNR and the Kent Downs AONB.<sup>[2.4, 5.1.1, 6.1.1, 7.1.1, 10.1.1, 11.1.1]</sup>

### 14.2. Basis for Assessment

14.2.1. LAAG, but not the legally represented parties, considers that the ES and AA should have considered a throughput of 2mppa, a figure stated in LAA's Masterplan, rather than 300,000 and 500,000ppa for the runway extension and terminal building respectively.<sup>[5.2.3, 6.2.1]</sup>

14.2.2. Although a legal opinion for LAAG maintains that the Masterplan should be subject to AA, it does not form part of the applications and has not been subject to any statutory procedure or approval. It is a long term aspiration and recognises that any increase above 500,000ppa would require a phase 2, dependent on phase 1 being a commercial success. Although LAAG contends that an application for a throughput of 500,000ppa would weaken the environmental baseline and strengthen the economic case, it would not be sensible to address such an uncertain possibility as 2mppa.<sup>[5.2.3, 5.2.6, 6.2.5, 9.2.4]</sup>

14.2.3. A report by Cranfield University indicates that a throughput of 500,000ppa would be unlikely to make an operational profit. LAAG's inference from this is that there must be further expansion in mind. However, the Cranfield report only considers part of the Airport owner's full portfolio of assets. A figure of 2mppa appears in information such as a Stakeholder Consultation Strategy, marketing literature and presentations. Although some of these date from 2006 and after the submission, many predate the applications. Moreover, any future expansion to 2mppa would require another ES, which is the approach adopted at Coventry and Bristol Airports.<sup>[5.2.3, 5.2.4, 5.12.23, 5.3.46, 5.2.4, 9.2.3]</sup>

14.2.4. In terms of EIA the *Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999* apply and are designed to ensure that any adverse impacts are understood from the outset. In *R v Swale BC exp p RSPB* it was held that, except for cases where the application was an integral part of an inevitably more substantial development, "the question whether or no the development was of a category described in either schedule has to be answered strictly in relation to the development applied for, not any development contemplated beyond that". These applications are not "an integral part of an inevitably more substantial development" and the caps on passenger numbers have been an integral part of the development from the start.<sup>[6.2.2, 6.2.3, 9.2.2]</sup>

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- 14.2.5. In planning, permission should not be refused if concerns could be addressed through conditions. If the proposals were assessed on the basis of both 500,000 and 2 mppa and it was concluded that the former was acceptable but the latter not, then permission should be granted subject to a limit of 500,000ppa. As permission is only sought for 500,000 there is no point in assessing 2 mppa solely to comply with a *Directive*. The *Directive* would not impose a meaningless requirement and it would be an illogical interpretation of legislation to conclude that an analysis should be carried out that could not have any effect on the eventual decision.<sup>[6.2.7]</sup>
- 14.2.6. In any event, whilst the runway extension could accommodate 2mppa, the terminal building couldn't. LAAG has compared floor areas of the existing and proposed terminals but whilst the existing terminal could handle a B737 and a smaller aircraft simultaneously, it could not do it to modern standards. The proposed terminal would be able to handle two B737s simultaneously to sustain 500,000ppa and provide the expected retail and catering facilities but there would be no in-built overcapacity. It would not be capable of handling 900,000ppa, never mind 2mppa, and would be capped by condition to 500,000ppa. Whilst the Airport currently has no limit on night time flying and so could accommodate movements over a longer period, the proposal would be subject to restricted hours which could not be altered without consideration of all the impacts, including any increase in throughput.<sup>[5.2.7, 6.2.5, 9.2.7]</sup>
- 14.2.7. The only basis for assessment at 2mppa would be if the applications were part of a "cumulative impact assessment" or an "in combination assessment" but they do not fit the reasons for seeking such an assessment. This is not a case where there are four airports each with 500,000ppa such that, in the absence of a cumulative assessment, the impacts of a combined total of 2 mppa would never be considered. Notwithstanding that phase 2 might be quantifiable, if LAA wished to expand from 500,000 to 2 mppa it would need to seek planning permission and the full impacts of 2 mppa would be assessed at that stage. This is not 'salami slicing' to avoid the need for an EIA as the applications have been the subject of EIA within the limits proposed. Indeed, LAAG does not suggest that development is being split to avoid an EIA or AA in the future. Any decision would be made in the full knowledge of the impacts the permitted development would have.<sup>[5.2.4, 6.2.5, 9.2.4, 9.2.6]</sup>
- 14.2.8. The Council's Scoping Opinion was given on the basis of a two phased development of 500,000ppa and 2mppa with the latter in outline. Although LAAG argues that it would be a breach of the Aarhus Convention to carry out an assessment on any other basis, there is no obligation to seek a Scoping Opinion. That outline application has not been made and the rest of the development was scoped in accordance with the opinion. There would be no benefit in complying with a Scoping Opinion for a development that is no longer proposed. Consultation took place between 2006 and March 2010 and the proposals have been scrutinized at this Inquiry so the public have not been prejudiced.<sup>[5.2.4, 6.2.6, 9.2.5]</sup>
- 14.2.9. For the AA, the relevant provision is the *Conservation of Habitats and Species Regulations 2010*. LAA's Masterplan is not a "plan or project" for which "consent permission or authorisation" is sought. The "plan or

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project" for which permission is sought is explicitly limited at the uppermost level to 500,000ppa.<sup>[6.2.4]</sup>

- 14.2.10. Advice referred to by LAAG was not provided by the Council's Solicitor, but by Counsel. It explicitly concludes that the AA should be conducted on the basis of 500,000ppa. The view that a cap on numbers should not be left to be dealt with by condition is contradicted by *Habitats Regulation 61(6)* which states "In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions to which they propose that the consent, permission or other authorisation should be given".<sup>[6.2.8, 9.2.8]</sup>
- 14.2.11. Npower Renewables Ltd's closing submissions at the Little Cheyne Court Wind Farm Inquiry are prayed in aid of LAAG's interpretation of the *Directive*. The advocate stated "Under the EIA regime it is not possible to separate an overall scheme into segments in order, as Mr Stewart reminded the inquiry, either to seek to avoid crossing the relevant thresholds for either Schedule 2 or Schedule 1 development, or alternatively to undertake EIA on individual phases of development of less magnitude than the overall development". That is not what the proposals in this case do. The Inspector in that case noted that LAA's proposals would need to satisfy their own environmental tests and the proposals have been tested at this Inquiry.<sup>[5.12.23, 9.2.9]</sup>
- 14.2.12. The ES has been prepared on an appropriate and lawful basis and any AA should be made on the basis of 500,000ppa.<sup>[6.2.9]</sup>

### 14.3. **Airport Operations**

#### **Current Operations**

- 14.3.1. The Airport is the only one in the UK that has a nuclear power station within 5km, a military danger area within 2.5km on the final approach track, a runway width less than 45m, only one runway direction available at times for landing the B737/A319 sized aircraft proposed for commercial operations, and a 5° offset ILS localiser and 3.5° ILS glideslope.<sup>[9.3.1, 12.38]</sup>
- 14.3.2. LAA began operating in 1954 and activity has fluctuated over the years. A scheduled passenger service still operates to Le Touquet using an aircraft of less than 5,700kg, although passenger numbers have fallen from 4,000 in 2003-4 to between 5-600 in 2009, some 1.2% of the total movements. There is GA activity with a flying school, and business jet traffic with aircraft charter and FBO handling and engineering services. All this results in approximately 22,000 aircraft movements pa, although light aircraft of less than 5,700 kg made up 99% of aircraft movements in 2009. There is currently no restriction on flight times but the actual hours of operation show limited flights at, or around, dawn and dusk resulting in limited on-site bird control activity.<sup>[5.3.1, 7.2.2, 8.2.1, 8.2.2, 8.2.3, 8.2.4, 12.2, 12.5]</sup>
- 14.3.3. The number of aircraft movements over 5,700 kg more than doubled from 234 in 2009 to 586 in 2010, but this is less than 2 a day and many of these were positioning flights by Aeronova Metroliners that have since moved to Birmingham. The number of ATR 42 flights was similar in 2009 and 2010, apart from additional touch and go movements for training.

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References to business jets include the Gulfstream V. There were 22 movements by a Gulfstream V in 2010, about one every 15 days, compared to 92 movements by all types of Gulfstream and Learjet business jets in 2009, around 1 every 3 days, and the numbers of “business aviation” flights were lower in 2010, at 82, than they were in 2006 and 2007. There is, therefore, little evidence that LAA has bucked the national trend of decline during the recession. [5.3.3, 7.2.2, 7.2.4, 8.2.1, 8.2.2, 8.2.3, 8.2.5]

- 14.3.4. RSPB accepts that the bird populations live alongside a very low key operation and NE accepts that the current operations at LAA have not had an adverse impact on the integrity of the SPA because of that. The current baseline is predominantly small aircraft with a limited number of larger aircraft and little evidence of any upward trend. Indeed, the number of business aviation flights has fallen since 2006 and passenger numbers are also falling. Movements outside normal daytime hours numbered 244 in 2010, less than one a day. [7.2.1, 8.2.1, 8.2.7, 8.2.8]
- 14.3.5. Runways 03 and 21, with LDAs of 1470m, can handle regional aircraft types for commercial passenger services and corporate jets but are not suitable for B737s or A320s. These can only operate into and out of Lydd empty or with light fuel loads, for private business or maintenance operations. The extended runway would maximise the availability of routes and aircraft choice for operators. The existing terminal was designed to handle small numbers of disembarking passengers at any one time. In its current configuration, it could only handle 200,000ppa from smaller aircraft, although internal reconfiguration would permit approximately 300,000ppa from larger aircraft. There would still be constraints and it would not be able to handle passengers from two B737s simultaneously so affecting scheduling requirements. [5.3.2]

### **Operations with Development**

- 14.3.6. Demand forecasts have been based on CAA survey data and the 60% market capture rate, based on Exeter competing with Bristol and Birmingham, is conservative. The upper and lower growth scenarios show that 300,000ppa would be reached in 2021 or 2023 and 500,000ppa in 2024 or 2028. [5.3.5, 5.3.6, 5.3.7]
- 14.3.7. There would be around 18 scheduled larger aircraft movements a day on average compared to one every three days in 2009. Normal operating hours would start at 07:00 bringing in dawn in autumn, winter and spring when there are currently very few flights. LAA has declined to accept a condition limiting commercial passenger aircraft movements until after 10:00 hours, although it maintains that it is unlikely that there would be flights at that time as aircraft would not be based at Lydd. [7.2.5, 7.2.6]

### **Movements and Flightpaths**

- 14.3.8. LAAG is the only party to question the ability of LAA to operate commercially in the manner proposed but its witness has much less relevant, and practical, experience of commercial flights than LAA's. [5.3.8, 5.3.9]

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- 14.3.9. It is alleged that FP1 would not be viable for commercial aircraft when the ranges were active as there would be insufficient space to manoeuvre safely. However, Group 2 aircraft can, and do, land on runway 03 using FP1 with the existing length and configuration of runway and the SCG accepts that they can operate commercially from the Airport.<sup>[5.3.10, 5.3.12]</sup>
- 14.3.10. It is alleged that commercial aircraft would be unable to take off from runway 21 when the ranges were active as the radius of turn on FP12 could not be achieved by an adequate safety margin and the bank angle would be unlikely to be achievable safely. However, the profile for a B737-800 departing runway 21 on a flight of up to 1,000nm shows it would be airborne around 1400m from SOR and be 500ft high some 1800m from SOR. Even with no head wind a sufficient radius of turn could be achieved on FP12 to avoid the ranges. Departure FPs from Hobart and Cairns demonstrate this. Moreover, FP6, which it is agreed could be flown by all aircraft types, would require an angle of bank at least as great as that on FP12. Concern was expressed about flying into the restricted area but there are already clear procedures for ATC to call for a ceasefire on the ranges via a hotline. There is no suggestion that this compromises safety and the MoD has not objected to the applications or the continued use of this procedure.<sup>[5.3.13, 5.3.14, 5.3.15, 9.3.6, 9.3.7, 12.13, 12.25]</sup>
- 14.3.11. LAAG suggests that a B737-800 would not be able to land on runway 21 with a full payload when there was a tailwind and that the modal split would be 80/20 in favour of runway 21 rather than 70/30 as LAA maintains. A number of factors would have to occur before a diversion were necessary: a tailwind component of more than 10 knots, a wet runway, and a fully laden aircraft in terms of fuel, passengers and luggage. This combination would not occur often, but even so in practice the aircraft would be configured prior to departure for LAA in a way that would enable it to land safely. These are practical measures for airline operators. The types of aircraft would vary but even a B737-800 or A319 would not normally need to be operated at maximum weights for short haul operations within Europe.<sup>[5.3.16, 5.3.17, 9.3.6, 9.3.7]</sup>
- 14.3.12. Whilst LAA is unwilling to accept a condition requiring use of ILS where possible, it is inconceivable that a commercial airline would use RNAV flight procedures just to save a few miles in the approach when ILS was available. Indeed, LAAG accepts that "The ILS approach is likely to continue to be the procedure of choice in the foreseeable future due to its greater precision". In relation to the ILS, a small deviation from the recommended intercept height and reference datum height would be insignificant. The glidepath would have an accuracy of +/-13.5ft at 180ft at which stage the pilot would no longer be following guidance from ILS. At the same height the PAPIs would have a tolerance of +/-15ft. These would be well within the tolerances in CAP 168.<sup>[5.3.18, 5.3.19, 9.3.11, 9.3.12]</sup>
- 14.3.13. The runway 21 departure RESA would remain at 116m as it is restricted by the rail line to Dungeness. This is short of the ICAO and CAA recommended minimum of 240m and there is no indication that CAA would accept 116m. However, although Southampton Airport does not support B737s and A320s, it has a RESA of 95m because of the M27 indicating that

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the CAA does, in some circumstances, accept existing restrictions.<sup>[9.3.9, 9.3.10]</sup>

- 14.3.14. Whilst LAA accepts that on occasion pilots might 'dip a wing' into the range danger area, land further up the runway, or disregard the PAPIs, there is no evidence that such practices would be accepted by the authorities or operators.<sup>[9.3.2, 9.3.3]</sup>
- 14.3.15. Runways of the length and width proposed already exist. They are used by the types of aircraft proposed at similar, or longer, ranges at a number of airports, some of which have operating conditions that would make the operations more difficult than at Lydd. If the FPs and other matters raised were impractical, as LAAG maintains, the CAA would not licence them, the airport would not be able to operate them, and the harm LAAG claims would be caused would not arise. Ultimately potential operators would decide if the constraints were acceptable or not.<sup>[5.3.9, 5.3.11, 5.3.20, 9.3.8, 12.4]</sup>
- 14.3.16. The ES was prepared on the basis of the Lydd ranges always being active and there being no FPs over them. It is now proposed to fly over the ranges when they are inactive, which could be about a third of the time. This would take aircraft over designated sites. LAA has indicated that it is prepared to accept a condition requiring all aircraft over 5,700kg departing runway 21 to follow FP12 and avoid flying over the ranges regardless of whether they are active, although it does not consider that such a condition is necessary. This is considered later in this report.<sup>[7.2.7]</sup>

### **Fallback**

- 14.3.17. NE and RSPB contend that fallbacks are not relevant at SE and AE stage for the reasons given by counsel for the SoS in *Britannia*. However, the judge's tentative view in that case was that it would be strange to refuse planning permission due to the impact on a protected site when in reality an existing use might have a much greater impact on nature conservation interests in it. NE/RSPB do not dispute the relevance in a planning context but if their view is correct it would have the illogical effect of fallbacks being relevant in assessments of impact on SSSIs but not on SPAs.<sup>[5.3.40, 7.2.8, 7.2.9, 7.2.10, 8.2.10]</sup>
- 14.3.18. There is no indication of when natural increases in business become a 'plan or project' in terms of the *Regulations*. However, although there might not be a formal plan for growth, the claimed fallback could not be described as 'business as usual' as it would embody growth from the current position. This is likely to require a change in operations and activities as there would be no significant passenger transport movements. It is estimated to have around 38,450 movements but with no limitation on greater growth compared to the cap in the development situation of 40,000 movements.<sup>[5.3.22, 5.3.23, 5.3.24, 5.3.41, 7.2.9, 7.2.10, 7.2.11, 8.2.11, 8.2.12]</sup>
- 14.3.19. In terms of business jets, LAA would provide a FBO, the ability to fly in without stacking saving time and cost, and business clusters and homes in the wider catchment area. It is estimated that there would be 26 movements a day by larger aircraft over 5,700kg in the fallback compared with 44 with the proposals. No account is taken of possible training flights

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in the fallback and the number of helicopter movements is common to both the fallback and development scenarios. [5.3.25, 5.3.26, 5.3.32]

- 14.3.20. The parties differ as to what growth in business jet movements might be achieved. The major airports will be at capacity by 2020 and other airports are constrained, with commercial flights displacing business aviation. Farnborough could absorb about 38% of the projected growth, principally for the area west of London. There might be some capacity at Biggin Hill but it is subject to airspace constraints in the London Terminal area and restrictions on operating hours. An application to relax these has been refused. Manston could also take some business aviation and other smaller airports could accommodate a limited amount of growth [5.3.27, 5.3.28, 5.3.29, 5.3.30, 5.3.31, 7.2.15, 12.2]
- 14.3.21. It is claimed that LAA would capture around 8,400 of the increased business jet movements in the period to 2030, around 12% of the market. However, investment in facilities has only led to business returning to 2006-7 levels. Business flights are influenced by the destination and other airports are better placed as LAA has poor surface access. Any local market would be limited and has had the opportunity to use LAA since 2006. Similarly, the claimed advantage of being able to operate at night currently exists. Capacity at airports closest to London would be taken up first and could be increased by the use of larger aircraft and future policy change in relation to additional runways. Whilst growth at LAA is likely to be greater than that indicated by applying a 5% growth figure to the 195 business jet movements in 2010, that would be only a proportion of the 8,400 claimed. [5.3.28, 5.3.31, 7.2.12, 7.2.13, 7.2.14, 7.2.15, 7.2.16, 8.2.14, 8.2.15, 8.2.16, 8.2.17, 9.3.18, 9.3.19, 9.3.20, 9.6.9]
- 14.3.22. There has been no attempt to attract freighter cargo services or maintenance activity, as those services could conflict with what is proposed in terms of no night flights. There has been no assessment of the local parcel market or catchment but a light cargo/freighter operation that works principally at night started in February 2010, due to works at Southend airport. It has expressed an interest in staying at LAA and increasing its operations, which would not require any physical works or hangerage as freight could be loaded directly from trucks, although staffing issues would need to be resolved. This parcel service is a one-off feature that may or may not prove to be part of the baseline. [5.3.3, 5.3.39, 7.2.3, 7.2.17, 8.2.6]
- 14.3.23. The extended runway would be suitable for pilot training on jet aircraft that would give rise to environmental problems, but without the employment benefits. Whilst CPRE is concerned that the airfield management would look to promote this in the absence of an airline operator, activities such as maintenance and training have always been an option but have not transpired in the past. There would be strong competition from established MRO bases and other airports seeking to attract that type of operation. MRO operations currently take place and a change to different types of aircraft would not constitute a change of business or require new hangerage. [5.3.39, 7.2.18, 9.3.21, 10.2.1]
- 14.3.24. The number of passengers would influence bird control measures as greater efforts would be required with more passengers at risk. The



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vulnerability of business jets is different to commercial aircraft and the noise contours and flight trajectories around the designated sites also differ between the two. LAA maintains that as it is unlikely to attract a based-airline operation there would not be many early morning or late evening flights and commercial passenger flights would mostly occur at the least sensitive times of day. A report by Airport Solutions queries the type of aircraft. A B737-800 has been used to assess terminal capacity as it has the highest potential number of passengers but it would not be the only type of aircraft used. The B737-300 is being phased out and the airlines mentioned by Airport Solutions are unlikely to operate from LAA. Delays from a 'warn and hold' approach to managing bird risk would not undermine flying times as major European cities would not be served and there would only be around 8 flights a day to the likes of Belfast, Dublin, Glasgow, and Edinburgh.<sup>[5.3.36, 5.3.37, 5.3.38, 8.2.18]</sup>

- 14.3.25. Whether there is a reasonable likelihood of the claimed fallback occurring has to be considered. If planning permission were refused the Airport would have to close, mothball parts of its operations, or maximise its general, business aviation, and cargo/freight operations that could operate 24 hours a day. It has not attracted new business in recent years and any scaling back would make it less likely to attract new business. When the planning permission granted in 1992 was not implemented or renewed, a fallback was not implemented. The situation now would be different to that following the 1992 permission but there must be a doubt about the implementation of the claimed fallback, or at least about the scale of it, notwithstanding the investment already made at LAA. Indeed, LAA only refer to the fallback in terms of 'might' and 'potentially'.<sup>[5.3.22, 7.2.19, 8.2.13]</sup>

### **Need**

- 14.3.26. No airline has shown an interest in the Airport, despite marketing since the ILS was installed in 2006 and with no restrictions on hours of operation that is a major advantage over other business airports such as Biggin Hill. A route to Jersey announced in 2009 has been scrapped due to lack of demand and the timescale for 500,000ppa throughput has been stretched to 2030. Objectors maintain that if there had been any demand, a conditional deal with an airline to improve or replace the terminal could have been negotiated.<sup>[8.2.9, 9.3.14, 9.3.15]</sup>
- 14.3.27. However, previous marketing efforts were not focused on sustainable operations with the current facilities. LAA did not employ a dedicated marketing team of consultants with a knowledge and experience of the market. As a result, key operators are unlikely to be aware of LAA's facilities. When Flybe went to Manston, LAA had no ILS and Flybe would have been considering operating with an upscaled fleet that would mitigate against LAA's restricted runway length. LAA could not handle operations up to 300,000ppa without the developments. The examples of other airports differ from LAA in either serving different markets, such as London City, or large conurbations, such as Southampton. Other smaller airports are in relatively remote areas of the UK handling far fewer than 300,000ppa and provide feeder links to London and elsewhere. Attempts to run services at small airports with short runways have been unsuccessful.<sup>[5.3.4, 5.3.34, 5.3.35]</sup>

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- 14.3.28. In terms of competition, there are ferry services and Eurotunnel nearby, with new train services proposed to a wider range of European destinations by both Eurostar and Deutsche Bahn, reducing demand for passenger and air freight services to some extent. However, these would not necessarily compete with the routes that might be served by LAA and comparative journey times by rail illustrate that flying would still be attractive for more distant destinations.<sup>[5.3.44, 9.3.16, 12.12]</sup>
- 14.3.29. Manston has been suggested as an alternative to LAA. It has unused runway and terminal capacity, less operational constraints, better surface access, and plans for a station nearby on the high speed Javelin train link to London. It has one of the longest runways in the country but still operates at a loss suggesting that runway length is not the only issue. This is reinforced by the fact that many short haul operators could use LAA now as it has a runway 306 metres longer than that of London City Airport. In addition, Southampton with a shorter runway than proposed at LAA attracts more passengers than Bournemouth, which is 25 miles away and has a runway longer than LAA's would be.<sup>[5.3.44, 6.3.1, 9.3.4, 9.3.5, 9.3.16, 10.2.1, 10.2.2, 12.12, 12.15, 12.17, 12.18, 12.24, 12.33, 12.40]</sup>
- 14.3.30. Whilst LAA and Manston might have poor catchment areas compared to Bournemouth and Southampton Airports that serve urban areas, CAA data indicates that LAA has 2.5 million passenger trips within 1 hour drive whilst Manston has only 1.8 million. 1.3 million of the LAA trips would be to 'top 40' destinations and trips are forecast to grow by 2.7% to 2020 and then by 2.5% to 2030. The numbers do not rely on passengers coming from London, or internal flights, or to destinations served by surface links. Manston's failure could be due to a dependence on spill from London airports that have not yet reached capacity but are projected to do so by 2020. Infrastructure may not be as relevant as location within the catchment.<sup>[5.3.45, 6.3.4, 9.3.5, 10.2.2, 12.15]</sup>
- 14.3.31. RSS Policy T9 does not mention Lydd but does not suggest it would prejudice any development of Manston. It encourages the development of, and growth at, smaller airports that have a valuable role to play in meeting local demand and contributing to regional economic development. Lydd is recognised in the 2003 ATWP as a small airport. There is not a 'beauty contest' between the two airports and the existence of a better alternative is irrelevant if the proposal is acceptable in itself. Manston would be relevant if the proposals at LAA significantly affected the integrity of the designated sites. Permission could only be granted then if IROPI was claimed. Not only is this not part of LAA's case but the existence of Manston would make it very difficult to pass an IROPI test.<sup>[6.3.1, 6.3.2]</sup>
- 14.3.32. LAAG claims that the proposal is speculative and that there is insufficient demand, as demonstrated by the proposed 10 year time condition for the terminal building, and that the Airport would not be profitable at 500,000ppa. However, this ignores the fact that the Airport is part of a wider portfolio including the Lydd Golf Club and Driving Range where a major hotel development is planned. This would make LAA more akin to Bournemouth and Humberside Airports where there is income from ancillary activities. LAA, having taken advice, is satisfied that the proposed investment is worthwhile. If the proposals were acceptable in all other

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respects, it would be irrelevant whether the Airport were viable. Any restrictions imposed would still exist and any future expansion would require further assessment and permission, although LAAG maintains that there would be pressure to allow 24 hour operations to make the airport viable. [5.3.46, 5.3.47, 6.3.3, 9.2.3, 9.3.13, 9.3.21, 12.7]

#### 14.4. **Ecology**

- 14.4.1. When the Inquiry opened NE, LAAG, KWT and many local people had concerns about ecological matters. Indeed, it was the topic most commonly raised in the written representations at Inquiry stage. [7.3, 9.4, 11.2, 12.18, 12.35, 12.45, 12.50, 13.3.1]
- 14.4.2. If either application were likely to have a significant effect on a European site permission should not be granted until an AA has been made in accordance with the *Habitats Regulations*. NE must be consulted, a requirement satisfied by its involvement at this Inquiry, and regard had to its representations, although they need not be accepted. Permission may only be granted if the proposal “will not adversely affect the integrity of the European site”. Conditions and mitigation secured through any Section 106 Agreement should be considered and permission should only be granted if “no reasonable scientific doubt remains”. This does not equate to absolute certainty. The only exception is if there are IROPI but this is not relied on. [6.4.5, 6.4.6]
- 14.4.3. As a matter of policy pSPA sites should be treated as if the *Habitats Regulations* applied. This does not currently extend to pRamsar sites, although the draft NPPF specifically proposes extending the protection of the *Regulations* to such sites. Where a permission to which Regulation 61 would have applied has been granted before a site is formally designated, but the development has not been completed at the date of designation, the Council must review the permission and make an AA. Depending on the result, the LPA may be legally obliged to revoke the permission or make a discontinuance order. These provisions apply to Ramsar sites as well as European sites. [6.4.7, 6.4.8]
- 14.4.4. Regardless of any legal or policy duty, permission should only be granted in this case if the proposals would not have a significant adverse effect on the integrity of the pSPA and pRamsar sites if those designations were subsequently confirmed/notified. Whilst this would not absolve SDC of its duty to review the permissions, it would dramatically reduce the prospect of any need to revoke the permissions as a result. [6.4.9]
- 14.4.5. The species of most concern in this case are great crested newt, common lizard, grass snake, water vole, medicinal leech and other aquatic invertebrates, bats, and moths and other invertebrates. [5.4.5]
- 14.4.6. Design changes and mitigation measures have overcome NE’s concerns about loss of ditches and CPRE’s concerns about detrimental impacts on water quality from activities such as de-icing. The new ditches would provide acceptable replacement habitat and agreed mitigation measures mean that the impacts on protected water vole, grass snake, common lizard, bats and medicinal leech, together with great crested newts, would be adequately addressed. [7.3.1, 7.3.2, 10.5.3, 11.2.2]

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- 14.4.7. An ABAP is proposed that would include the involvement of NE, KWT, Buglife and Butterfly Conservation on an expert panel. There would be a baseline survey, annual monitoring against it, and an annual target for maintaining or increasing site populations. An annual report would be compiled and the panel would be able to add or remove species and habitats subject to a maximum number. [5.4.1, 5.4.2, 11.2.1, 11.2.3]
- 14.4.8. In terms of lighting impact on moths, an assessment approach has been agreed with an annual monitoring programme. An annual report would be made available. In addition to the mitigation set out in the ES, internal and external lighting would be minimised between 23:00 and 07:00 hours. Security lights would be linked to movement sensors, dimmed to minimum intensity, and hooded to prevent light spillage. [5.4.3, 11.2.4]
- 14.4.9. Common ground has been reached and, subject to conditions and a Section 106 Agreement, NE and KWT accept that all the species of concern would be fully protected and the proposal would have no significant effects or unacceptable impacts on the SAC or other designations. Consequently they have withdrawn their objections in terms of all matters of ecological interest except birds. LAAG presented no evidence of its own but relied on that of NE and KWT. There is no evidence that would lead to a contrary conclusion. [5.4.4, 5.4.5, 5.4.8, 6.4.2, 6.4.3, 6.4.4, 7.3.1, 7.3.2, 11.2.3, 11.2.4, 9.4.1]
- 14.4.10. Moreover, NE acknowledges that there would be ecological benefits from the proposals, including the ABAP. 800 metres of ditches would be infilled but there would be 1300 metres of new ditches, a net addition of 500 metres of habitat for aquatic invertebrates, invertebrates, water vole, great crested newts and reptiles. Species protection plans during construction would ensure existing species were properly preserved and translocated where necessary. [5.4.6, 5.4.7, 7.3.3]

#### 14.5. **Air Quality**

- 14.5.1. Whilst NE and KWT initially raised concerns about air quality in terms of nitrogen deposition affecting plants, a number of local people raised concerns about the impact on human health in terms of incomplete combustion processes leading to dispersion of CO<sub>2</sub>, water vapour, nitrogen oxide, carbon monoxide, hydrocarbons and soot at low altitudes that would prevent dispersion. [7.4, 11.3, 12.18, 12.28, 12.29, 12.30, 12.33, 12.43, 13.3.1]
- 14.5.2. Conditions and a Section 106 Agreement would ensure that matters contained in SCGs agreed between LAA, NE and KWT relating to air quality, nitrogen deposition, and vegetated shingle would be implemented. Monitoring, and additional monitoring, would be carried out and any deleterious changes would be investigated. If recorded for more than a year this would trigger remedial action to be instigated within six months. Indeed, a report indicates that it is surrounding land uses, particularly agriculture and the use of fertilisers, which play a significant part in the quality of the lichens in the vicinity. Conversion of land to non-fertilised and managed meadow and a ban on pesticides and fungicides which would be achieved by taking land out of unregulated agricultural use for the runway extension would, to some extent, have a positive effect that would not exist without the proposals. [5.5.3, 5.5.4, 6.5.1, 7.4.1, 11.3.1, 12.4]

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- 14.5.3. As a result of the measures in the SCGs, NE and KWT consider that nitrogen deposition would be within acceptable levels and would not affect the integrity of the SAC or substantially damage the interest features of the SSSI. There is no technical evidence that would lead to a contrary view. [5.5.2, 7.4.1, 11.3.2, 12.9, 12.18, 12.30]
- 14.5.4. Persistent loud noise can cause stress and a greater risk of heart attack. There are a number of vulnerable locations in the vicinity, including schools, nursing homes, and holiday parks. Although concerns have been raised about the effects on human health, in terms of noise and air quality, they are not supported by any technical evidence and there has been no objection from any statutory consultee. Impacts on health are dealt with in the ES, which has been independently reviewed by consultants on behalf of SDC. Existing background pollutant levels are low and concentrations of pollutants would remain well below the standards set out in the UK's *Air Quality Strategy*. Similarly, concentrations at roadside locations are predicted to remain well within the standards in the *Strategy*. Consequently there would be no material impact on the health of local residents due to the proposals. [5.5.5, 6.5.1, 10.5.3, 10.5.4, 12.17, 12.28, 12.29]
- 14.6. **Ornithology**
- 14.6.1. The most notable outstanding issue as far as NE/RSPB are concerned is the potential effect on birds in the context of the *Habitats Regulations*. [5.6.1, 7.1.2]
- 14.6.2. Dungeness is an important site for birds all year round with a variety of habitats supporting a range of species. It is a notable stopping-off point for migratory birds and the excavation of large and small pits has provided roosting and breeding sites for waterfowl. The area around the Airport has internationally important populations of wintering waterfowl, as well as an overall assemblage of species. There is also an internationally important range of breeding birds, including sea birds and marsh harrier. The breeding bird assemblage is an SSSI feature. There is a very high number of important birds, and of birds hazardous to aircraft. [7.5.1, 7.2.2, 7.2.3, 7.2.4, 8.3.9, 12.4, 12.6]
- 14.6.3. The success of the designations is demonstrated by the proposed extension of the SPA that would add 8 new species, 7 of which are Annex I species, and the pRamsar. Within the SPA and pSPA there is a range of habitats offering opportunities for feeding, roosting and breeding for different species. The supported bird populations change with time as they are highly mobile and are not confined by the boundaries of the designated sites as they move between roosting and feeding sites. Despite references to inappropriate management, and possible future population trends as a result of climate change, it is the sites as designated that have to be considered. The conservation objectives are to maintain the habitats in favourable condition for the bird populations. [5.6.11, 7.5.1, 7.5.6, 7.5.7, 7.5.8, 7.5.9, 8.3.1, 8.3.10, 8.3.11, 8.3.12, 8.3.13, 8.3.15, 8.3.16]
- 14.6.4. The SPA and pSPA consist largely of waterbodies used for roosting and so land outside, but functionally linked to, the designated sites is also important. Arable and grassland fields adjacent to the Airport, to the north-west, west and south-west of it, and to the west and north-west of Lydd provide feeding areas for concentrations of designated species.

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Without this land outside the designated sites the range of species and assemblages for which the sites are designated might not be there. [7.5.5, 8.3.1, 8.3.10, 8.3.17, 8.3.31]

- 14.6.5. Although it presented its case on ornithology with RSPB, NE is the statutory consultee under the *Habitats Regulations*. NE pursued similar objections, which were rejected by the Inspectors and the SoS, at the Little Cheyne Wind Farm Inquiry and the Inquiry that led to planning permission for an extension to the Airport runway in 1992. Neither case was provided to NE/RSPB's witnesses. In the Little Cheyne case, the common position was informed by local officers and ornithological specialists but NE's officers have had no input into this ornithological objection and it is reliant on RSPB. NE did not consult RSPB's Area Manager who worked on site at the Reserve to see if any past or present activities were causing problems and the only NE expert view known to the Inquiry is that there was no objection to the renewal of the 1992 permission as it was not considered to have any material adverse effect on ornithological interests. [5.6.3, 5.6.4, 5.6.5]
- 14.6.6. The *Conservation of Habitats and Species Regulations 2010* seek to provide a high degree of protection to relevant species and their habitats. SPAs are central to that purpose. The SoS is a competent authority and cannot give consent for any plan or project within Regulation 61 without complying with its terms. Whilst 'plan or project' is not defined, it has been construed widely and includes associated measures and mitigation through conditions or Section 106 obligations. [8.3.2, 8.3.3]
- 14.6.7. All the designated sites have been identified, together with the requirements that apply to them by law, and the pSPA and pRamsar have been treated as if already designated. The tests are whether a plan or project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and, if a significant effect appears likely, an AA must be made of the implications for the site in view of its conservation objectives to ascertain if the plan or project would adversely affect the integrity of the site. [5.6.6, 5.6.7]
- 14.6.8. The stringency of the test in the *Regulations* is acknowledged but it is not a test of absolute certainty. In this case RSPB does not say that any significant effects would be likely, which is the threshold under the *Regulations* before requiring an AA, or that there would be harm to the integrity of the SPA, only that all the ingredients are present to varying degrees and that there is no evidence to demonstrate that there would not be any effects. This is mere bare possibility. [5.6.1, 5.6.5, 5.6.7, 5.6.8, 6.6.2, 6.6.10, 8.3.6, 8.3.7]
- 14.6.9. Even if it is necessary to carry out an AA, the test is whether the proposals would have a significant adverse effect on the integrity of the site. That is "the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of species for which it was classified". Impacts on, or even deaths of, individual birds that do not impact on a species at population level do not bring a proposal into conflict with the *Regulations*. This point was raised at the Little Cheyne Inquiry and in the 1992 decision. The situation must be looked at in the light of the best scientific knowledge in the field. [5.6.9, 5.6.10, 6.6.1, 6.6.2, 8.3.8]

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## The 1992 Decision

- 14.6.10. The correlation between aviation activity and bird interest was examined at a 1988 Inquiry that led to planning permission being granted for a runway extension at the Airport in 1992. The two current applications differ from the 1992 scheme as that did not include a terminal building. However, there is no objection to the construction of the terminal and it would not affect the maximum number of aircraft movements or types, or the  $LA_{max}$  noise levels that were at issue in 1992. Indeed, modern aircraft are quieter than those considered then. The exclusion zone around the power stations, with the exception of direct overflying at less than 2,000ft, was not introduced until 2001 and aircraft could take off and turn left over the Reserve, the pSPA and the pRamsar. Indeed, in 1992 6,000 movements by aircraft over 5,700kg could use FP D4 over the Reserve. This contrasts with the current proposals where only some 3,600 movements of larger aircraft are now contemplated and most would fly north over Lydd due to the Ranges being in use. Moreover, LAA is prepared to accept a condition preventing any jets taking off and flying south over the Reserve and designated sites even when the Range is closed if it is considered necessary. [5.6.11, 5.6.14, 5.6.15, 5.6.21, 8.3.20]
- 14.6.11. In the 1980s, just prior to the previous Inquiry, there had been large numbers of passengers and large aircraft using the Airport. Aviation activity has fluctuated over the years but there were 38,900 movements in 1978, almost the maximum number now sought, and numbers peaked in 1979 at 60,900. There were very few movements in 1970-1972 and numbers have declined again recently. However, there have been periods when there have been far more aircraft movements than now sought by considerably noisier aircraft, including Chapter 2 aircraft that were so noisy they are now banned in the UK. At the time of the 1988 Inquiry movements had dropped to 19,400 in 1987 with 1,100 passengers. The current baseline is similar with approximately 22,000 movements pa and passenger numbers of 2,817 in 2005 falling to 529 in 2009. [5.6.13, 5.6.26, 6.6.6, 7.6.1]
- 14.6.12. NE/RSPB's objection then was similar to that made now. Although NE maintains that they cannot be used as a proxy for all birds, Sandwich and Common Terns were identified as the principal species at risk as they are particularly sensitive. Noise levels were predicted to exceed 90-95dBA up to 20 times a day with a maximum of three peaks in an hour. However, the terns established their colony when aircraft movements had reached 39,000. Concerns that the proposals, with a similar number of movements, could prevent them recolonising are, therefore, unfounded. The SoS agreed that terns had bred successfully at Borrowes Pit since 1978 and that any variation in breeding success during that time did not correspond with variations in aircraft movements at Lydd Airport. The scientific evidence relied on then by NE/RSPB is not materially different to that relied on now and the main development, the recognition that an effect does not necessarily constitute an impact, only weakens their case. The range of birds breeding, feeding and wintering in the area was generally similar to those found today and it is difficult to see why species that were not identified as a concern then, when there was experience of

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frequent noisy movements, should now be thought to be at risk. [5.6.16, 5.6.17, 5.6.19, 5.6.25, 6.6.5, 6.6.6, 6.6.7, 6.6.13, 7.6.2, 8.3.14]

- 14.6.13. There was no evidence at the time of the 1992 decision of decline or problems from low flying aircraft or helicopters at other tern colonies or at another RSPB Reserve. Indeed, two NE offices reported gull and/or tern colonies co-existed at airfields with no apparent harm. The Irish Wildbird Conservancy confirmed that there was no threat to a seabird colony at Dublin Airport that was overflowed by aircraft at about 1,000ft. No concerns were raised about impacts from bird scaring activities that would have been, and would continue to be, part of the operations at the Airport. [5.6.18]
- 14.6.14. The 1987 *Circular* referred to protection of economic growth as a consideration but, following the decision in *Waddenzee*, the law has changed and it is no longer Government policy that a balance can be struck between protecting a designated site and economic growth. Notwithstanding this, the 1992 conclusions on bird disturbance were not reached on the basis of protecting economic growth and so are still relevant. [5.6.23, 7.6.2]
- 14.6.15. At the time of the 1992 decision the SSSI had been designated, the pRamsar and RSPB Reserve existed, and the area that is now an SPA was a pSPA. Both of the proposed designations were treated as if they enjoyed actual legal protection under the *Directive*. The SPA has changed over the last 20 years with the addition of new waterbodies and reed beds and the habitat has become more diverse, and there are now more bird species. In addition, there is now the new pSPA designation, which is slightly closer to the airport, and includes additional species and assemblage of birds. However, the 1992 decision was based on aircraft overflying waterbodies in a pSPA with a nesting tern colony and noise levels in excess of 90-95dB LA<sub>max</sub>. The waterbodies and reed beds now in issue would not be overflowed in the same way, particularly if the condition requiring use of FP12 were imposed, and would be subject to lower noise levels. The terns have subsequently relocated to Rye Harbour, due to predation during the breeding season by badgers and foxes, but no more sensitive species has been identified. [5.6.11, 5.6.12, 5.6.24, 7.6.2, 8.3.14]
- 14.6.16. In 1997, after consulting RSPB, NE did not object to renewal of the 1992 planning permission as it was unaware of any further evidence regarding impact of aviation on birds or any material change in circumstances. On that basis it invited LAA to withdraw its safeguarding objection to the pSPA. The author of NE's 1997 letter makes clear that consideration of the renewal was in the light of the new guidance and that consideration of the principle of the development was not inhibited by the fact that the application was for a renewal. [5.6.20, 5.6.22, 5.6.23, 5.6.69, 7.6.1]

### **Disturbance from Aviation Activity**

- 14.6.17. It is necessary to ask what has changed since the 1992 decision, which is what NE did in 1997 when renewal of the 1992 permission was sought. Neither NE, nor RSPB, identify any advance in knowledge since 1992 and their witness, who has no personal or practical experience of assessing the impacts of aviation on birds, had not studied that decision but had come to



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the subject via the literature. Papers since 1992 do no more than indicate that there can be disturbance effects but it is common ground that this does not necessarily lead to disturbance impacts on the population as a whole. No academic paper demonstrates that aviation either does, or does not, produce disturbance impacts on any of the species of concern at Dungeness. [7.5.61, 7.5.93, 6.6.8, 6.6.9, 6.6.10, 8.3.58]

- 14.6.18. There is no inherent conflict between birds and busy airports. The contention that more aircraft means more disturbance is inconsistent with a paper by Burger that found gulls habituate at the end of the runway at a busy international airport. Different species show different propensities to habituation but it is accepted that lapwings are tolerant of noise, gulls readily habituate and golden plover are tolerant of the existing operations at LAA. If birds are more likely to habituate given more exposure then the proposals should decrease rather than increase disturbance. If they don't habituate to infrequent or irregular flights then the current operations should be causing disturbance now and there is no evidence that they do. [6.6.11, 6.6.12, 6.6.14, 7.5.60, 7.5.66, 7.5.67, 8.3.59, 8.3.71]
- 14.6.19. Much of the scientific material that exists is not relevant as LAA is an existing Airport with existing activity, including intermittent noise from Gulfstream jets, using established flightpaths. The ES accepts that there would be a change to the existing relatively quiet noise environment, that increased noise disturbance would be likely, and that some species would be disturbed at peak noise levels above 80dB. However, supporting material to the ES includes case studies that, whilst not scientific, identify that a number of species of major conservation interest show no obvious adverse effects from aircraft movements at a number of different airports. [5.6.61, 7.5.59, 7.5.62, 7.5.63, 7.5.70, 7.5.71, 8.3.56, 8.3.63]
- 14.6.20. The habitats of concern, and the species within them, were identified as those along the western boundary of the RSPB Reserve, the pSPA and SPA that contain habitats for birds throughout the year, including mute swan, shoveller, bittern, golden plover, marsh harrier and widgeon. Although the ES concluded that there could be noise disturbance to some species at peak noise levels exceeding 80dB, these species occur within the 88dB, 85dB, 82dB, and 79dB contours. NE/RSPB do not accept the contours as accurate but offer no expert evidence of their own as to why or what they should be. An area just within the contours would be 270m from the end of the runway at its closest point, and a perpendicular distance of between 150-300m and 1km from the southerly flightpath. Aircraft would be low over the length of the western boundary when landing and for part of it when taking off but a condition, which LAA is prepared to accept, would preclude use of a southerly flightpath over the Reserve. This would move aircraft further away from parts of the SPA/pSPA and remove sites 7-8 and A-C, as identified in the SCG, from the 79dB contour. This should be applied as a precautionary measure. [5.6.62, 5.6.63, 7.5.57, 7.5.64, 7.5.65, 7.5.71, 8.3.17]
- 14.6.21. RSPB accepted that if the SoS was satisfied, on the basis of the habitats and species in the SCG, that there were no likely significant effects or adverse effects on integrity then there were no other species or habitats of greater concern that would lead to a different conclusion. All species except Goldeneye were considered. None are known to be sensitive to the

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peak level or type of noise proposed for any habitat area and examples were given where they nest, feed, or loaf very close to existing, busier, and noisier airports. No one suggests that Goldeneye are more sensitive.<sup>[5.6.63, 5.6.64]</sup>

- 14.6.22. None of the baseline monitoring sites were within the SPA but noise levels in the countryside area are relatively low. LAA used 85dB as a watershed in evidence, rather than the 80dB in the ES, on the basis that there is no evidence of that level of noise having an impact. However, different species respond in different ways to peak noise levels. The difference between peak and ambient, which is significant in this case, is also a factor. Notwithstanding this, only a relatively small area of the SPA/pSPA would lie within the 79dB contour, let alone the 85dB contour. Each habitat and species was analysed in relation to the LA<sub>max</sub> and the conclusion reached by LAA's witness from knowledge of the literature and practical experience is that none would be affected by the change in the noise environment. There is little evidence to indicate this conclusion is wrong. The existing situation was also analysed by reference to the Gulfstream V contours. The irregularity of its flights reduce the chance of habituation making the analysis robust.<sup>[5.6.65, 6.6.15, 7.5.55, 7.5.59, 8.3.59, 8.3.70, 8.3.71]</sup>
- 14.6.23. Despite RSPB's view that birds may tolerate some locations as there is no spare capacity at better sites elsewhere, Marsh Harrier, Cetti's Warbler, Waterrail and Reed Warbler, all species of concern, breed on the airport within the 88dB LA<sub>max</sub> contour where the noise exposure from the Gulfstream V already far exceeds anything proposed. This does not indicate disturbance. In addition, some habitats of concern are already disturbed by fishing, human activities or shooting adjacent to the Airport.<sup>[5.6.19, 5.6.66, 8.3.66]</sup>
- 14.6.24. The conservation objectives require there to be no significant decrease in extent of habitat or displacement of birds by disturbance and the maintenance of areas of open water and food. No habitat would be lost and the areas of habitats within the contours that could possibly be affected would be small. They could be used by birds highly tolerant of noise such as those that breed within the 88dB contour. If birds were disturbed they would lose feeding time and have to expend energy flying but species disturbed by aviation could exploit the land for feeding at night when there would be no flights. Species do move elsewhere as indicated by the terns that relocated within the SPA from Dungeness to Rye Harbour. There is little evidence that there would be significant declines in the size, distribution and functioning of the populations of any species within the designated areas. Indeed, the Airport has functioned at a more intense level than now proposed and there is no evidence that it had such an effect at that time. The proposals would not disturb and fragment the habitats of the SPA, pSPA and pRamsar birds such as to adversely impact on a species as a whole. Nor would they have any adverse effect on the integrity of the site as a whole, or that part of it in the vicinity of the Airport, as there are other areas in the vicinity that could be used.<sup>[5.6.67, 6.6.15, 7.5.60, 7.5.83, 7.5.84, 7.5.85, 7.5.86, 7.5.87, 7.5.88, 7.5.89, 7.5.90, 7.5.91, 7.5.92, 7.5.94]</sup>
- 14.6.25. Assessments made by qualified and experienced ornithologists were reviewed and there are some differences between the parties. Bewick's

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Swans might not be at Derry now, but they used to be. Diving duck numbers declined at Big Waters SSSI when aviation was increasing at Newcastle Airport but a new waterbody had been opened nearby and the species continues to be found in close proximity to the airport at Belfast Lough. Nearly all the species of concern are found close to, or on, airports with greater or louder activity than proposed at LAA. Many were referred to but four were challenged on the grounds that they were used by different types of aircraft than in the proposals. However, Redshank that breed at Sumburgh are also found under the flightpath at Belfast City Airport.<sup>[5.6.68, 5.6.71]</sup>

- 14.6.26. The best scientific knowledge should be considered. Birds nesting or feeding close to roads suffer from poorer condition in winter and reduced breeding productivity. However, studies concerned with road noise, which is continuous, cannot be compared to aircraft noise that is intermittent. There is no similar study in relation to aviation activity and there is little evidence that aviation activity would lead to bird disturbance, let alone have any impact. Indeed, of the papers referred to by RSPB only three deal with aircraft noise from jets and it accepts that there are no bespoke or directly applicable studies relating to the circumstances or range of species at Dungeness.<sup>[5.6.69, 5.6.71, 7.5.60, 7.5.69, 8.3.57, 8.3.58, 8.3.61]</sup>
- 14.6.27. Reed bed birds are stated to be a particular concern, particularly bittern and purple heron, but there is no scientific evidence that they would be disturbed and some 'real world' evidence that they wouldn't be. Indeed, their reed bed habitat would, at least to some extent, mitigate against visual disturbance. Although literature shows lateral distances of 1-1.6km and altitudes of below 1600ft are factors in bird response, these do not transfer to LAA. The western corridor of the SPA/pSPA is within 1km of the southerly flight path and aircraft would be below 1600ft when taking off, and at around 200ft over the Dungeness Road when landing. If birds at Dungeness were going to be disturbed by light aircraft at 60dB at a lateral distance of 1km they would already be disturbed as this is a regular activity at LAA. Moreover, a condition requiring FP12 to be used would reduce any effect on the western edge of the SPA/pSPA.<sup>[5.6.71, 7.5.56, 7.5.64, 8.3.59, 8.3.60, 8.3.62]</sup>
- 14.6.28. Given the shortage of scientific evidence of any disturbance effects or impacts as a result of aviation activity, witnesses gave information based on practical experience. LAA's witness, despite not visiting the RSPB Reserve and lacking knowledge of some local features, has extensive practical experience having created reserves for the kind of species found at Lydd and having advised a number of airports, three of which involve SPA issues. Evidence from practical experience exists in the SEI in the form of case studies that demonstrate ongoing activities at other airports have not affected SPA species on nearby SPAs. Similar practical experience from NE reporting stations was part of the evidence at the 1988 Inquiry and NE's closing asserts the need for deterrent measures for SPA species close to Derry, Heathrow and Wharton. This reinforces the point that birds are not scared by aviation activity, even at busier, noisier, airports. Evidence of practical experience, together with an appraisal of the existing scientific literature, should not be dismissed.<sup>[5.6.33, 5.6.34, 7.5.39, 7.5.69, 8.3.63]</sup>

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- 14.6.29. A Gulfstream noise contour was given as a representation of the noisiest LA<sub>max</sub> level at the Airport when the Gulfstream V makes one of its irregular flights. These have produced no recorded effect on any species of concern, including breeding and feeding sites within the 88dB and above contour. Current activities have taken place for a number of years with no recorded complaint from RSPB and NE/RSPB confirm that current activities do not result in any material adverse effects. No noise measurements were taken in the SPA but NE has referred to SEL noise levels in relation to the B737 trial. However, when the correct LA<sub>max</sub> is used the noise level is around 83dB. This is from a noisier aircraft, the B737-300, than is likely to be flown from LAA. [5.6.27, 5.6.28, 5.6.29, 5.6.30, 5.10.29, 6.6.12, 7.5.58, 12.20]
- 14.6.30. The B737-300 noise trial was publicised in the local press. RSPB were not directly informed of it but its Manager experienced it from a vantage point closer to the runway than for the Gulfstream. Although the test took place in February when bird numbers were falling, neither RSPB's Manager, nor anyone else, witnessed any birds reacting to the B737. [5.6.32, 5.10.29, 6.6.12, 7.5.56, 8.3.72, 12.20]
- 14.6.31. The current aviation activity means that the area around the Airport enjoys relatively low noise levels, despite the existence of the Military Ranges and gamebird shooting close to the Airport. Public access to sensitive parts of the Reserve is strictly controlled and the neighbouring farmer does not allow public access to his land, although there is fishing. The only disturbance event raised is a flight by a Gulfstream V on 15 November 2010 which the RSPB's Reserve Manager described as the noisiest aircraft he had experienced at the airport. Birds were disturbed into the air, but it is not known whether that was as a result of the bird scaring regime for vulnerable aircraft movements. Although the Gulfstream V operates approximately once every 15 days, no concerns about its operation have been raised before or since. Indeed, RSPB accepts that current activities at the Airport peacefully co-exist with the thriving SPA/pSPA. [5.6.31, 5.6.32, 6.6.13, 7.5.59, 8.3.18, 8.3.19, 12.38]
- 14.6.32. Hours of operation would be restricted, which would give birds an opportunity to feed undisturbed at night. Aircraft movements at or around dusk or dawn in autumn and winter, when birds might be moving across the airfield, would not be prevented by condition but as it is unlikely that any airline would be based at LAA, flights would start in a morning and end at night elsewhere making early morning or late evening flights at LAA unlikely. [5.3.36, 7.5.68, 8.3.21, 8.3.38, 8.3.67]
- 14.6.33. Notwithstanding NE's formal advice, RSPB's concerns, and the fact that the presence of birds does not necessarily equate to a lack of disturbance impacts, similar proposals were found to be acceptable in 1992. At that time there had recently been many more flights than now proposed, by noisier aircraft, with no record of any disturbance. There is little new evidence since then to suggest an alternative view should now be adopted. Indeed, there is further 'real world' evidence that there would be no likely significant effect. Although the pSPA would be slightly closer to the Airport than the SPA, there would be less movements, by quieter aircraft, than were proposed in 1992. If there were any readily available evidence that there would be likely significant effects one would have expected the

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parties to have presented it to the Inquiry. RSPB does not say that there would be likely significant effects, which is the threshold under the *Regulations* before requiring an AA, nor do they positively assert that there would be harm to the integrity of the SPA. [7.5.70, 7.5.71, 7.5.72, 7.5.73, 7.5.93, 7.5.95, 8.3.64, 8.3.65, 8.3.68, 8.3.69, 14.6.8, 14.6.17, 14.6.18, 14.6.25, 14.6.26, 14.6.17, 14.6.18, 14.6.25, 14.6.26]

### **Bird Control**

- 14.6.34. Whilst the runway extension would handle up to 300,000ppa and the terminal 500,000ppa there is no suggestion that they would require different levels of bird control activity. The two applications have, therefore, been considered together. [8.3.20]
- 14.6.35. Only three accidents due to birdstrike in the UK have resulted in crashes, and none have involved passenger jets, although they would be at lower altitudes for slightly longer than business jets. The types of business jets involved in two of the three accidents are, and will continue to be, used at LAA. Business jets are more vulnerable than larger jets as the latter's engines have been designed to withstand a significant degree of birdstrike whereas smaller jets and turbo-props have not. Despite its location alongside the SPA, and references to the large number of hazardous birds, LAA has a low incidence of recorded birdstrike. NE considers that the existing bird control regime is adequate for current operations, the RSPB that it is fit for purpose, and the CAA is satisfied that the Airport operates safely. However, the number of potential casualties would be a factor in the amount of bird control effort required. [5.6.35, 7.5.20, 7.5.43, 7.5.44, 8.3.24, 12.27, 12.31, 12.39, 12.43]
- 14.6.36. NE and RSPB agree that the risk at LAA can be managed, provided appropriate measures are applied. RSPB also agrees that it would be possible to increase the number of business jet movements at LAA by around 750 a year without any change in the bird control regime and with no off-site measures. The difference between the parties is the intensity, scope and area of the measures that would be required. Birds tend to be present below 1,000ft and aircraft approaching LAA would be below 1,000ft down the western boundary of the SPA/pSPA, across the Denge Marsh area to the south and before Romney Salts to the north. The Airport already operates scheduled flights and has an existing obligation to manage risk of birdstrike, albeit there are less movements now than are proposed. The Airport should already be seeking to reduce birdstrike to ALARP. [5.3.36, 6.6.16, 6.6.17, 7.5.9, 7.5.32, 7.5.44, 7.5.45, 8.3.27, 8.3.29, 12.18, 12.20, 12.27, 12.31]
- 14.6.37. A Bird Conservation and Hazard Management Assessment was included in the ESs and supplemented by an Assessment of the Predicted Impacts of a Bird Hazard Control Programme and an updated BCMP. There is now a BHRA dated December 2010 and an updated BCMP prepared by a co-author of CAP 680, the predecessor to CAP 772 *Birdstrike Risk Management for Aerodromes*. [5.6.37, 8.3.55]
- 14.6.38. The ICAO Standards cover a 13km area around the Airport and require the control of potentially hazardous birds. CAP 772 expresses similar objectives and notes that the more open water sites there are around aerodromes the more complex and frequent will be the movements of waterfowl between them. Many of the species identified in CAP 772 are

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present in the locality. NE and RSPB identify two parts to the bird strike problem. The first are flocks of lapwing, golden plover, corvids, pigeons, starlings and mute swans in the vicinity, and the second is longer distance overflights by Bewick's swans, mute swans, greylag geese, Canada geese and cormorants. They fan out from roosts to feed on arable fields and grassland with many crossing the airfield. [7.5.10, 7.5.11, 7.5.13, 7.5.24, 7.5.33, 7.5.34, 7.5.35, 8.3.28, 8.3.29, 8.3.31]

- 14.6.39. Although the ornithological data underpinning the BCMP was criticised, it is accepted that vantage point surveys are not the only relevant method of gathering data. Data gathered for the ES was used, as well as the bird controller's observations. NE accepted that no species had been missed, but in any event RSPB's Area Manager accepted that the number of birds fluctuated significantly year on year for reasons other than the Airport. There was no criticism of the BHRA in terms of the pattern of birds around the Airport. Bewick's Swans used the ARC pits last winter but didn't in the previous 3 years. Similarly, White-Fronted Geese had been feeding between Cheyne Court and Lydd town and roosting at Cheyne Court and not flying across the Airport. This indicates that further survey work would have little benefit in terms of possible off-site measures for an Airport operating some years into the future when birds may be in different locations. [5.6.48, 7.5.12, 7.5.25, 7.5.26, 7.5.28, 7.5.29, 7.5.53, 8.3.30, 8.3.32, 8.3.49]
- 14.6.40. No one identified any substantive errors in the BHRA. The judgements reached by NE from its vantage point survey, by RSPB through the experience of its Manager, and by LAA from collation of the data and experience came to the same conclusions in terms of species in the area, presence of overflights, potential flightlines and potential roosting and feeding areas. [5.6.49, 7.5.14, 7.5.15]
- 14.6.41. NE and RSPB do not contend that the environmental information is so deficient as to prevent an assessment of the environmental effects, or that a request should have been made for additional information under ES Regulation 19. NE considers that the information is not detailed enough to provide the sufficient degree of certainty on environmental impacts and leaving issues over is not permissible under the *Regulations* as it would amount to salami slicing and introduce new elements into any subsequent decision making process. [5.6.38, 7.5.30, 7.5.31, 8.3.4, 8.3.33]
- 14.6.42. Notwithstanding this view, a SCG on birdstrike risk (CD4.5), confirms that the BHRA methodology is appropriate and the strike numbers associated with different strike frequency categories in the risk assessment are not disputed. The bird management techniques proposed in the BCMP are also accepted as appropriate to the proposed future operation of the Airport subject to certain caveats. The measures to be adopted would be in substantial compliance with the submitted draft BCMP. [5.6.39, 7.5.27]
- 14.6.43. NE's witness drafted the IBSC's *Recommended Practices Note No 1* that states "these standards should apply to any aerodrome carrying regularly scheduled commercial air traffic, irrespective of the movement frequency or type of aircraft involved". Whilst RSPB considers that the guidance should be applied flexibly, NE considers that when passenger jets are introduced they would require continuous bird control and off-site measures as airlines are extremely sensitive to bird strike issues.

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However, there are already scheduled commercial flights from LAA. [5.6.42, 7.5.46, 8.3.26]

- 14.6.44. RSPB accepts that in terms of Airport management there is nothing that would need to be done if planning permission were granted that it is not already recommended should happen now. An AA in June 2009, and a revised AA in February 2010, by consultants for SDC address the four main measures in the BCMP, habitat management, off-site land management agreements, safeguarding, and bird scaring. They note that there do not appear to be any reasonable grounds for concern about the first two. Grass management and some scrub clearance already take place but more is desirable and there is a need to net ponds and watercourses where reasonably practicable. There is no reason why these measures within the Airport site would have any likely significant effect on the designated sites as indicated by SDC's consultants. [5.6.39, 5.6.40, 6.6.17, 7.5.18, 7.5.21, 7.5.35, 8.3.24, 12.20]
- 14.6.45. In terms of off-site measures, NE and RSPB disagree with SDC's consultants about impact. Although options are identified in the BCMP, it states that no disturbance measures would routinely be carried out on sites beyond the airport boundary. There is a mechanism, involving SDC, NE and RSPB, for this to be reviewed but NE referred to the difficulties airports have in securing off-site agreements and, notwithstanding what witnesses might have said, it would be inappropriate to rely on such measures when there is no evidence that such an agreement could be secured. [5.6.50, 6.6.18, 7.5.36, 7.5.37, 7.5.41, 7.5.42, 7.5.81, 8.3.47]
- 14.6.46. Examples of reasons for off-site measures, such as stubble left in a field proving an attractant to geese, would best be dealt with by the farmer ploughing it in or placing some sort of bird scaring device in the field. These measures would require the consent of the landowner and cannot be assumed. Moreover, there is little point in speculating, if, when, where and to what extent such a situation might arise in the future as it would be likely to vary year on year. [5.6.51, 7.5.37, 7.3.38, 7.5.38, 8.3.47]
- 14.6.47. NE acknowledges that the Airport would be unlikely to be able to take action in the SPA itself but refers to off-site measures at Derry, Heathrow and Wharton. Before any off-site bird control could be carried out the S106 Agreement would require details to be submitted for assessment. This would include the measures to be deployed, their duration, scope and location. Any change to land use would have to be consistent with local agricultural practices in terms of crop rotations, and timing of cultivation, and designed to have a conservation benefit, including to birds, without increasing the risk of bird strike. This would not be salami slicing but reacting to changing circumstances. These transitory measures, if any were ever approved, would not be likely to have any significant effect on the designated areas and, despite their concerns, none are alleged by RSPB. In any event, NE and RSPB would be able to make their views known to SDC. Unacceptable changes could not be approved unless LAA was able to demonstrate IROPI. The Airport does not rely on IROPI now, and there is no reason to believe that it would in the future. Indeed, the existence of Manston would make it difficult to do so. [5.6.52, 5.6.53, 5.6.55, 6.6.19, 7.5.39, 7.5.40, 7.5.41, 8.3.36, 8.3.37, 8.3.41]

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- 14.6.48. As now the Airport's ability to take genuine emergency measures would not be affected by the Section 106 Agreement, although emergency safety would not apply to any of the proposals for off-site measures of the type governed by the S106 Agreement such as those requiring landowner consent. In addition, the Agreement would introduce a procedure for a review of any emergency measures taken, including an assessment of any pre-emptive measures to reduce the likelihood of the need arising again. [5.6.56]
- 14.6.49. Safeguarding is an essential part of the Airport Safety Management System. Its purpose is to allow LAA to object to development that has not yet taken place. SDC's consultants had concerns over safeguarding but note that they could have been overcome by a condition or Agreement. However, the test under the *Regulations* relates to the integrity of the SPA as it currently exists and comments on future development would not have any effect on the integrity of the site as it exists today, and so could not conflict with the *Regulations*. In any event, it is accepted that a compromise between air safety and conservation interests is sometimes achievable and that some positive conservation measures would have no impact on birdstrike risk. [5.6.41, 5.6.45, 5.6.46, 5.6.58, 6.6.21, 7.5.48, 7.5.49, 7.5.50, 7.5.51, 7.5.52, 7.5.81, 8.3.51]
- 14.6.50. In terms of bird scaring, it is agreed that the Airport should already be seeking to disrupt flightlines across the airport by taking action at either the source or destination points. A buffer around the perimeter would push birds back, and action against key species beyond the Airport boundary is already permitted by a General License to Kill wild birds granted by NE. [5.6.39, 5.6.45, 5.6.50, 6.6.18, 7.5.36, 7.5.37, 7.5.38, 7.5.41, 7.5.42, 7.5.54, 7.5.79, 7.5.80, 7.5.81, 7.5.82, 8.3.34, 8.3.40, 8.3.47]
- 14.6.51. If ramping up of bird control, or off-site measures, took place now, or were approved in the future, NE/RSPB consider that they could constitute a 'plan or project' and so engage the *Habitats Regulations*. This interpretation of the *Regulations* would mean a legal 'lock', in addition to the contractual 'lock' under the Section 106 Agreement. [5.6.54, 8.3.5, 8.3.25]
- 14.6.52. LAA has started on a programme of improvements to bring existing practices into line with what is required, although there is little evidence of any significant ramping-up of bird control activities. The responsibility for bird-runs has been moved from the fire service at the Airport to a dedicated full-time bird control manager. However, operations are still relatively low key with runway inspections and a bird control run morning and afternoon and before each high risk aircraft movement, which the bird control logs indicate average around 2 a day at present. [6.6.20, 7.5.16, 7.5.17, 7.5.19, 7.5.21, 7.5.23, 8.3.23, 8.3.25]
- 14.6.53. Reference to 'jaw dropping' numbers of waterfowl early in the morning, before the Airport opens, was claimed as an indication that more should be done to reduce bird strike risk, given the presence of business jets and the additional activity allocated to the Airport for the Olympics in 2012. The BCMP refers to the creation of a 0.5km buffer zone. Whilst LAA declined to remove reference to such a provision to the south of the Airport, a buffer in that location might not be possible due to the constraints around the railway line to Dungeness. NE's view that it is only necessary to carry out



a bird run 15 minutes before each vulnerable flight is at odds with the International Bird Strike Committee's Standard 3. Whilst NE considered the absence of smaller bird species in reported bird strikes as suggesting they were going unreported, it also suggests that the lack of bird strikes is a reasonable indicator of risk and a reason why Standard 3 need not be complied with. The Standard makes clear that for infrequent movements, such as less than every 15 minutes, a short bird run might not be sufficient. This indicates that more movements could actually mean a lower frequency for deterrence measures. [5.6.39, 5.6.43, 5.6.44, 5.6.45, 6.6.21, 7.5.14, 7.5.36, 8.3.46]

- 14.6.54. Bird scaring could, and should, take place now when necessary. The operation of a buffer zone for which the use of audio and pyrotechnics are the best option, is good practice and virtually continuous patrolling of the airport should be carried out, rather than short bird scaring runs. Although the frequency of patrols might alter to a continuous level should the proposals be implemented, the methods would be the same and the range of any disturbance would be the same as now. Scaring trials were carried out in the summer of 2008 and winter of 2009, albeit that RSPB considers them inadequate due to the wide number of variables. These trials indicate scaring might have some effects up to 0.6-1km away but there is no indication that there would be any impacts. No off-site bird scaring takes place other than once or twice from one field immediately to the west but a gamebird shoot takes place on land surrounding the Airport. The range and intensity of activity is, therefore, known and can be assessed. [5.6.39, 5.6.40, 5.6.44, 5.6.46, 6.6.17, 7.5.18, 7.5.21, 7.5.22, 7.5.35, 7.5.36, 7.5.53, 7.5.54, 7.5.78, 7.5.79, 8.3.24, 8.3.39, 8.3.45, 8.3.47, 8.3.48, 8.3.49, 8.3.54, 12.20, 12.32]
- 14.6.55. RSPB maintains that others would have to demonstrate damage, that there is little mitigation proposed, and that there should be replacement for sterilized areas and compensatory habitat for land on the SPA that would suffer adverse effects. However, no habitat on the SPA would be lost and although the use of some functionally linked land might change, there is nothing to suggest that it would be 'sterilized'. Even if birds were scared off a feeding area during the day they would be able to exploit it at night. This would be aided by the restriction on night time flying. The bird control management measures that would be necessary if permission were granted would be no different to what NE accepts the Airport is, or should, be doing already. [5.6.46, 5.6.47, 5.6.57, 6.6.22, 6.6.23, 6.6.24, 7.5.80, 8.3.38, 8.3.52, 12.15, 12.17]
- 14.6.56. A precautionary approach should be taken such that the combined effects of bird control and aviation activity are assessed. The two things would happen at a similar time and measures aimed at one species could also affect other species using the same habitat. However, there is no evidence from other locations of any reinforcement of effects. The protection conferred by the designations is not limited to the area within the boundaries. Notwithstanding NE's view, there is little evidence that there would be likely to be a significant effect, such as a significant decline in the size, distribution, structure or function of the population that would require an AA. Even if an AA were required, the area of the SPA that would be affected would be small and there is no evidence that there would be an adverse effect on the integrity of the designated sites. [7.5.74, 7.5.75, 7.5.76, 7.5.77, 12.20]

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14.6.57. NE maintains that the bird control regime in the fallback scenario might not be the same as in the development case but if planning permission were not granted it is likely that the Airport would seek a return on its investment to date. It would seek growth in business jet movements, to benefit from the lack of control on night flying, and might seek a commercial training school. Such incremental business expansion might not be regarded as a 'plan or project' and if this occurred the bird control measures would not be significantly different to that needed for 500,000ppa. Notwithstanding this, the conclusions in relation to ornithology have not been reached by reference to any fallback position.<sup>[5.6.46, 5.6.47, 5.6.72, 5.6.59, 6.6.22, 6.6.23, 6.6.24, 7.5.47]</sup>

#### 14.7. **Nuclear Safety**

14.7.1. If an aeroplane were to crash into the nuclear power station, the consequences might be catastrophic but there needs to be a rational assessment of the chances of such an event, and the extent to which the grant of permission would increase that risk.<sup>[5.7.3, 6.7.1, 9.5.5, 12.31]</sup>

14.7.2. The SoS considered, and rejected, arguments about the impact of airport expansion on nuclear safety in 1992 and did not identify it as a matter requiring consideration at this Inquiry. LAAG's view is that the manoeuvres posing a threat are due to the proximity of the sites and could not be mitigated as the restricted flying zone would not provide any physical restriction on an aircraft heading towards the power station. However, the effects of these proposals were assessed by expert consultants in the planning process and accepted by SDC after consulting HAS/NII, now ONR. Whilst LAAG considers it unclear why ONR finds the proposals acceptable, the 1992 permission was granted when there was no exclusion zone around the power station, unlike now, and there was a FP for jets in closer proximity to the power station than now proposed. Moreover, the current application proposes a lower cap on the number of flights than that which was imposed in 1992, and aircraft safety has improved in the intervening period.<sup>[5.7.1, 5.7.2, 6.7.2, 9.5.3]</sup>

14.7.3. It is accepted that much of the existing air traffic is GA that would not cause significant damage if they crashed onto the power station. The risk would arise from larger aircraft, such as B737s and A320s that would be introduced, crashing onto the nuclear island. Whilst LAA's witness might not have expertise in the radiological consequences of a large aircraft crashing onto a nuclear site, his evidence related to the probability of such an occurrence and had been peer reviewed. ONR is well aware of the type of nuclear power stations at Dungeness, the potential risks of an accident, and the resultant consequences. It would, therefore, know that a high level of risk would remain after the power stations were closed and be aware of the events in Fukushima.<sup>[5.7.3, 5.7.6, 9.5.5, 9.5.6, 9.5.7, 9.5.8, 9.5.9]</sup>

14.7.4. Notwithstanding LAA's view that there would only be a residual risk by the time the proposals reach capacity, ONR would know of the possible extension of operation at Dungeness B, the changing pattern of risk and hazard during the lengthy decommissioning period, and the uncertainty over the timing of fuel removal from Dungeness. Whilst it might have altered its view on which of the power stations, A or B, would present the

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greatest risk, ONR has maintained its original stance of not objecting. [9.5.13, 9.5.14, 9.5.15, 9.5.16, 9.5.17, 9.5.18]

- 14.7.5. LAAG, and some local residents, challenge the Regulators decision not to oppose the applications and criticise the resistance to disclose details, which it maintains is contrary to Directive 2009/71/EURATOM. Disclosure is not a matter for this Inquiry. British Energy is not party to the bird hazard management proposals being discussed between LAA, NE and RSPB and LAAG is concerned that there might be the potential for nuclear safety to 'fall through the gap' as ONR is not automatically alerted to changes that could affect nuclear safety. As a result, and due to the longevity of the infrastructure and the severity of the outcome should an incident occur, LAAG considers that a worst case scenario should be considered. It has inferred the number of possible deaths from consequence assessments at other sites, and maintains that if the outcome is too extreme then there may be a need to reduce the probability of an accident to zero. This would be impractical to achieve in practice. [9.5.1, 9.5.2, 9.5.3, 9.5.4, 9.5.11, 9.5.49, 12.31]
- 14.7.6. It also considers that ONR misunderstood, or was not aware of, a number of factors. These include the scale of increase in the probability of a large radiological release, the numbers and type of aircraft movements, the target size, and the potential skid distance and quasi-skidding situations. Moreover, LAAG considers that in terms of increased risk British Energy was labouring under the same misapprehension. However, despite LAAG's repeated attempts to persuade ONR to alter its position and object it has not done so. [5.7.2, 9.5.25, 9.5.26, 9.5.27, 9.5.28, 9.5.29, 9.5.30]
- 14.7.7. The Government recently considered the risk which flights to and from Lydd pose to nuclear safety in its review of the options for future nuclear power stations. Although Dungeness C has, for the time being, been ruled out, this decision was not based on grounds of nuclear safety associated with the Airport and there is little evidence that an expansion of operations at LAA would jeopardise its consideration in the future. Although LAAG asserts that a new reactor would increase the probability of an accident, it was agreed that EDF would not do anything to affect the development land value of the possible Dungeness C site. If it had identified any detriment to the prospects for Dungeness C in risk analyses, one would have expected it to have been presented to the Inquiry. No such evidence has been submitted. Although British Energy has objected on the grounds that it is duty bound to resist any increase in risk, however small, it acknowledges that the increase in risk would be very small and would not compromise current or future activities. [5.7.5, 6.7.6, 9.5.19, 13.3.1, 12.4, 12.27, 12.29]
- 14.7.8. A risk based approach is considered too great a risk by LAAG's witness. This would apply to all aircraft overflying any nuclear power station. The witness has been involved in a number of cases for anti nuclear groups but none of the criticisms made have been found to be justified or been adopted. The core of LAAG's case on nuclear safety is an attack on the methodology used by the ONR to assess risk. LAAG's approach is not the one currently adopted by the Regulator or the planning system in this country and it is not for this Inquiry to pursue an alternative assessment methodology. [5.7.4, 6.7.3, 9.5.20, 9.5.21, 12.30]

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- 14.7.9. If the established safety procedures are applied the issue reverts to the application of risk assessments. These have been carried out by consultants for ONR using standard methodologies. The Byrne methodology is the standard basis for assessing risk and it was accepted that it had been applied correctly. [5.7.5, 9.5.20, 9.5.21, 12.30]
- 14.7.10. LAAG asserts that the risk would be unacceptable by virtue of being above the level of 1 in 10 million pa ( $10^{-7}$ pa) due to known deficiencies in the modelling. However, this is not a limit of tolerability but a screening level below which the potential for aircraft crash need not be considered further. LAA's assessment has been peer reviewed, unlike LAAG's report, which in any event considers 2mppa for which there is no application. [5.7.6, 9.5.22, 9.5.24]
- 14.7.11. For aircraft crash ONR's SAPs define the design basis as an event with a frequency of 1 in 100,000pa but the Byrne methodology allows a relaxation to 1 in 10,000pa for events that could not lead to off-site doses over a threshold of 100 milliSieverts. Based on experience, the consultants consider that only crashes on the nuclear island could lead to doses above that threshold. In a 2009 report the consultants estimated the crash frequency as  $8.3 \times 10^{-6}$  for the whole site and  $5.6 \times 10^{-7}$  for the nuclear island, both well below the design basis criteria. LAAG does not dispute the mathematics but does not accept the assumptions. [5.7.7, 5.7.8, 9.5.23]
- 14.7.12. Criticism is made of a cut off 3.275km beyond the runway for landings on runway 21 in the Byrne model but this indicates that such large overshoots or overruns are so unlikely that the airport related crash frequency at such locations is indistinguishable from the background level. Similarly, for take offs on runway 03 the equation is not valid for values less than -0.6km indicating that crashes further away in the opposite direction to take off would also be indistinguishable from background levels. The same would apply to 'go-arounds'. [5.7.3, 9.5.35, 9.5.36, 9.5.37]
- 14.7.13. LAAG claims that there are systematic biases in the Byrne model such that the ratio of airfield to background crash rates are under estimated. It suggests that there are better methods than the nuclear industry standard Byrne methodology, which takes no account of the particular circumstances at Lydd. LAAG has carried out its own assessment based on added assumptions including a different runway split and an increased risk of bird strike. Based on a throughput of 500,000ppa LAAG's own calculation, which it is claimed is robust and valid, indicates a frequency of  $6.964 \times 10^{-6}$  which is still well within the tolerability criteria. [5.7.9, 5.7.10, 5.7.11, 9.5.31, 9.5.32, 9.5.33, 9.5.34, 9.5.38, 9.5.39, 9.5.40, 9.5.41, 9.5.42, 9.5.45, 9.5.46]
- 14.7.14. LAAG maintains that the integrated risk of a chain of events, such as a failed go-around, a pilot diverting left, bird strike and engine failure, that could lead to an accident have been rationalised away. Whilst it might not be possible to make a numerical assessment of site specific factors, the probability of any of these events in isolation is very low and the probability of a combination of events would be even more remote, although there would always be a chance that a combination of events could occur. [9.5.43, 9.5.44]
- 14.7.15. Turning to overall risk, there would be some increase. There might be less movements by aircraft over 5,700kg in the fall back position than claimed,

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and an increase in airport activity might trigger AA or a revised safety case. However, ONR has maintained its position of no objection and there is little evidence that would suggest its view should be overturned.<sup>[9.5.47, 9.5.48]</sup>

- 14.7.16. LAAG's concerns have been set out in correspondence. ONR is aware of the points raised but remains satisfied that it is appropriate to use the Byrne methodology. LAAG does not put forward any alternative methodology that could be used to assess the risk. Even if the Byrne methodology were modified in the way that LAAG suggests to take account of the points of particular concern, the results are still well below the tolerance threshold.<sup>[5.7.5, 6.7.3]</sup>
- 14.7.17. In any event, the risks to which LAAG refers are not specific to Lydd. They arise wherever aircraft overfly nuclear power stations. Consequently the logical extension of LAAG's argument is that nuclear power stations should be ruled out until they can be proofed against aircraft.<sup>[6.7.4]</sup>
- 14.7.18. LAAG identifies four crash scenarios. The first is a failure during a left turn departing from runway 21, but that could only be by a light aircraft and is unchanged from the current situation.<sup>[5.7.12]</sup>
- 14.7.19. The second is a failure on an aircraft making an ILS, NDB or RNAV approach on runway 21 such that it must fly straight on over the ranges. There is a tried and tested procedure for this and the MoD does not object to its continued use. Moreover, pilots drill for such occurrences. In any event, aircraft now have multiple systems making any such occurrence less likely. CAA treats 'go-arounds' as a single movement but in terms of safety there is an argument for treating them separately. However, whilst it was suggested that 'go-arounds' would make an accident more likely this would be offset to some extent as aircraft would use the ILS reducing the likelihood of 'go-arounds'.<sup>[5.7.12, 5.7.13, 9.5.4]</sup>
- 14.7.20. The third scenario is a failure on a Cat A aircraft on a circling manoeuvre to the east of the airport to land on runway 03 whilst on the downward leg towards the power station. However, Cat A aircraft are not permitted to land on 03 when the ranges are open. If they were to land on 03 when the ranges were closed they would fly to the west of the airport.<sup>[5.7.14]</sup>
- 14.7.21. Finally, the suggestion is that a Cat A, B or C aircraft flying visual to the west of the airport would fly the base leg pointing towards the power station but that is not a manoeuvre that a Cat A aircraft would fly as it would approach on FP1.<sup>[5.7.14]</sup>
- 14.7.22. LAAG's concerns were not shared by the forerunner of ONR which considered the matter in 1988. That proposal included a FP D4 flying even closer to the power station and this was available for up to 6,000 departing aircraft over 5700kg. The current proposals would not allow a left turn increasing operational safety compared to the scheme permitted in 1992.<sup>[5.7.15]</sup>

### **Terrorist Threat**

- 14.7.23. The consequences of a successful airborne terrorist attack would be likely to be greater than a crash as a terrorist would seek out the most

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vulnerable parts of the power station. However, none of the aircraft in the 9/11 attacks took off from, or was scheduled to land at, the airport closest to its target. Hijacked aircraft for a similar attack on Dungeness nuclear power stations could come from, or be going to, anywhere. The prevention of hijacking is now the subject of national and international safety systems, including security screening before boarding and a second barrier technique to prevent access to the flight deck. LAA would therefore be an illogical place from which to mount such an attack as by the time control of the cockpit had been achieved Dungeness would have receded into the distance. In any event, the ability to carry out such an attack would not be altered by the proposals although they would increase the number of movements by larger jets. Whilst there might be information in the public domain to aid terrorists to bring about a release of radioactive material ONR's view that terrorist attacks are not reasonably foreseeable is justified.<sup>[5.7.16, 6.7.5, 9.5.52, 12.31]</sup>

- 14.7.24. The scenario of someone trying to shoot down an aircraft on its approach to Lydd in the hope that it would overshoot the runway, veer off course and collide with the critical part of the power station leaves too much to chance. It would be more effective to fire missiles directly at the Power Station and the proposals would have no effect on this.<sup>[6.7.5]</sup>

### **Demographics**

- 14.7.25. Government policy is to control demographics around existing, and proposed, nuclear installations. Reference has been made to CALA's application for housing close to the Atomic Weapons Establishment in Berkshire but that case differs from this as the population there already exceeded the relevant criteria. In the case of LAA's proposals, a scoping assessment has been carried out by ONR based on 500,000ppa. Even LAAG's calculations show that for 500,000ppa the population would be no more than 27% of the 'remote' site classification. Despite LAAG's contention that ONR did not take account of seasonal and daily scheduling peaks or serious congestion scenarios such as the Icelandic volcanic ash incident, ONR concluded there was no basis for objection. Whilst the proposals would affect the potential for growth in other sectors, that would be true for any development in the area and would not justify dismissing the appeals.<sup>[5.7.17, 9.5.53, 9.5.54]</sup>
- 14.7.26. ONR maintains that the railhead "would not normally be factored into any demographic analysis". It is not a licensed nuclear site and has no consultation zone as the quantity of radioactive material is much smaller than the power stations, even when a train carrying nuclear material is present. LAAG's demographic calculations for the railhead claims that the population already just exceeds the 'remote' site criterion due to it being closer to Lydd town and Lydd-on-Sea than the power station. However, that is not until the passenger throughput reaches a hypothetical 1mppa in a 'log jam' case when flights are cancelled and passenger numbers build up. Whilst there has been no assessment of the train or railhead vulnerability to aircraft crash, ONR stated in a letter to residents that this was due to its view that the probability of such an event was so low.<sup>[5.7.18, 9.5.10, 9.5.50, 9.5.55]</sup>

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- 14.7.27. Whilst LAAG considers that any decision should wait until the publication in June 2012 of the report on stress tests following the Fukushima disaster, ONR has not asked that any decision be delayed until the report is published. It is also alleged that the ONR has been misinformed and has failed to carry out its duties as a Regulator and that as a result it has failed to adopt HSE's safety guidelines. However, notwithstanding repeated attempts by LAAG to persuade ONR to change its recommendation it has not amended its position of not objecting. [5.7.2, 9.5.56, 9.5.57, 9.5.58]
- 14.7.28. The SoS, the Regulator and the Government, have consistently concluded that there is no unacceptable nuclear safety risk and there is little evidence that would lead to a contrary view. [5.7.19, 6.7.6, 12.2, 12.4, 12.15, 12.17, 12.18, 12.27, 12.31]

#### 14.8. **Socio-Economic Matters**

- 14.8.1. The proposals would involve some development but would have no significant impact on the ability of the area to produce food or provide land for leisure. The economic policy framework for the area recognises the potential of LAA. This is a reflection of the economic reality of low productivity, economic activity and employment rates. The workforce has a low-skill profile and there is a high dependence on the public sector. Although unemployment on Romney Marsh is lower than in Folkestone, Shepway was the 131<sup>st</sup> most deprived District in 2004, and the situation had worsened to 123<sup>rd</sup> in 2007, which contrasts with the comparative affluence in the South East. Job creation between 1998 and 2008 lagged behind the remainder of Kent and average earnings are lower than in Kent as a whole, and the South East. Wealthy retirees have done little to redress existing problems and, despite the proximity of Ashford which has lower unemployment than Shepway, failing to cater for the young people would be a recipe for long-term deprivation and social division. [5.8.1, 5.8.2, 5.8.3, 5.8.4, 6.8.1, 6.8.3, 9.6.1, 9.6.2, 9.6.4, 9.6.5, 10.3.4, 12.2, 12.3, 12.5, 12.6, 12.8, 12.9, 12.10, 13.2.4]
- 14.8.2. There is little evidence relating to trends in the type of employment, such as home working or changes in the leisure industry, but the area around the Airport is generally reliant on a small number of major employers, predominantly Dungeness Power Stations and to a lesser extent LAA. Dungeness A and B are subject to actual and proposed decommissioning and there are no prospects of Dungeness C even being reconsidered before 2020. However, Dungeness C's exclusion from the NPS was not due to LAA or its aspirations, and whilst it might provide more jobs both during construction and operation than LAA it is not an either/or situation despite LAAG's concerns that Dungeness C could be withdrawn if the European Commission came to a different view to the UK Regulator on safety. Jobs at LAA would occur whether or not Dungeness C went ahead. [5.8.5, 5.8.14, 6.8.2, 9.6.2, 9.6.3, 9.6.12, 9.6.13, 9.6.14, 9.6.15, 12.43]
- 14.8.3. LAAG maintains that the fleet mix is inaccurate but the only expert evidence is that provided by LAA. In any event, the proposal would, to some extent, save passengers in the catchment area from having to drive significant distances by car to access air services. It would also provide employment and be a source of economic activity. LAA currently employs 48 staff, 58% of which live within 7.5 miles of the Airport. Other on-site employers provide work for a further 24 people. The Airport has already invested £30 million in improved facilities. [5.8.8, 5.8.9, 9.6.6]

- 14.8.4. The wider criticisms of aviation policy in a document by Brian Sewill, an anti-aviation campaigner, are not a matter for this Inquiry. Criticism of job assessment is unfounded as established methodology has been used to assess the socio-economic impacts. At 300,000ppa LAA would provide around an additional 90 direct, indirect and induced jobs which would rise to some 200 direct, indirect and induced jobs at 500,000ppa. Compared to the claimed no development case that would mean an increase of 50-60 jobs at 300,000 and 140-160 at 500,000. The new jobs would require a range of skills and LAA would support local employment where possible rather than 'drain' jobs from elsewhere. There is little evidence that local infrastructure could not cope with the additional demand. The GVA calculated from national data sources would rise from just over £4 million to £7.4-7.5 million at 300,000 and between £11.5-11.7 million with the new terminal at current prices. [5.8.10, 5.8.11, 5.8.13, 5.8.17, 9.6.10, 10.3.2, 12.12, 12.17, 12.18, 12.26, 12.30]
- 14.8.5. LAAG has criticised the employment densities used by LAA of 500 jobs per mppa reducing to 400 by 2030 but they are a function of the nature of the traffic and the scale of operation and would be higher at smaller airports. Densities at other airports have been considered and LAA's assessment reduced densities over time to reflect economies as numbers increased. Seasonal temporary staff have been factored in and job numbers are on a full time equivalent basis. SDC considers that there could be 350-600 jobs per mppa whilst LAAG advocates a range of 250-450 jobs per mppa. The jobs would be created over several years and notwithstanding claims that a new Sainsbury's supermarket at Hythe might have created 300 jobs, albeit that some of these might be part time, the proposals would bring new visitors to the area. Any future development within the Airport site would be subject to the *Habitats Regulations* and ONR's demographic siting assessment. Although the proposals might not fundamentally alter the district's economic direction or generate significant demands for employment land, the Airport would change the perception of the area being 'out on a limb' and is supported by East Sussex County Council and Rother District for the benefits it would bring to their areas. [5.8.12, 5.8.13, 6.8.5, 6.8.6, 9.6.7, 9.6.10, 9.6.17, 12.13, 12.34, 13.2.4]
- 14.8.6. LAAG maintains that there would be more outbound passengers than inbound and that as a result at least 23 jobs would be lost to overseas territories. However, at 300,000ppa with the runway extension, LAA would handle about 26-28,000 international and 33-36,000 inbound passengers, supporting £8.9-9.7 million of expenditure in the catchment area economy and approximately 207 jobs in tourism. With the terminal at 500,000ppa the figures would be 37-38,000 international and 38-40,000 domestic inbound passengers supporting £11.7-11.9 million expenditure in the local catchment area and around 273-278 jobs in tourism. Stripping out visitors that might have come to the area anyway, the net figures range from £1.3 million - £4.1 million additional expenditure supporting 33-96 additional tourism jobs, and £2.0 million to £3.6 million additional expenditure supporting 47-84 jobs in tourism. In an area where the prospects of any significant regeneration remain precarious, these are substantial increases. There would only be a relatively small number of additional flights and so there is no reason why tourism related jobs should be netted off, despite



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claims by LAAG and some local business people. [5.8.15, 5.8.16, 9.6.7, 9.6.11, 9.6.15, 10.3.3, 12.16, 12.17, 12.29, 12.32, 12.35, 12.39]

- 14.8.7. In addition, there would be cumulative journey time savings with a discounted monetised cost saving of between £6,710,998-£7,393,227 for the extended runway and £8,055,470-£10,134,914 with the terminal building. This is significant but might also be supplemented by cost reductions of flights and reductions in journeys on Kent's roads. [5.8.18, 12.3]
- 14.8.8. There are also wider benefits that are difficult to quantify but there is little reason to consider that they have been significantly overstated despite Kent's relatively good connectivity and claims that subsidies for parking and fares might cause passengers to make extended journeys by-passing closer airports. Journey time benefits are likely to improve business productivity whilst improved air services could stimulate the economy and make the area better able to exploit opportunities. The existence of an airfield is likely to be a pre-requisite for certain types of investment. There is, therefore, widespread support from the Chambers of Commerce in the area. [5.8.19, 5.8.20, 9.6.16, 12.3]
- 14.8.9. Manston is proposing to grow to 4.75mppa by 2033 and is referred to in more policy documents than LAA but each would serve its own catchment and, although Manston might be larger, it would not be a matter of either Manston or LAA. KCC make it clear that LAA can play an important part in providing private sector jobs to boost employment, tackling deprivation and growing the economy. [5.8.6, 9.6.8, 10.3.4, 13.2.3, 13.2.4, 13.2.5]

## 14.9. **Climate Change and Flood Risk**

### **Carbon Emissions**

- 14.9.1. Tackling climate change is a Government priority as set out in the *Supplement to PPS1* and the *Climate Change Act 2008*. It is also reflected in RSS Policy CC2. RSPB and CPRE are both concerned about getting locked into a high carbon infrastructure and aviation is a particular concern due to its rapid growth and the emission of CO<sub>2</sub> and other gases high in the atmosphere. There are two elements relating to carbon emissions, aircraft in flight and ground operations. [5.9.1, 6.9.1, 10.4.2, 10.4.3, 12.17, 12.43, 12.50]
- 14.9.2. Reference has been made to comments by LJ Sullivan in refusing leave to appeal on London City Airport, the basis of which is that future decision makers must consider the up-to-date policy position. The current policy situation in respect of carbon emissions is set out in the *Climate Change Act 2008*, the *Report of the Committee on Climate Change* and the *Government's Response to the Committee on Climate Change*. A decision by the SoS in relation to Farnborough, which CPRE disagrees with, indicates that emissions from aircraft in the air are best dealt with by the EU Emissions Trading Scheme. This is reiterated in the *Response to the Committee on Climate Change* published on 25 August 2011 and reflects the most up-to-date position. [5.9.4, 5.9.6, 5.9.8, 8.4.3, 8.4.5, 10.4.1]
- 14.9.3. It is, therefore, more relevant to ensure that the overall target for UK emissions being no greater in 2050 than in 2005 is not contravened. Flights displaced from other airports would be replaced by other flights, potentially by bigger, more carbon intensive aircraft. The proposal would,

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therefore, contribute to expansion of aircraft movements nationally. However, even if the movements were all new growth they would only represent 0.25% of the 60% demand growth that is consistent with meeting the UK's 2050 target of capping emissions to 2005 levels as identified by the Climate Change Committee and the proposal would be in accordance with current policy on climate change. [5.9.2, 5.9.6, 5.9.7, 8.4.1, 8.4.4, 8.4.5, 10.4.2, 12.14, 12.26]

- 14.9.4. In terms of ground operations, the terminal building would be constructed to BREEAM level Very Good, just short of Excellent, although CPRE considers that it should be at least Excellent. Renewable low carbon measures would contribute towards meeting a 10% renewable energy target and a carbon management report has been submitted. [5.9.5, 6.9.1, 10.4.6]
- 14.9.5. The proximity of LAA to its catchment would lead to some savings in CO<sub>2</sub> emissions compared with trips to Gatwick, although not all trips originating in the catchment would be captured as flights from Lydd would not serve all destinations. The carbon footprint at full capacity has been assessed using the *Guidance Manual: Airport Greenhouse Gas Emissions Management* and yield a 7,500 tonnes CO<sub>2</sub> pa footprint. This is potentially a net reduction of 6,000 tonnes CO<sub>2</sub> pa compared to the same passengers travelling to Gatwick. The assessment does not include savings in emissions from the landing/take-off cycle. Emissions from aircraft engines whilst still on the ground would be lower than at existing congested airports due to shorter holding times in the air and on the ground and shorter taxiing distances, although these might be offset to some extent in the first few years by partially filled aircraft as passenger numbers grow. [5.9.3, 6.9.1, 10.4.4, 10.4.5, 12.3, 12.26]

### **Sea Level Rise and Flooding**

- 14.9.6. Preventing inappropriate development in high flood risk areas is an objective of national policy as well as a public concern and the risk would increase with sea level rises due to climate change. Romney Marsh is one of the top 10 areas in the UK in terms of flood risk and some areas have already been down graded to 'managed realignment'. CPRE maintains that a flood defence at least 13m high and extending 50km would be necessary to protect the wider area as increased winds may cause higher waves and a greater likelihood of flooding with water pouring rapidly through any widening breach. The crest of the flood bank at Romney Sands is "insufficient to stop overtopping during extreme high tide events" and the defences at Lydd Ranges are only sustained to a 1 in 5 year standard. It will be at least 8 years before a scheme to protect the area is in place. However, if sea levels rose parts of Greatstone and New Romney would also be under threat and flood defences would almost certainly have to be improved. If they were, the Airport would no longer be at risk. [6.9.4, 10.4.7, 10.4.10, 10.4.12, 10.4.13]
- 14.9.7. PPS25 was published following the submission of the applications. An updated FRA has been undertaken in the light of PPS25 and takes account of the SFRA, EA's *South Foreland to Beachy Head Shoreline Management Plan*, and its *Folkestone to Cliff End Flood and Erosion Management Strategy*. These show that the coastal cell including the Airport provides a standard of protection that meets the 1 in 200 year standard required by

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PPS25 for the next 25 years. The probability of a 1 in 200 year event coinciding with a 4 or 7% breach is 1 in 5,000 or 1 in 3,000 years. There would be no flood risk for the terminal with a floor level of 3.5m AOD even if the defences were not maintained. In any event, given the presence of Lydd town a rapid repair of any breach could be anticipated. [5.9.10, 5.9.12]

- 14.9.8. Flood Zones are defined in PPS25 and the runway extension would be in Flood Zone 1 whilst the terminal would be in Flood Zones 1, 2, and 3a. The airport would be a 'less vulnerable' use in terms of PPS25 and would pass the sequential test. Even if it were considered to be essential infrastructure, the exception test would be met as there would be benefits to the community, it would be on brownfield land, and there is no readily available alternative land at the existing operational airport. The SFRA recommends a 60 year design life for commercial development. Assuming an opening year of 2015 the life would end in 2075. However, the updated FRA uses 2115 giving a robust assessment of an extra 40 years. The EA was consulted on the proposals and had no objection, subject to the imposition of appropriate conditions. CPRE now accepts that the updated FRA is PPS25 compliant. [5.9.13, 5.9.15, 5.9.16, 5.9.19, 6.9.2, 10.4.9, 10.4.11]
- 14.9.9. In addition, the FRA includes a Flood Warning and Evacuation Plan, notwithstanding that the Airport is safe from flooding in 2115 having regard to the SFRA. The terminal building would provide a safe refuge at either ground or first floor level and there are blue light services and communications equipment on site. LAA would also have access to the EA's three day flood risk forecast and managers would receive flood warnings. [5.9.14]
- 14.9.10. CPRE is concerned that any flooding would be exacerbated by a rising water table as higher sea levels allow greater water penetration through the permeable Denge Gravels. However, a drainage strategy has been approved by the RMAIDB, as have the details of the proposed new drainage ditches. The RMAIDB has no record of flooding at the Airport and monitoring shows a water table 1.7-3.6m below ground. Even if the water table were to match the rise in sea level it would not come above ground level. In any event, RMAIDB would manage ground water levels through the existing ditch system, as it does now, and even if it didn't the runway would be resilient to flooding and the terminal would be set above flood levels. [5.9.9, 5.9.11, 10.4.14]
- 14.9.11. Notwithstanding all that, CPRE's view is that sea level rises may be greater than set out in both UKCIP02 and UKCP09 resulting in the Airport being at risk of flooding. This is inconsistent with national policy. It would require an assessment that went beyond the probability parameters in PPS25 that are used by DEFRA and EA in their strategic planning, and by SDC in its SFRA. EA's guidance requires it to use UKCIP02 predictions, which in any event are higher than the scenarios for sea level rise in UKCP09. Further EA guidance on the use of UKCP09 advises use of the Medium Growth 95<sup>th</sup> percentile which shows a reduction of 121mm over 60 years from the originally predicted sea level rise. As a result the modelling that has been carried out is extremely precautionary. [5.9.15, 5.9.17, 6.9.3]
- 14.9.12. Reference has been made to Dungeness C but that did not fail on any flood criterion. In any event, the Airport is not essential infrastructure as

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Dungeness C would be, would not be immediately behind flood defences, nor at risk of rapid inundation. At the only coastal location where CPRE has identified a residual climate change flood risk the EA strategy is to raise the standard of protection through a secondary defence.<sup>[5.9.18, 10.4.15]</sup>

- 14.9.13. The crux of CPRE's case is that whilst it is not mandatory for proposals that do not require a material change to on-going flood management to make a contribution, it is encouraged. However, the FRA makes clear that a breach in defences today would not cause flooding at the Airport and so it is not a direct beneficiary of coastal defences. Even if flood levels rose to the point where it affected the terminal, the building would have the capacity to accommodate people who might be affected at first floor level. A contribution would therefore fail the tests in *Circular 05/2005* and the *CIL Regulations*. Indeed, the EA has not requested any contribution.<sup>[5.9.20, 6.9.5, 6.9.6, 10.4.16]</sup>

#### 14.10. **Landscape, Tranquillity and Noise (Quality of Life)**

- 14.10.1. A number of factors have an impact on the perception of quality of life and it is necessary to look at landscape, tranquillity, and noise holistically. One resident considers that local people are exhausted by development that has taken place whilst another believes that Kent is overdeveloped and a line should be drawn in the sand. CPRE considers that the disruption to tranquillity that would arise visually, and audibly, would in itself justify refusing the applications on the grounds that they would be contrary to saved LP Policies SD1 and CO1.<sup>[10.5.2, 10.5.13, 12.32, 12.35, 12.36]</sup>

##### **Landscape**

- 14.10.2. In terms of landscape and cultural heritage, Dungeness has the largest shingle beach in Europe and the area attracts writers, artists, photographers, fishermen, walkers and cyclists. The AONB is also enjoyed for its tranquillity and Derek Jarman's garden attracts visitors. There are numerous medieval churches and a rich archaeology including the 'listening ears'.<sup>[10.5.1, 10.5.2, 12.40, 12.50]</sup>
- 14.10.3. However, landscape/visual assessments appraise the effects of the proposals in landscape, visual, and cultural heritage terms in accordance with the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment*. They include a physical assessment of the landscape, and assessments of landscape character, albeit that more than one landscape character area would be affected, such as that contained in the *Character of England: Landscape, Wildlife and Natural Features 1999*. The assessments are based on a comparison between the proposals and the current levels of operation without taking account of any increase in activity that might occur without development but conclude that there would be no material landscape or visual harm.<sup>[5.10.2, 5.10.3, 10.5.2, 12.14, 12.42]</sup>
- 14.10.4. The landscape contains the power stations, which some people appreciate but others don't. It also includes the Airport that has existed for longer than the power stations and is a part of the cultural heritage. Indeed, the area has, in the past, had far greater levels of aviation activity by larger, and much noisier, aircraft. There is no basis for suggesting that continued aviation activity, at levels significantly below historic levels and with more

modern, quieter, aircraft, would change the cultural landscape or perception of the Romney Marsh area. Moreover, the runway extension would not be readily visible to people in the surrounding area, although aircraft on it would from some locations, and would have no material impact on the landscape character of the area.<sup>[5.10.4, 12.14, 12.21]</sup>

- 14.10.5. Indeed, there is no suggestion that the Airport and aviation activity has previously caused any harm to the cultural landscape, the perception of the area, or its attraction to artists and visitors. The area has a triennial festival and has been used for film-making or photo shoots with no suggestion of harm from aviation activity. The airport is not identified as a detractor in any landscape character documents, in contrast to the firing ranges that CPRE considers increase tranquillity, and there is no reason why the proposed development would have a detrimental effect.<sup>[5.10.5, 10.5.2, 12.11]</sup>
- 14.10.6. Whilst further lighting could affect the night-time character of the area, internal and external lighting would be minimised between 23:00 and 07:00 hours and security lights would be linked to movement sensors, dimmed to minimum intensity and hooded to prevent light spillage. Reference is made to the wider area, such as the shore near the power station and the Dungeness Shingles. Whilst these could have been overflowed historically, when aviation activity was greater and there were no restrictions on FP's, they would not be under the current proposals. In addition, the 1992 permission gave consent for a greater scale of operations than now proposed. No adverse material change in circumstances has been identified since that decision. Indeed, the only material differences are the absence of a FP in the current proposals across the southerly area, the smaller number of movements, the use of quieter aircraft, and the caps on other activity such as night time use.<sup>[5.10.5, 5.10.6, 10.5.3, 12.21, 12.27]</sup>

### **Tranquillity**

- 14.10.7. Tranquillity mapping has evolved since the early 1990s and a new approach was developed in response to comments in the *Rural White Paper 2000*. The complex methodology assesses commonly appreciated aspects of the countryside and the human experience of them. It is based on 500 metre squares. Forty-four positive and negative factors, and their weighting, were determined by public consultation and assessments are based on national data of the presence or absence of the factors in each square. However, whilst the identified factors are applied consistently, not all local features are taken into account.<sup>[6.10.1, 10.5.5, 10.5.6, 10.5.7, 10.5.14]</sup>
- 14.10.8. The RSS, and the *Rural White Paper* refer to tranquillity, and it was mentioned in the Officer's report to committee. However, the concept as advanced by CPRE in terms of mapping is not incorporated into any development plan policy. It is identified as a general characteristic of the countryside. The two references to tranquillity in the RSS are in a table under paragraph 9.2 in the category of Noise. This refers to Policy NRM10 which deals with noise. Paragraph 11.2, when read with the preceding paragraph, again refers to the noise environment. Whilst paragraph 173 of the NPPF, which is for consultation and should attract limited weight, refers to tranquillity it is again in the context of noise and recreational or amenity

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value as is a reference in the draft *Core Strategy*. [5.10.7, 5.10.8, 6.10.9, 10.5.11, 10.5.12]

- 14.10.9. Reference has also been made to other policy documents such as those relating to the Northumberland National Park and the Dover Core Strategy but those are not applicable in this area. In any event, tranquillity is not defined in those documents in any way that would alter the assessments that have been carried out in this case. [5.10.9, 10.5.10]
- 14.10.10. The AONB Executive refers to a number of decisions in which it maintains that tranquillity was a determining factor but again tranquillity is used to cover other factors such as noise, which have all been assessed in this case. In any event, the decisions differ from the current proposals in that a number are in or adjacent to an AONB or National Park rather than some distance from such a designation or are for new rather than expanded operations. [5.10.10, 5.10.11, 13.3.3]
- 14.10.11. CPRE accepts that tranquillity is not a discipline in itself and its witness has no professional expertise in landscape, visual assessment or noise that were all described as components of tranquillity. Despite criticisms by CPRE all these have been assessed by LAA which provided the only expert assessment. CPRE's objection is based on the national tranquillity mapping with no site visit, no landscape character assessment, or noise assessment, having been carried out. CPRE has criticised the lack of a separate tranquillity assessment but neither SDC nor other statutory consultees have identified the need for one. [5.10.8, 5.10.16, 10.5.14]
- 14.10.12. CPRE's tranquillity mapping is at an early stage and the results are too crude to be of any use at a local level without a local assessment. NE refers to CPRE mapping work with caution stating that "I would stress again that these NCA profiles are intended to be used as context to inform more detailed projects. Descriptions do not go into local detail and it is expected that partners will also use the more detailed sources of information such as local character assessments in specific cases, for example in Public Inquiries". CPRE has not done that in this case. [5.10.7, 5.10.17, 5.10.22, 6.10.9, 6.10.12]
- 14.10.13. Tranquillity is described by CPRE as 'freedom from all man-made features'. It includes visual intrusion and the quality of noise, such as bird song and wave roar, can be positive factors. However, the mapping does not take account of less frequent forms of development such as the power stations or smaller airports. As a result, the assessment for Dungeness ignores their existence and shows the power station as the most tranquil part of the area. The mapping methodology is also blind to gravel extraction and the security fencing around Lydd Ranges. Unsurprisingly, earlier Intrusion Maps show the area as being subject to significant intrusion and whilst this did not incorporate positive features, it is difficult to reconcile it with the claim that it is one of the most tranquil areas in the country. CPRE maintains that the work is consistent across the country and that there is a misunderstanding of the granularity of the mapping, but it is the granularity that makes it unsuitable for development control. [5.10.18, 5.10.19, 5.10.20, 5.10.23, 5.10.24, 6.10.10, 10.5.14, 10.5.15, 10.5.18]

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- 14.10.14. It is claimed that the power stations are largely silent and generate little traffic but there are noisy activities associated with the operation and decommissioning of them as well as car, lorry and train movements. Whilst power stations may not be statistically prominent in surveys, they do occur, they have an effect, and should be considered. In addition, no allowance is made for the dispersal of aircraft in different directions or reduced noise levels due to increased altitude. The 'impact' of the Airport is therefore the same at a point on the AONB boundary as it is on the boundary of the Airport at the end of the runway where there would be more aircraft at much lower altitudes.<sup>[5.10.25, 5.10.26, 6.10.11, 10.5.16, 10.5.17]</sup>
- 14.10.15. In any event, on CPRE's own evidence, when the proposals are factored in the result is a reduction of only 3 tranquillity points on a scale of -140 to +148 and Lydd would continue to enjoy a tranquillity score comparable to National Parks and AONBs.<sup>[5.10.21, 6.10.12]</sup>
- 14.10.16. Whatever the ingredients of tranquillity are taken to be, noise, landscape and visual effects and cultural heritage have all been professionally assessed in the normal way. The proposal would not have an unacceptable impact on the tranquillity of the area and would not be contrary to saved LP Policy SD1 or RSS Policy CC1.<sup>[5.10.7, 10.5.8, 10.5.19]</sup>

### Noise

- 14.10.17. Paragraph 18 of PPG24 states that account should be taken of background noise levels as the introduction of a noisy activity into a quiet area can be especially disruptive. The Airport is in a rural area with a relatively low background noise level. Despite that, no significant concerns have been raised in respect of ground noise, road traffic noise or construction noise and vibration. In any event the latter would only be for a limited time.<sup>[5.10.27, 10.5.18, 12.14]</sup>
- 14.10.18. The *Aircraft Noise Index Study* quoted in the ATWP suggests that the onset of significant community annoyance occurs at 57dB, moderate community annoyance at 63dB and high community annoyance at 67dB. This is assessed through a combination of ambient noise assessments and modelling calculations. The industry standard calculates and plots contours showing the daily continuous noise level,  $LA_{eq\ 16\ hours}$ , on the ground.<sup>[5.10.31]</sup>
- 14.10.19. CPRE is concerned that certain factors at LAA, such as landing on runway 21 with a tailwind with wheels and flaps down, would lead to greater noise. Aircraft taking off might use maximum power with the same effect on the level of noise and when jets were landing or taking off, private and GA aircraft would be held circling the airport, adding to local disturbance.<sup>[10.2.1]</sup>
- 14.10.20. Despite these concerns, and assuming all departures from runway 21 use FP12 over Lydd to avoid undue disturbance to birds, with 300,000ppa no properties would be within the 57-60dB contour band for departures on runway 21 and only three properties for 500,000ppa. For runway 03 that would be used by 30% of departures, there would be 36 properties in the 300,000 scenario and 75 in the 500,000 scenario in the 57-60dB contour band. The summer average, or Upper Parameter figures, would be 66 and 106 properties respectively on 03 departures. There would be no instances

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of properties beyond the 57-60dB contour being affected. Notwithstanding that many properties around the Airport enjoy relatively low background noise levels this is a very small effect. Moreover, many of the properties that would be affected existed in 1992 when the SoS concluded that the effect on residential amenity did not warrant refusing planning permission despite a higher cap on the number of movements. Engine technology has improved in the intervening 20 years and there is little evidence that would suggest reaching a different decision in this case. [5.10.32, 5.10.33, 6.10.1, 6.10.2, 6.10.3, 12.27, 12.28, 12.33, 12.43, 12.44, 12.45]

- 14.10.21. Greatstone School, which would be around 600m from the end of the runway, has around 370 pupils in total and some 75 staff. The WHO *Guidelines for Community Noise* indicates that for schools and pre-schools the background noise in class should not exceed 35dB<sub>LAeq</sub> during teaching sessions and for outdoor playgrounds the noise level from external sources should not exceed 55dB<sub>LAeq</sub>. The *Acoustic Design Guide for Schools* confirms that for new schools 35dB is the upper limit for nursery school quiet rooms and 40dB for ordinary teaching areas. [5.10.34, 5.10.35, 10.5.20, 10.5.21, 12.27, 12.29, 12.30, 12.38, 12.33, 12.43]
- 14.10.22. No noise measurements were taken at the school but it is standard practice for noise impacts to be calculated. Notwithstanding concerns that the school is a prefabricated structure built in 1973 and that a survey and report were not produced until late in the proceedings, aircraft noise levels would increase to 48dB with the runway extension and 51dB with the terminal building. This would be well below the WHO guideline figures for outdoor playgrounds and would not exceed the WHO internal level of 35dB. There would not, therefore, be any significant impact on the noise environment at Greatstone School. [5.10.35, 6.10.8, 10.5.21, 10.5.22]
- 14.10.23. Despite this the Section 106 Agreement makes provision for a survey and sound insulation works at the School to the value of £100,000. Whilst the sum might be fairly and reasonably related in scale and kind to the development, in the light of the lack of significant impact on the School it would not be necessary to make the proposals acceptable in planning terms, and so would not meet the test in *CIL Regulation 122*. [5.10.36, 6.10.8]
- 14.10.24. Policies SDT6 and GNR5 of the *Kent Downs Management Plan 2009-2014* refer to tranquillity and the AONB Executive maintains that the AONB would be affected by 'very noisy' aircraft at 'low altitudes'. The Executive refers to *Government Guidance to the CAA* which indicates that overflights of AONBs below 7,000ft should be avoided if possible where it could be done without adding to burdens on more densely populated areas. All larger aircraft would follow the ILS, regardless of payload, and so would not be lower in the sky and would be at least 2,800ft over the escarpment. No aircraft would be lower than 3,200ft as they pass over the AONB and whilst some flights would be below 7,000ft over part of the AONB, that is already the case with established departure and arrival routes. These are over the least tranquil area of the AONB, which is unsurprising as they lie over a relatively urbanised part of the escarpment with the Link Park employment area and have existed for many years. CAA has not objected in this case. [5.10.12, 5.10.13, 5.10.14, 13.3.2, 13.3.4, 13.3.5]



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- 14.10.25. The AONB Executive carried out its own analysis but equates  $LA_{max}$  or  $LA_{eq}$ <sup>40 secs</sup> with the 57dB 16 hour average levels for the onset of community annoyance. This is comparing apples with pears. The aircraft would not be 'very noisy' and the expert assessment on behalf of LAA demonstrates that there would be no material change to the noise climate in the AONB due to the proposals. There would not, therefore, be materially less impact if additional aircraft movements were handled by Manston rather than Lydd. [5.10.15, 13.3.5]
- 14.10.26. RSPB questions the noise contours but provides no expert evidence or alternative. Noise assessments include BAE146 movements, which are similar to those of the Gulfstream that uses the Airport. The failure to use the SEL unit for ambient noise levels is criticised, but ambient noise is, by definition, from a number of sources not a single event. Scientific papers referred to by RSPB use  $L_{Amax}$  and no studies were identified that use SEL for ambient noise. RSPB assumed that 4 out of 10 flights would go south over the Ranges but a condition could be imposed requiring all take-offs from runway 21 to use FP12 mitigating any effects on the western edge of the Reserve. [5.10.27, 5.10.28, 5.10.30]
- 14.10.27. Reference to a noise reading of 90dB at 1000ft for the trial flight by a B737-300 is a SEL that is about 7dB higher than the  $LA_{max}$  level that should be used. The noise level was, therefore, around 83dB and from a noisier aircraft than is likely to be flown from LAA. The model for the ES assumes the aircraft would be fully laden. A loud jet taking off on 15 November 2010 disturbed a mixed flock of around 1500-2000 birds which circled for several minutes before settling. Whilst there would obviously be some effect from the proposals, there is little evidence that jets would have any significant effect on the visitor experience along the western edge of the Reserve with its character as a wild or remote place. [5.10.29, 8.5.1]
- 14.10.28. CPRE maintains that noise impacts in themselves could justify refusal and that SDC's contrary view is a change in stance since the report to committee. However, the report considered that only when noise impacts were added to the weightier environmental concerns did the need to balance harm against benefits arise and it was only the combined harm that was not considered to be outweighed. Both the main and supplementary reports explicitly state that noise and tranquillity on their own are not a sufficient reason for refusal. [6.10.4, 6.10.5, 6.10.6, 6.10.7]
- 14.10.29. The proposals would not change the cultural landscape or perception of the Romney Marsh area and would not have an unacceptable impact on tranquillity. Given the limited harm to the wider population and the lack of significant harm to Greatstone School in terms of noise, there is no reason to refuse planning permission in terms of landscape and visual assessment, cultural heritage, noise or any combination of factors that contributes towards the concept of tranquillity and the quality of life. The proposal would not, therefore, adversely affect the human rights of local residents. [5.10.37, 12.8, 12.14, 12.17, 12.19, 12.26, 12.28, 12.29, 12.34, 12.36, 12.38, 12.39, 12.42, 12.43]

## 14.11. Transportation

- 14.11.1. In addition to CPRE and LAAG, transportation was raised as a concern in written representations at both application and Inquiry stages. Issues raised are the accessibility of the site, congestion, particularly on the C24 Camber Road, parking provision and travel plans. [5.11, 6.11, 10.6, 12.12, 12.15, 12.20, 12.22, 12.29, 12.37, 12.38, 12.39, 12.43, 12.46, 12.48, 13.1.1, 13.3.1]
- 14.11.2. In transport terms, LAA has a catchment population of 848,000 within a 60 minute drive. Based on CAA passenger survey data, a small regional airport at Lydd would reduce car mileage of passengers within the 60 minute catchment by an average of 40%, saving over 800 tonnes of CO<sub>2</sub> pa. Reference has been made to the better access that exists to Manston Airport but it is not a question of Manston or LAA. Most passengers and staff at Lydd would use motor vehicles, mostly cars, but a S106 Agreement would secure improved accessibility by other means including walking and cycling, and a shuttle bus to Ashford and the railway. This would be an appropriate response to making the proposals as sustainable as possible. Although concern has been expressed that the Shuttle bus would be dropped, the S106 Agreement provides for it to operate before throughput reaches 30,000ppa and to continue until the runway extension and terminal building cease to operate. [5.11.3, 6.11.3, 6.11.4, 10.6.2, 10.6.3, 12.3, 12.7, 12.12, 12.13, 12.15, 12.22, 12.24, 12.37]
- 14.11.3. CPRE had not seen the terms of the S106 Agreement when raising concerns. Whilst the modelling has been criticised, the assumptions made are the most appropriate in highway terms. Traffic generation has been assumed to coincide with peak traffic times, giving a robust assessment, and service vehicles have been accounted for in the traffic forecasts. Although there are concerns about congestion, the scale of growth would be within that anticipated by saved LP Policy TR15 which was drafted with accessibility and the road network in mind and no road widening has been suggested. The coastal route through Camber would not be quicker than the main A259 from the west and would be addressed by a signage strategy. This would be monitored and if flows through Camber increase more than expected, traffic calming would be introduced and a contribution made towards it. The junction of the A257 with the B2075 at Hammonds Corner would be improved by a roundabout. The junction of the Airport access road and the B2075 has sufficient capacity but would be monitored and improved if necessary. [5.11.4, 5.11.5, 6.11.2, 6.11.3, 10.6.1, 10.6.2, 12.20, 12.29, 12.37, 12.43, 12.46, 12.48]
- 14.11.4. CPRE's parking scenario of 90% of a summer month peak of 25,000 passengers arriving by car and leaving their vehicles for 14 days is improbable. Research suggests that only 42% would arrive by car and want to leave it. Others would be dropped off or arrive by taxi. A balance has to be struck between making adequate provision and over providing and encouraging travel by car. The methodology for car parking provision was agreed by KCC and the Highways Agency and there is no reason to believe that provision would be inadequate. [5.11.6, 6.11.5, 10.6.4]
- 14.11.5. A Section 106 Agreement would provide for a number of measures, including a travel plan. There is provision for updating the travel plan

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following regular reviews, and should the terminal building come into operation. Concern had been expressed that this may differ from the original, not be open to public scrutiny, and may not accord with saved LP Policy TR13. However, a travel plan has been submitted as required by TR13. It is usual to expect that it would be monitored and updated to reflect events and that is provided for in this case. Both SDC and KCC would be involved in this process.<sup>[5.11.2, 5.11.5, 12.20]</sup>

- 14.11.6. Whilst local residents are concerned about the costs associated with accidents and delays, the applications were accompanied by a TA and the only technical evidence is from the applicant. Concerns that were raised by the highway authorities have been addressed such that, subject to conditions and a S106 Agreement, there is no objection from any statutory body on highways grounds. The proposals would not have any significant effect on highway safety and would accord with the aims of saved LP Policies TR5, TR6, TR8, TR11, TR12 and TR13.<sup>[4.4, 5.11.1, 6.11.1, 12.13, 12.37]</sup>

## 14.12. Planning

### National Policy

- 14.12.1. The ATWP remains the guidance on aviation policy but needs to be considered in the light of more recent statements that do not support all of its content. The scoping document *Developing a sustainable framework for UK aviation* indicates that many of the provisions of the ATWP are no longer fit for purpose but does not say it should not be taken into account. It identifies the failure to recognise the importance of addressing climate change and the insufficient weight given to local environmental impacts of aviation. In addition, there has been the *Climate Change Act 2008* setting legally binding targets for emissions, and the recession would have affected assumptions about demand and aspirations for growth. In relation to climate change, the Farnborough decision indicated the SoS's view that the matter is more properly dealt with through the EU Emissions Trading Scheme and this is confirmed in the *Response to the Committee on Climate Change*. In terms of the recession, air transport growth projections are long term and there will inevitably be peaks and troughs. UK aviation forecasts show short haul growth between 2008 and 2020 of 1.93% compared with 2% prior to the recession. The difference would be no more than 20-30,000 passengers in 2020.<sup>[5.12.18, 5.12.19, 5.12.21, 6.12.15, 7.6.5, 10.7.1, 10.7.2]</sup>
- 14.12.2. The scoping document makes clear that the aviation industry is "essential for a dynamic economy as well as to improve our well being and quality of life". The stance is not anti aviation but anti carbon. *Planning for Growth* sets out a similar message. Nothing in the *Hillingdon* judgement supports the view that the weight to the ATWP is diminished by the *Climate Change Act*. Indeed, it was rejected in *R(Griffin) v London Borough of Newham* [2001] EWHC 53. The August 2011 *Response to the Climate Change Committee* concludes that the targets in the *Climate Change Act* can be met without the need to cap aviation activity. Although some parts of the ATWP are undoubtedly out of date, the weight to be given to other sections has not diminished. The decision in the North East Sector Crawley appeal (APP/Q3820/A/08/2092933) confirms that the ATWP "remains extant" and

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“sets out a long term national strategy for the sustainable development of air travel to 2030”. [5.12.5, 5.12.12, 5.12.13, 5.12.14, 5.12.15, 6.12.15, 6.12.16, 6.12.17, 10.7.4]

- 14.12.3. The ATWP requires disturbance of habitats and species, impacts on biodiversity and the loss of habitats and species to be minimised. LAA is in an ecologically sensitive area and references to it in the ATWP are specifically qualified as being subject to environmental considerations. However, the ATWP notes that “from studies undertaken for the White Paper and the responses to consultation, it appears that some further development could be possible at any of the smaller airports that have been assessed without insurmountable environmental constraints”. [5.12.9, 7.6.5, 9.7.1, 9.7.6]
- 14.12.4. The ATWP’s starting point is to make the best use of existing airport capacity, particularly in the south east, to provide much needed additional capacity. The updated *UK Aviation Forecasts* demonstrate that the three main London airports will be full by 2020 and full to the limits of their maximum capacity by 2030. In principle support is given to smaller airports in the south east, including Lydd, and this has not changed. The Reform of Air Passenger Duty, with differential duty rates between South East airports, and the scoping report continue the thrust of Government policy. There is no suggestion that Lydd and Manston should be regarded as alternatives. Indeed, there was support for smaller airports when new runways were contemplated at major airports, which is no longer the case. LAAG accepts that LAA could contribute to regional development albeit through meeting local demand. [5.12.5, 5.12.6, 5.12.8, 5.12.9, 5.12.10, 5.12.14, 5.12.20, 5.12.21, 6.12.11, 9.7.1, 9.7.2]
- 14.12.5. LAAG refers to the foreword of the ATWP and maintains that as the airport has at best utilised 3.7% of current capacity since 1992 there is scope to make better use of LAA’s facilities without lengthening the runway or building a new terminal. However, the foreword also states that “increased capacity is needed at a number of airports across the country, including some new runway capacity, more terminal capacity and support facilities. This would require some runway extensions and new terminals. Indeed, permission has been given for a runway extension at Southend in March 2010 and a new terminal at Bristol since the ATWP. This is reinforced by the *Future of Air Transport* which states that the first priority is to make the most of the UK’s existing airports through a process of improvements and modernisations. There is no support for the view that every last bit of capacity has to be squeezed out of existing facilities before any extensions or improvements can be allowed”. [5.12.7, 5.12.14, 6.12.12, 6.12.13, 6.12.14, 9.7.3, 9.7.4]
- 14.12.6. Changes to the ATWP are at scoping stage and it does not follow that all airports in the regions would get policy support as some would be more suitable for expansion than others. If respondents to the consultations on the RSS transport section give broadly the same advice in response to the replacement ATWP, then Southampton and Manston could be preferred regional airports. The continued development of HS rail will provide quick links between London, the South East and mainland Europe relieving pressure on airports to some extent but would not happen within the timescale for the proposals. In any event, they would only delay the requirement for additional capacity by three years. The most significant

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change in aviation policy since the publication of the ATWP is the cancelling of Government support for additional runways at Heathrow, Gatwick or Stansted. This would add to the pressure in the South East and bolster the case for expanding smaller airports. [5.12.6, 5.12.11, 5.12.14, 5.12.22, 6.12.18, 9.7.5, 10.7.3, 13.2.2]

- 14.12.7. The closest airport with a significant choice of destinations for the majority of people within an hour drive of Lydd is Gatwick. Providing them with a chance to fly from LAA would make a significant saving in CO<sub>2</sub> emissions from surface transport travel. If flights from Lydd are displaced from elsewhere there would be further CO<sub>2</sub> savings as Lydd is closer to most European destinations. If they are not displaced, the Climate Change Commission has concluded that the UK could still meet its climate change obligations with a 60% growth in air transport movements. Expansion of Lydd would be just a very small fraction of that growth. The proposals would, therefore, accord with the most up-to-date national aviation policy. [5.12.16, 5.12.17, 6.12.19]
- 14.12.8. The Inspector in the Little Cheyne Court Wind Farm Inquiry was concerned with whether that proposal was incompatible with LAA's. He considered they were not and the environmental tests for LAA's proposals have been addressed at this Inquiry. The decision in respect of Coventry airport, which had a particular niche role for business aviation, mail and some airfreight, does not affect the position at LAA, or the policy support expressed for it. LAAG relies on the capacity assumptions in the *South East Regional Air Services Study*. This considered 125,000ppa at LAA but was an assumption as to the level of demand, rather than any capacity limit or maximum. Indeed, in Chapter 4 of the same report, LAA was assessed with 2mppa. [5.12.23, 5.12.24]
- 14.12.9. The draft NPPF is for consultation and so should attract little weight at this stage. If it is adopted before decisions are made on these applications then the SoS should give it weight in accordance with the usual principles. In terms of relevance, it encourages sustainable growth but also notes that development likely to have a significant effect on sites protected under the *Habitats Directive* would not be sustainable. If significant harm cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused. [5.12.25, 6.12.20, 7.6.6, 7.6.7]

### **Development Plan Policy**

- 14.12.10. The Inspector's report leading to the 1992 decision notes that development plan support for the Airport dates back to at least the early 1980s. The *Romney Marsh Local Plan* considered that there was scope for increased services above the 1979 peak of 60,900 movements and was drafted when the implications of that level of activity were fresh in people's minds. Development plan support has been consistent for at least 25 years and remains KCC's position today. [6.12.1, 6.12.2, 13.2.3]
- 14.12.11. The development plan for the area includes the RSS and saved policies in the LP. RSS Policy T9 broadly reflects the approach in the ATWP but introduces a three tier approach and deals with the first two tiers. LAA is not specifically mentioned in the policy but paragraph 8.30 of the explanatory text states that other small airports, which include Lydd, could

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play a valuable role in meeting local demand and contributing to regional economic development subject to relevant environmental considerations. This reflects RSS Policy NRM5. Whilst CPRE does not consider this to be proactive promotion, it does support development at LAA. [4.1, 4.2, 5.12.1, 6.12.3, 10.7.5, 10.7.6]

- 14.12.12. In relation to ornithological interests, although paragraph 9.23 of the RSS mentions “conserving and enhancing”, *Great Trippetts Estate Limited v Secretary of State for Communities and Local Government* [2010] EWHC 1677 indicates that this should be construed as maintain and where possible enhance. Moreover, PPS 9 does not suggest a two-fold requirement of maintaining and enhancing. [5.12.2, 7.6.3]
- 14.12.13. Recent documents, including *21st Century Kent*, the *East Kent Sustainable Community Plan*, and the LEP bid, identify the role of HS rail with reduced journey times. However, this does not undermine support for aviation as there is also an emphasis on Manston with a planned link to the HS rail network. No operators are signed up to LAA and it might offer some routes offered by Manston but there is little evidence to support CPRE’s belief that LAA might compete with, and undermine, Manston. The two airports serve different catchment areas and KCC continues to support the expansion of both airports which it considers have distinct differences that would favour different sectors. [5.3.45, 10.7.7, 10.7.8, 13.2.3]
- 14.12.14. Although the LP predates the ATWP and the RSS, it reflects RSS paragraph 8.30 and therefore remains relevant. LP Policy TR15 supports the development of commercial aviation provided there would be no significant impact on the internationally important wildlife communities. In addition, regard must be had to the likely effects of proposals on other special features, particularly the power stations. [5.12.3, 6.12.4, 7.6.4, 10.7.9]
- 14.12.15. Paragraph 11.40 of the supporting text recognises the importance of the Airport as a source of employment on the Marsh, whilst paragraph 11.41 gives an indication of the scale of expansion. It refers to a throughput of up to 2mppa but recognises that Lydd is “unsuitable for use as a new airport for London”. The proposals contemplate growth to only a quarter of that level and the applications fall comfortably within the scale of expansion for which the LP provides support. [6.12.5]
- 14.12.16. Whilst there is a difference between the parties as to whether Policy TR15 is an allocation, and the proposal goes beyond the boundary on the proposals map, the policy specifically refers to “expansion” of facilities at the Airport and therefore supports the proposals. However, although the policy identifies the key issues of impact on the internationally designated sites and likely effects on the nuclear power station, this does not preclude the need for the proposals to be assessed against other LP policies. [6.12.5, 10.7.9]
- 14.12.17. LP Policy SD1 identifies a number of criteria to be respected and the relevant topics are covered in sections of this report. Criterion d) relates to the protection of the designated sites which TR15 expressly identifies as a consideration and these are dealt with under ecology and ornithology. In terms of the other criteria it should be borne in mind that they were adopted in full knowledge of Policy TR15. Criterion (a) is “Shape new

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development patterns in a way which reduces the need to travel, especially by car, and increases the attractiveness of walking, cycling and public transport.” But the relative remoteness of the airport is specifically referred to in LP paragraph 11.41. Criterion (a) therefore encourages the improvement of the Airport’s accessibility by non-car modes. This is done through the Section 106 Agreement. Similarly, there would be no significant impact on tranquillity or the amenity of local residents and the proposals would comply with criteria c) and k). There would be no conflict with saved LP Policy SD1. [5.12.4, 6.12.5, 10.7.10]

- 14.12.18. LP Policies CO1 and CO14 should also be read in the context of saved Policy TR15. The criteria in CO1 broadly echo those in SD1 and the proposal would also comply with Policy CO1. Whilst it is suggested that noisy jets on the runway would not be compatible with the character of the area they already form part of that character. LP Policy CO14 covers the ornithological interest of the sites at Dungeness and requires priority to be given to them over other planning considerations. That would apply in these decisions. The assertions by a local planner that the proposals would be contrary to a number of LP policies were made without reading many of the supporting documents, and on the assumption of a throughput of 2mppa. [5.12.4, 7.6.4, 10.7.10, 12.19, 12.20, 12.21, 12.22]
- 14.12.19. The current proposals fall well within the scale of growth anticipated by both past and present development plans. Subject to the issues of impact on the internationally designated sites and the nuclear power stations, both the regional and the local components of the development plan provide clear support for the principle of expansion at Lydd. [6.12.6]
- 14.12.20. SDC has recently published its CSPSD for consultation but this attracts very little weight at this stage. CPRE’s view that SDC is ‘going wobbly’ on the airport does not reflect the reality of the situation, notwithstanding the fact that LP Policy TR15 was not rolled forward into the *Core Strategy* as LAA wanted. SDC is seeking to ensure that the *Core Strategy* remains sound whatever the outcome of this Inquiry. The spatial strategy for the area is set out in paragraph 5.108 of the CSPSD and includes seeking regeneration, supporting improved communications, respecting the natural environment and achieving additional employment and housing opportunities. LAA is one of the few opportunities to provide additional employment. SDC’s appearance at the Inquiry indicates its continued support for development at the Airport. [6.12.7, 6.12.8, 6.12.9, 6.12.10, 10.7.11, 10.7.12, 12.29]

### **1992 Decision**

- 14.12.21. It is a long time since the 1992 decision and there have been a number of changes. There had been large numbers of passengers and large aircraft relatively recently in the 1980s. However, a number of the issues considered then are broadly similar to matters raised in the current proposals. [6.12.21, 7.6.1, 9.7.7, 10.7.14]
- 14.12.22. Whilst a runway extension is common to both the 1992 and current scheme, the previous proposal did not include the 150m starter extension or a new terminal. It could only therefore have been assessed in the context of the existing terminal, a maximum of 300,000ppa, whilst the

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proposal could accommodate 500,000ppa. However, there was a cap of 56,000 aircraft movement pa in 1992 compared to 40,000 now proposed and the number of jets was restricted to 6,000. Although there is no restriction proposed on the number of jets, 500,000ppa implies an average of 10 commercial passenger movements a day or 3,650pa. Hours of operation would also be more constricted starting at 07:00 rather than 06:30.<sup>[5.12.28, 9.9.7, 10.7.15]</sup>

- 14.12.23. The previous permission encouraged the use of a southerly departure over the RSPB reserve with the possibility that all 6,000 jets would use that FP. Because of the restrictions around the ranges and the power station, and a condition requiring use of FP12, the southerly route would not be used and jets would not directly fly over the Reserve.<sup>[5.12.29]</sup>
- 14.12.24. A principal issue in 1992 was the effect on the adjoining SSSI and the then pSPA. The SPA was classified in 1999 since when new water bodies and reed beds have been added. The current pSPA is larger and closer to the Airport and includes additional species and assemblage of birds whilst further species are added by the pRamsar designation. Legal protection has tightened and the tests are not the same. Notwithstanding that, the SoS's decision in 1992 that the then proposal would not have a significant impact on ornithological interests is a material consideration.<sup>[5.12.27, 7.6.2, 9.7.10]</sup>
- 14.12.25. The risk of air crash into the power station was a principal issue in 1992 when the SoS accepted it was not a basis to dismiss the proposals. Since then Dungeness A has ceased power generation and Dungeness B is due to cease generation in 2018, although it might be given an extension. In addition there is now a restriction of 2nm around the power station extending to 2,000ft, although the airport has a dispensation allowing aircraft taking off or landing to fly within 1.5nm. These factors can only have improved safety. Neither the operator nor the Regulator objected in 1992. Whilst the Regulator has not objected to the current proposals the new operator of Dungeness B has as it is duty bound to resist any increase in risk however small. However, British Energy acknowledges that the increase in risk would be extremely small and would not compromise current or future activities at the site.<sup>[5.12.27, 9.7.8, 9.7.11, 13.3.1]</sup>
- 14.12.26. In terms of operational changes, the height restrictions over the Hythe and Lydd military ranges have been increased and the instructions to pilots have changed from "Active 08:00-23:59 local and when notified" to 24 hours a day. ILS and RNAV procedures have been introduced and there is now a wind farm at Little Cheyne Court around 7.5km from the airport. Low cost airlines have improved productivity since 1992 and seek to maximise fleet utilisation whilst the Channel Tunnel opened in 1994 and Manston changed from a combined RAF and civilian airport to a wholly civilian one in 1999.<sup>[9.7.8, 9.7.9]</sup>
- 14.12.27. The 1992 decision is still material but the materiality of the topics identified would reflect the amount of change that has occurred. Operational changes have improved the safety situation and many constraints would be tighter than in 1992 with less flights over the Reserve.



## 14.13. Other Matters

### Localism

- 14.13.1. Opinion within the community is divided and both sides at the Inquiry claim that localism supports their case. The vast majority of representations received at both application and Inquiry stages object to the proposals. A referendum was held by SDC in 2007 and from a turnout of 35% some 66% voted against expansion. However, a poll by a local radio station indicates that the majority are in favour. Queries have been raised about how these results might have been affected by the procedures used. However, localism must be underpinned by democratic accountability. The local MP and Councillors, recently elected despite their support for the proposals, have a clear view of local opinion and where the public interest lies.<sup>[6.13.1, 12.2, 12.3, 12.5, 12.9, 12.29, 12.34, 12.35, 12.39, 12.43, 13.1.1, 13.1.2, 13.3.1]</sup>
- 14.13.2. LAAG claims to speak on behalf of a large number of local people but has no democratic structure, holds no formal meetings, and there is no voting on officers or issues. Its evidence may or may not represent the views of the membership body, which has not been asked to endorse it, but the views expressed are valid planning concerns.<sup>[5.13.2, 5.13.3]</sup>
- 14.13.3. The *Localism Act 2011* received Royal Assent after the Inquiry had closed. However, it is unlikely to impinge on these decisions as specifically noted by LAA. Paragraph 8 of PPS1 states that "This plan-led system, and the certainty and predictability it aims to provide, is central to planning and plays the key role in integrating sustainable development objectives". It goes on to echo the statutory duty in Section 38(6) of the *Planning and Compulsory Purchase Act 2004* to determine applications in accordance with the development plan unless material considerations indicate otherwise. That is the basis for the conclusions and the recommendations in this report.<sup>[5.13.1]</sup>

### SDC's Handling of the Applications

- 14.13.4. LAAG, CPRE, and a number of local people expressed concern about SDC's handling of the applications, particularly events at the Committee meeting when the AA was amended. Whether or not the Council misdirected itself is not a matter for this Inquiry, and in any event the Council's resolution has been overtaken by the SoS's call-in of the applications. Moreover, the Inquiry heard extensive expert evidence that was not available to Members at the time they made their decision. The recommendations in this report is based on that expert evidence and not on the Council's resolution.<sup>[1.2, 6.13.2, 9.8, 10.8.1, 12.16, 12.30, 12.31, 12.47, 12.49]</sup>

### Security Fencing

- 14.13.5. Although LAAG maintains that a security fence is needed regardless of whether the proposals go ahead, security checks are part of the CAA inspection prior to granting or renewing an operating licence. The Airport has a CAA operating license. The extended airport boundary would be delineated by dykes and fields and the only obstruction that would be

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required in the future would be on the existing Bravo apron and would not have any impact on the designated sites.<sup>[5.13.4, 9.8.11]</sup>

### **Mitigation**

- 14.13.6. LAA produced a schedule, CD17.27, of what it considers the main mitigation measures. This sets out all the main measures proposed, although not all the items listed would be mitigation for effects created by the proposals. Mitigation measures would be provided predominantly through the design of the proposals, conditions that should be attached to any planning permission, and a Section 106 Agreement.
- 14.13.7. A number of restrictions would be imposed on airport operations by a Section 106 Agreement and conditions. These would mitigate against effects on noise, nuclear safety, and ornithological interests. A Noise Management Plan would be required and funds provided for measures at Greatstone School. In relation to ecology, an ABAP Panel would be set up, a Construction Environmental Management Plan required, and extensive surveying, monitoring and, if found necessary, remedial measures devised and implemented for a range of species. In addition, a Carbon Management Plan, an AQMS and AQMAPS would be required addressing any effect on air quality.
- 14.13.8. Improvements would be required to the junction at Hammonds Corner and access to the Airport would be monitored. A Travel Plan and various other miscellaneous measures would mitigate against transportation effects. In terms of design, the terminal building, use of existing infrastructure for parking, a lighting scheme and landscaping would be the main elements of mitigation and would be supported by conditions attached to each scheme. These would address, amongst other matters, renewable energy, the reduction of emissions, proposed materials, geomorphology and archaeology, contamination, surface and foul water, ground water protection, and the provision of an Environmental Management System.

### **14.14. Section 106 Agreement and Conditions**

- 14.14.1. Versions of the Section 106 Agreement and the conditions have been the subject of an iterative process with all parties to the Inquiry commenting on a number of occasions. Many, but not all, of the comments made have been incorporated and the details are recorded in schedules with the last being CD17.22. Concerns have been raised that conditions could be removed but any subsequent application for removing or varying a condition would be considered on its merits and a condition would not be removed if it was still required to make the operation of the proposals acceptable. The same would apply to the terms of any Agreement. A number of the conditions refer to consulting NE and in some cases other bodies. In the particular circumstances of this case where the *Habitat Regulations* are an important consideration this might be justified and the reference has been left in the Schedules at Appendices 4 and 5. However, the SoS might like to consider whether that would be enforceable against the Council. There is no reason to believe that the Council would not consult, deliberately ignore, or go against justified comments by EA, NE or RSPB when considering the discharge of conditions.<sup>[5.14.1, 5.14.2, 5.14.3, 5.14.4, 7.7.1, 11.4.1, 12.23, 12.34, 12.41]</sup>

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- 14.14.2. CPRE has concerns about 'Emergency and Governmental Activities' but LAA has little control over, and cannot limit, them. However, training has been removed from the definition as suggested by LAAG. Whilst a condition requiring a contribution towards coastal defences is sought by CPRE, it would not be justified for reasons set out in the section on Climate Change and Flooding. Noise and Air Quality monitoring are dealt with in the Section 106 Agreement and there is no need for conditions as well. The methodology for calculating parking provision has been agreed with KCC and the Highways Agency. There is no reason to believe that provision would be inadequate and so no need to monitor long term informal parking in Lydd. In terms of a community fund, as set out in Clause 13.5.1 of the Agreement, it would be fair to limit the use of the fund to the 5km area that would be affected rather than the 10km area that was modelled.<sup>[5.14.2, 10.9.1, 14.9.13, 14.11.4]</sup>
- 14.14.3. Most helicopter movements are by military helicopters over which LAA has no control. However, the cap on helicopter movements includes 'emergency and governmental activities' and flightpaths would be compatible with the UK AIP minimising disruption as far as possible. LAAG accepted that ILS would be the procedure of choice and so there would be no need to limit use of RNAV procedures to a backup to ILS as suggested.<sup>[5.14.9, 5.15.10, 9.9.2, 9.9.7]</sup>
- 14.14.4. In terms of nuclear safety, LAAG is concerned about restrictions on the size, weight, and nature of the aircraft. A range of operational restrictions are proposed but there is no need to constrain the number of large aircraft as this would be achieved by reference to noise contours, an approach agreed with SDC's consultants. The capped passenger numbers would effectively limit the number of commercial aircraft to around 3,650 a year compared to a cap of 6,000 in 1992. a condition restricting activities on the Airport site would not be justified as a demographic assessment at 500,000ppa indicates that the population would be no more than 27% of the remote site classification figure.<sup>[5.7.17, 5.12.28, 5.14.9, 9.9.3, 9.9.4, 9.9.5]</sup>
- 14.14.5. The effect on house prices is a local concern. A house purchase scheme has been mooted but LAA confirms that it was, and remains, a corporate commitment outside the Agreement. It would, therefore, attract no weight.<sup>[5.14.10, 9.9.6, 12.32]</sup>

### **Section 106 Agreement**

- 14.14.6. A Section 106 Agreement has been signed between LAA and SDC. It makes provisions under five main topics and a number of miscellaneous matters. Some of the measures required are dependent on the runway extension taking place before the terminal building and this would be ensured by Schedule 1 Clause 1 of the Agreement.
- 14.14.7. Clause 23 would provide for setting up an Airport Consultative Committee with representatives of SDC, KCC, NE, EA, RSPB, CPRE Protect Kent, and LAAG as a collaborative, rather than an approval, body to enable comments to be made on the various reports that would be submitted to SDC as a result of Section 106 provisions. This would provide stakeholders with a forum for comment. Although LAAG has made suggestions about

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the content and format of the report, that is a matter to be agreed with SDC.<sup>[5.14.10, 9.9.6]</sup>

- 14.14.8. Clauses 2 to 9 of Schedule 1 relate to transportation matters and deal with matters as diverse as a routing plan, a travel plan and a travel plan steering group, a parking management scheme, car sharing and a shuttle bus service to Ashford International Train Station. In addition, it would require monitoring of the entrance to the airport. If this identifies a need to improve the safety of the junction with the B2075 as a result of the proposals then remedial measures would be agreed and implemented within a set timetable. A signage strategy would be agreed with East Sussex County Council to discourage use of the B2075 Camber Road. Monitoring would take place on the Camber Road and if traffic counts rise by more than 5%, the Airport would be required to contribute towards traffic management measures. This would be subject to a realistic cap as agreed with the highway authority. These measures generally address concerns raised by the highway authorities.<sup>[5.14.9, 9.9.6, 10.9.1]</sup>
- 14.14.9. The setting up of a Bird Control Management Plan Panel, bird control measures, monitoring of a BCMP and a remedial measures scheme are addressed in Clauses 10 to 12. A number of criticisms are made by NE and RSPB who would be members of the Panel. Public safety would be paramount and emergency measures would exceptionally be allowed in the interests of safety. This reflects the existing bird control manual. However, the Agreement would introduce a mechanism to review why any emergency action was necessary and measures to reduce the likelihood of it recurring.<sup>[7.7.2, 8.3.36]</sup>
- 14.14.10. It is claimed that the nature, intensity and extent of any measures is not known but the BCMP sets out the measures that could be used. Studies to investigate the effect of distress calls and cartridge pyrotechnics were carried out in August 2008 and winter 2009. The BCMP states that bird control patrols would be continuous when movements were more than one an hour, but that no disturbance would routinely be carried out on sites beyond the Airport boundary. Exceptionally measures may be needed in fields immediately adjacent to the boundary but this would only follow agreement of the details by SDC in consultation with NE/RSPB. The effect of possible measures can, therefore, be assessed.<sup>[7.7.3, 7.7.5, 7.7.7, 8.3.33, 8.3.36, 8.3.37, 8.3.39, 8.3.46]</sup>
- 14.14.11. A BCMP, to be substantially the same as that presented to the Inquiry, would have to be submitted for approval by SDC in consultation with NE and RSPB. The S106 Agreement includes mechanisms that would provide for reference to an expert if there is any disagreement between the Airport and SDC. Both the Council and the expert could refuse to approve the BCMP if the content was not accepted.<sup>[5.14.6, 7.7.6]</sup>
- 14.14.12. The S106 Agreement provides for monitoring of the BCMP and amendment where found necessary. Although NE considers that there would be pressure to approve any amended BCMP the same considerations would apply as safety is an issue now not just following any implementation. Remedial measures cannot be described at this stage as it is not known whether any would be required, or if found to be necessary what matters they would have to address. Indeed, this arrangement is similar to that for

other species of concern about which there has been no criticism. Timescales for action are set with loopbacks. Ultimately expansion would be stopped if measures were not implemented. This does not bypass the IROPI and alternative solutions requirements but would provide a sensible safety net should any unforeseen adverse effect be observed. [5.14.7, 5.14.8, 7.7.4, 8.3.42, 8.3.43, 8.3.44, 8.3.53]

- 14.14.13. Matters pertaining to noise are covered by Clauses 13 to 16 of Schedule 1. Noise Management Plans, with measures to reduce operational noise effects, would be required for each of the proposed developments. There would be a system of regular reporting to SDC with a range of information including any noise complaints received by a noise complaints service. Operational restrictions are set out that would assist in reducing the noise effect from aircraft. There is also a requirement for payments to Greatstone School. CPRE is concerned that the payment might not be enough but, as already discussed, the contribution would not meet the tests in *CIL Regulation 122* and so can be given no weight. [5.14.11, 9.9.6, 10.9.2, 14.10.23]
- 14.14.14. Clause 18 would require a Carbon Management Action Plan relating to ground vehicles and buildings that would seek to minimise carbon emissions and make the Airport more sustainable. An AQMS and an AQMAPS have been agreed between LAA and NE and would be required by Clause 19 to prevent any significant adverse effects in terms of air quality. [11.4.3]
- 14.14.15. Clause 22 would require the setting up of an ABAP Panel to review the ABAP which would then have to be submitted to SDC for approval. Clause 21 would require updated surveys of water vole, grass snake, common lizard, medicinal leech and bats, monitoring of population levels, and action if there was a material decrease, whilst provision for a Great Crested Newt Remedial Measures Scheme with monitoring of population and action should there be a material decrease would be required by Clause 20. [11.4.1]
- 14.14.16. A Jobs and Business Strategy would be required by Clause 17 for each of the proposals before they were brought into use. This would provide for initiatives for training opportunities, apprenticeships or training advice for local residents to enable them to gain employment at the Airport. Whilst this might be a laudable aim, it would not be necessary to make any proposal acceptable in planning terms and so its inclusion in the Section 106 Agreement would attract no weight.
- 14.14.17. Clause 24 provides for the payment of contributions towards the provision of SDC and KCC staff resources that would be required as a result of the implementation of the proposals.
- 14.14.18. With the exception of the contribution to Greatstone School (Clause 16) and the Jobs and Business Strategy (Clause 17), neither of which are necessary to make the proposals acceptable in planning terms, the measures in the Agreement would meet the tests in *CIL Regulation 122*.

### **Runway Extension Application**

- 14.14.19. A schedule of draft conditions in relation to the runway extension, CD17.24, is divided into seven sections. Section A includes a number of

definitions whilst Sections B to G include the suggested conditions. Some conditions have been grouped together under a single number and the number in the schedule of draft conditions has been used in this section of the report. However, in the schedule of conditions to be attached should the SoS be minded to approve the applications the conditions have been numbered individually and so would not necessarily correspond to the draft condition number.

- 14.14.20. Section B - General includes 2 conditions. The first is the standard three year time condition that should be attached. For the avoidance of doubt, and in the interests of good planning, suggested condition 2 should also be attached listing the approved drawings and documents.<sup>[9.9.1]</sup>
- 14.14.21. Three conditions are suggested under Section C - Construction. Firstly, suggested condition 3 would require a Construction Environmental Management Plan to be approved that would monitor and control the environmental impact of the development during construction. This would minimise disruption through the construction phase in accordance with saved LP Policies SD1 and CO12. Suggested condition 4 would require a scheme of geological monitoring and a programme of archaeological work. This would minimise disturbance to the geomorphology of the area in accordance with the aims of PPS5 and PPS9 and saved LP Policies SD1 and CO9.
- 14.14.22. Hours of working would be restricted by suggested condition 5. Although the works would be on an airfield that is currently operational with unrestricted hours there are relatively few night flights and the runway extension would be relatively close to residential properties. It would, therefore, be reasonable to restrict the hours as suggested to prevent night time working. This would not contradict suggested condition 22.
- 14.14.23. Six conditions in Section D relate to environmental management and would address the aims of PPS25, and saved LP Policies SD1, CO13, U4, and U10. Suggested condition 6 would require an Environmental Management System to be submitted and approved, condition 7 would require details of a surface water drainage system based on sustainable drainage principles to be approved including details of how it would be maintained and managed and operated during emergencies. Ground water protection would be addressed by suggested conditions 8.1, 8.2, and 8.3 including quality monitoring, approval of any protective measures and their implementation. Suggested condition 9 would prevent pollution of the water environment from spillages by requiring details of facilities for the storage of oil, fuel and chemicals to be approved.<sup>[11.4.1, 12.19]</sup>
- 14.14.24. Section E relates to the replacement ditch network and includes 25 conditions. A series of 6 conditions would require updated baseline ecology surveys in respect of water vole, grass snake, common lizard, medicinal leech, aquatic emergent and bank vegetation, and aquatic and amphibious invertebrates. This would assist in the protection of these species in accordance with the objectives of PPS1, PPS9 and saved LP Policies SD1, CO8, CO9, CO10, CO11, CO12, CO13 and CO14.
- 14.14.25. Secondly, 4 suggested conditions would deal with submission of details pre-construction. The details include a construction species protection plan

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for the species listed in the condition, a ditch construction method statement, ditch design details, and mitigation. Following on from those are 14 conditions relating to monitoring and remedial actions in relation to the species of concern. The last condition in this section would preclude the netting of the remaining ditch lengths within the Airport and in the SSSI and the new 1300m replacement ditch. These conditions led to the withdrawal of NE's objection on ecological grounds. They are all necessary and should all be attached.

- 14.14.26. Nine conditions have been suggested under Section F Ecology-General. Four relate to great crested newts and, as with the species in Section E, would require an updated baseline survey, submission of pre-construction details and mitigation, monitoring, and remedial action. Two conditions relate to moths and would require an updated relative population estimate survey within the Airport site and annual monitoring and assessment for 10 years. Two conditions concern bats and would require an updated bat foraging and commuting behaviour survey and a scheme of protection and mitigation measures. The last condition in this section relates to netting of waterbodies within the Airport site and requires it to be in accordance with Annex 10 to CD17.24. As with Section E these conditions led to the withdrawal of the objections of NE and KWT and are necessary. [11.4.2]
- 14.14.27. Finally, Section G includes 12 suggested conditions relating to operational management. Two conditions would restrict the number of aeroplane and helicopter movements, excluding the Air Show, a third would restrict the number of passengers until the proposed terminal building was occupied, and a fourth would restrict the maximum take-off weight of aircraft using the airport ensuring that the development accords with the ES. Air Shows would be restricted to no more than one a year lasting no longer than three days. Suggested condition 22 would preclude any flight movements, except in relation to emergency and governmental activities, between 23:00 and 07:00 hours. This does not need to be locked into the lease of land as permission runs with the land. Although not agreed by LAA and SDC it would be necessary to ensure compliance with those conditions relating to the number of movements and passengers to require that the Airport keep records that could be audited as suggested by a third party. [5.14.10, 9.9.8, 12.23, 12.34]
- 14.14.28. Two conditions would require details of improvements at the junction of the B2075 and A259, known as Hammonds Corner, to be submitted, approved, and implemented prior to the throughput of passengers exceeding 30,000ppa and for supplemental surveys in the area around the junction. This would minimise highway disruption and preserve the ecological potential of the area. A lighting scheme for the car park and associated roads, including details of how lighting would be minimised during the night time period and security lighting would be linked to movement sensors, dimmed and hooded to prevent light spillage would be required by suggested condition 24 again to preserve the ecological potential of the site particularly for moths and bats. [11.4.2]
- 14.14.29. The location for engine power checks would be set out in suggested condition 25 to minimise any disturbance to local residents in accordance with saved LP Policy SD1. In the interests of safety, suggested condition

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26 would preclude any landings on either runway or take-offs from runway 21 whilst a train was in transit between the nuclear flask loading bay at Halfway Bush and Lydd town. Finally, suggested condition 27 would require aircraft with a take-off weight of 5,700kg or over taking off from runway 21 to follow flightpath 12 and turn right rather than fly over the Reserve. This would be necessary to ensure a precautionary approach to any effect on birds within the designated sites and whilst LAA does not believe it would be necessary, it is content for it to be imposed.

### **Terminal Building Application**

- 14.14.30. A schedule of suggested conditions in relation to the proposed terminal building, CD17.25, is also divided into 7 sections with Section A being definitions. Section B - General includes 2 suggested conditions. The standard time condition has been amended by an increase from 3 to 10 years for commencement. As the implementation of this proposal would be contingent on the implementation of the scheme in Application A and growth over a number of subsequent years, it is reasonable in the particular circumstances to increase the period as suggested. For the avoidance of doubt, and in the interests of good planning, suggested condition 2 should also be attached listing the approved drawings and documents.<sup>[9.9.1]</sup>
- 14.14.31. Section C - Construction suggests 7 conditions. There is relatively little detail of proposed materials for the terminal building and suggested condition 3 requiring submission and approval of samples would ensure a high standard of design in accordance with saved LP Policy BE1. Condition 4 relates to a Construction Environmental Management Plan and as with Application A this condition is necessary. A programme of archaeological work would be required by suggested condition 5 and would accord with the aims of PPS5 and saved LP Policy SD1. Three conditions would relate to contamination and would require a remediation strategy, a verification report, and should unidentified contamination be found an amended remediation strategy to be submitted for approval. As the land has previously been used these conditions should be attached. In terms of working hours, a condition should be attached for the reasons given in relation to Application A.
- 14.14.32. Eight conditions are suggested in Section D - Environmental Management. Suggested conditions 10, 13.1, 13.2, 13.3 and 14 are concerned with an Environmental Management System, ground water protection and control of the storage of chemicals reflecting suggested conditions 6, 8.1, 8.2, 8.3 and 9 in Application A and should be attached for the reason given for those conditions. The airport has no mains drainage and is surrounded by sensitive ecological habitat including drainage ditches. Suggested conditions 11.1, 11.2 and 12 should therefore require a scheme for the disposal of foul water to the main sewerage system to be approved and implemented before the throughput of passengers exceeds 300,000 and for a drainage management plan to be submitted, approved and implemented before any new surface drainage infrastructure is installed. This would address the objectives of saved LP Policies U2 and U4.<sup>[11.4.1]</sup>
- 14.14.33. Section E - Carbon Reductions includes two conditions that would require the terminal building to be designed so that at least 10% of its total energy



requirements would be from renewable or low carbon sources and that it would achieve a BREEAM 2006 "Very Good" or "Excellent" rating. These should be attached to any permission to meet the aims of PPS1 and saved LP Policies SD1 and BE1. Section F proposes a condition requiring details of hard and soft landscaping and this should be attached to safeguard the character of the area in accordance with saved LP Policies SD1, BE1, BE14, and CO4.

- 14.14.34. Suggested conditions 18.1, 18.2, 20, 21, 22, 24, 25 and 26 in Section G reflect identical conditions in Section G relating to Application A. The need for the restrictions that would be imposed by the conditions is not disputed, but LAA does not consider them necessary as the Section 106 Agreement precludes the terminal building being commenced until the runway extension has been commenced thereby engaging the restrictions. Whilst this might be true, terms of Agreements can be varied and it would avoid any doubt, and preclude the need for a paper chase, if the conditions were also attached to any permission for the terminal building. The same would apply to a condition requiring records of movements that could be audited to be kept. In addition, suggested condition 19 would restrict the passenger throughput following occupation of the terminal building to 500,000ppa in a calendar year which would reflect the maximum that has been assessed in the ES. Suggested condition 23 would require a lighting scheme for the terminal building, car park areas and associated roads and is necessary to protect the ecological potential of the site in accordance with saved LP Policies SD1 and U15.
- 14.14.35. The suggested conditions meet the tests in *Circular 11/95* and should be attached should the SoS be minded to grant planning permission for the two proposals.

## **15.0 Overall Conclusions and Recommendations**

### **15.1. Overall Conclusions**

- 15.1.1. The ES has been prepared on an appropriate and lawful basis and any AA should be made on the basis of 500,000ppa.<sup>[14.2.12]</sup>
- 15.1.2. In terms of Airport operations, if the flight paths of concern to LAAG weren't practical the CAA would not licence them, the airport would not be able to operate, and no harm would arise. The parties disagree on the relevance and scale of operations in a fallback situation should planning permission be refused. However, the conclusions in this report have not relied on any fallback situation.<sup>[14.3.15, 14.3.25]</sup>
- 15.1.3. No airline has shown an interest in LAA since 2006, but it has not been marketed by consultants with knowledge and experience of the market. Ferries and Eurotunnel provide some competition but flying would be more attractive in terms of journey time for more distant destinations. LAA has a better catchment than Manston, although Manston has better access, but Policy does not promote one at the expense of the other. Even if Manston were a better alternative that would only be relevant if LAA affected the integrity of the designated sites. Claims that the proposal would not be viable at 500,000ppa are also irrelevant if the proposals are acceptable in all other respects.<sup>[14.3.26, 14.3.27, 14.3.28, 14.3.29, 14.3.30, 14.3.31, 14.3.32]</sup>

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- 15.1.4. In relation to ecological matters the pSPA and pRamsar have been treated as if already designated. With the exception of birds, it is common ground that, subject to conditions and a Section 106 Agreement, all species of concern would be fully protected and there would be no significant effects or impacts on the SAC and other designations. There is little evidence that would lead to an alternative conclusion. Indeed, there would be some ecological benefits, including the ABAP and a net addition of 500m of ditch habitat. [14.4.3, 14.4.9, 14.4.10]
- 15.1.5. Measures contained in SCGs, which could be ensured by conditions and a Section 106 Agreement, would mean that nitrogen deposition would be within acceptable levels and would not affect the integrity of the SAC or substantially damage the interest features of the SSSI. This is accepted by NE and KWT and there is little evidence to the contrary. Concerns about human health are not supported by any technical evidence and there has been no objection on that basis from any statutory consultee. Concentrations of pollutants, including at roadsides, would remain well within the standards in the UK's *Air Quality Strategy* and there would be no material impact on the health of local residents. [14.5.3, 14.5.4]
- 15.1.6. In terms of ornithology, proposals should be considered in the light of the best scientific knowledge but the tests in the *Regulations* do not require absolute certainty about effects. In this case RSPB do not say that there would be likely significant effects or that there would be harm to the integrity of the SPA, only that all the ingredients are present to varying degrees and that there is no evidence to demonstrate that there would not be any effects. That is 'mere bare possibility'. [14.6.8, 14.6.9]
- 15.1.7. There have been periods of much greater aviation activity at LAA, peaking in 1979, and sensitive terns established a colony at Dungeness whilst there was a similar number of movements to that now proposed. There is, therefore, no reason why the proposals should prevent re-establishment. Planning permission was granted in 1992 for a scheme that did not include a terminal building but had a similar baseline in terms of movements and passenger numbers. The SSSI had been designated, the Reserve and pRamsar existed, and the area that is now an SPA was a pSPA. The current exclusion zones did not exist and a significant number of large aircraft could fly over the Reserve, which could be precluded in this case. The SoS concluded that variations in breeding success did not correspond to variations in aircraft movements based on scientific evidence that was much the same as now. Moreover, there was no evidence of problems elsewhere with two NE offices and the Irish Wildbird Conservancy reporting the co-existence of birds at airports with no apparent harm. The proposal was not allowed on the basis of protecting growth, which the *Circular* at that time allowed. In addition, NE did not object in 1997 to an application to renew the 1992 permission as it was not aware of any further evidence on impact or material change in circumstances. [14.6.10, 14.6.11, 14.6.12, 14.6.13, 14.6.14, 14.6.15, 14.6.16]
- 15.1.8. Notwithstanding NE's formal advice, RSPB's concerns, and the fact that the presence of birds does not necessarily equate to a lack of disturbance impacts, there is little new evidence since 1992 to suggest an alternative view should now be adopted. Indeed, case studies indicate that there

would not be any likely significant effect. Although the pSPA would be slightly closer to the Airport than the SPA, there would be less movements, by quieter aircraft, than were proposed in 1992. If birds are more likely to habituate given more exposure then the proposals should decrease rather than increase disturbance. If they don't habituate to infrequent or irregular flights then the current operations should be causing disturbance now and there is no evidence that they do. If there were any evidence that there would be likely significant effects it seems highly unlikely that the parties would not have presented it to the Inquiry.<sup>[14.6.18, 14.6.33]</sup>

- 15.1.9. In terms of bird control, although the ornithological data underpinning the BCMP was criticised, the judgements reached by NE, RSPB and LAA from their various sources came to the same conclusions. RSPB's Area Manager accepted that the number of birds fluctuated significantly year on year for reasons other than the Airport, which indicates that further survey work would be of limited value. Indeed, NE and RSPB do not contend that the environmental information is so deficient as to prevent an assessment of the environmental effects, or that a request should have been made for additional information under ES Regulation 19.<sup>[14.6.39, 14.6.40, 14.6.41]</sup>
- 15.1.10. Nothing more would need to be done, if planning permission were granted, than it is recommended should happen now. More on-site habitat management is desirable but would have little effect on the designated sites and their populations. The BCMP indicates that no disturbance measures would be carried out beyond the airport boundary. Indeed, it would be inappropriate to rely on measures that would require the consent of a landowner when there is no evidence that such an agreement could be secured. If such a situation arose in the future, off-site measures could not be carried out without assessment and approval and NE and RSPB would be able to make their views known to SDC. The Airport does not rely on IROPI now, and the existence of Manston would make it difficult to do so in the future. Moreover, the Agreement would introduce a procedure for review of any emergency measures taken, including an assessment of any pre-emptive measures to reduce the likelihood of the need arising again.<sup>[14.6.44, 14.6.45, 14.6.46, 14.6.47, 14.6.48]</sup>
- 15.1.11. The test under the *Regulations* relates to the integrity of the SPA as it currently exists and safeguarding comments on future development would not have any effect on the integrity of the site as it exists today, and so could not conflict with the *Regulations*.<sup>[14.6.49]</sup>
- 15.1.12. In terms of bird scaring, this takes place now when necessary using techniques listed in the BCMP although the frequency would increase with the development and could be continuous. Trials indicate scaring might have some effects up to 0.6-1km away depending on conditions but there is no indication that there would be any significant adverse impacts. Indeed, game shooting already takes place close to the Airport. No habitat would be lost on the SPA/pSPA and although the use of some functionally linked land might change, there is nothing to suggest that it would be sterilized. Even if birds were scared off a feeding area during the day they would be able to exploit it at night due to the restriction on night time flying.<sup>[14.6.52, 14.6.54, 14.6.55]</sup>

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- 15.1.13. Considering the combined effects of bird control and aviation activity, measures aimed at one species could affect others using the same habitat. However, there is little evidence from other locations of any reinforcement of effects. There is little evidence that there would be any, never mind a significant, decline in the size, distribution, structure or function of the population such as to require an AA. Even if an AA were required, the area of the SPA that would be affected would be small and there is no evidence that there would be an adverse effect on the integrity of the designated sites as a whole.<sup>[14.6.56]</sup>
- 15.1.14. The SoS considered, and rejected, arguments about the impact of the expansion of the Airport on nuclear safety in 1992. The Government's recent review of the options for nuclear power stations did not rule out Dungeness C on the grounds of safety associated with the Airport. LAAG challenges the Regulator's decision not to oppose the applications, and the methodology used to assess risk. ONR has not altered its position despite the events at Fukushima and repeated attempts by LAAG to persuade it otherwise. British Energy has objected, as it is duty bound to resist any increase in risk however small, but it acknowledges that the increase in risk would be extremely small and would not compromise current or future activities at the site. LAAG's own calculation of risk for a throughput of 500,000ppa, including site specific assumptions, is still within the tolerability criteria. Crash scenarios suggested by LAAG are based on situations where the sequence of events becomes increasingly improbable. In any event, large aircraft would not be allowed to turn towards the power station, as up to 6,000 could have done in the 1992 decision, and there would be a lower cap on aircraft movements.<sup>[14.7.2-22, 14.12.25]</sup>
- 15.1.15. In terms of terrorist threat, shooting down an aircraft would leave far too much to chance. The proposals would have no effect on the ability of terrorists to carry out an attack and the prevention of hijacking is the subject of national and international safety systems. In relation to demographic assessment, LAAG's calculations for 500,000ppa show that the population would be no more than 27% of the remote site classification and whilst this would affect potential growth in other areas that would be the same for any development. The railhead is not a licensed nuclear site and so not subject to demographic assessment. ONR has stated that there has been no assessment of an aircraft crashing onto a train or the railhead as the probability is so low. The proposals would not have any significant effect on nuclear safety.<sup>[14.7.23, 14.7.24, 14.7.25, 14.7.26, 14.7.27]</sup>
- 15.1.16. The proposals would have no significant impact on the ability of the area to produce food or provide land for leisure. Shepway is a deprived area compared to Kent and the South East, and the power stations are a major employer but Dungeness C was not excluded from the NPS due to the Airport and it is not an either/or situation. Despite differences about the employment density to be assumed, the proposals would provide a modest number of jobs over a period of years, if successful, and would have a positive effect on GVA. International and in-bound passengers would make a significant contribution to expenditure in the local economy and create jobs in tourism. There would be journey time savings and wider benefits that are difficult to quantify, but in an area where the prospects of

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significant regeneration remain precarious, the proposals would have a positive impact.<sup>[14.8.1-8]</sup>

- 15.1.17. In terms of carbon emissions, there are two elements. The *Government's Response to the Committee on Climate Change*, and a decision by the SoS relating to Farnborough Airport, indicate that emissions from aircraft in the air are best dealt with by the EU Emissions Trading Scheme. Even if all the movements at LAA were considered new growth rather than displaced flights, they would only represent 0.25% of the 60% demand growth consistent with meeting the UK's 2050 target of capping emissions to 2005 levels. In relation to ground operations, the terminal building would meet a 10% renewable energy target and be constructed to BREEAM 'Very Good' level. A carbon management report has been submitted and the carbon footprint assessed using the *Guidance Manual: Airport Greenhouse Gas Emissions Management* indicates a potential reduction of 6,000 tonnes CO<sub>2</sub> pa. This does not include savings from the take off/landing cycle, where there would be shorter holding times in the air and on the ground, and shorter taxiing distances, compared to congested airports, although this might initially be offset by partially filled aircraft as passenger numbers grow.<sup>[14.9.1-5]</sup>
- 15.1.18. PPS25 was published after the applications were made but it is now accepted that the updated FRA complies with it. Notwithstanding that the Airport would be safe from flooding to 2115, the FRA includes a Flood Warning and Evacuation Plan. The terminal building would provide a safe refuge and there are blue light services and communications equipment on site. A Drainage Strategy has been approved by the RMAIDB, which has no record of flooding at the Airport. RMAIDB would manage ground water levels through the ditch system as it does now. CPRE's view on sea level rise is inconsistent with national policy but the modelling carried out has been precautionary. A breach in coastal defences today would not cause flooding at the Airport and a contribution towards coastal defences would not, therefore, meet the tests in *CIL Regulation 122*.<sup>[14.9.6-13]</sup>
- 15.1.19. Quality of life is affected by a number of factors that should be considered holistically. Landscape character areas have been assessed in accordance with the Landscape Institute's *Guidelines for Landscape and Visual Impact* and there would be no material harm. The landscape contains the power stations and the existing Airport and there is no evidence that past activity has caused harm. Even with the proposals, the level of aviation activity would be below historic levels and would be by quieter aircraft. Indeed, activity would be at a lower level than allowed in 1992 and no material adverse change in circumstances has been identified since then. Lighting would be minimised and hooded to prevent light spillage affecting the night time character. There would be no material impact on the cultural landscape or visual perception of the Romney Marsh area.<sup>[14.10.1-6]</sup>
- 15.1.20. Tranquillity mapping, as promoted by CPRE, is not required by any relevant planning policy. It does not take account of less frequent forms of development, such as the Airport and the power stations, and is also blind to gravel extraction and security fencing. Earlier Intrusion Maps show the area to have significant intrusion and it is difficult to reconcile this with the current claim that it is one of the most tranquil areas in the country. The

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mapping may be consistent across the country, but its granularity makes it unsuitable for development control. Indeed, NE indicates that the mapping does not go into local detail and the use of more detailed sources of information, such as local character assessments, should be used at Public Inquiries. In any event, on CPRE's own evidence the proposals would only lead to a reduction of 3 tranquillity points on a scale of -140 to +148 indicating a minimal impact.<sup>[14.10.7-16]</sup>

- 15.1.21. The Airport is in a rural area with a low background noise level, but no significant concerns have been raised about ground noise, road traffic noise, or construction noise and vibration. The *Aircraft Noise Index Study* suggests that the onset of significant community annoyance occurs at 57dB, and moderate community annoyance at 63dB. Relatively few properties around the Airport would lie within the 57-60dB contours, and none above 60dB. The effect of the proposals would be relatively small. Indeed, many of the properties that would be affected existed in 1992 when the SoS concluded that the effect on residential amenity did not warrant refusing planning permission. In addition, the current proposal would have a lower cap on movements and engine technology in terms of noise has improved in the intervening years.<sup>[14.10.17-20]</sup>
- 15.1.22. Greatstone School would be close to the end of the runway. No noise measurements were taken at the school but it is standard practice to calculate noise levels. In the case of the school they would be well within the WHO Guideline figure for outdoor play areas, and internally would not exceed the WHO level of 35dB. Notwithstanding that there would be no significant impact on the school, a contribution would be made to improving noise insulation. This would not meet the tests in *CIL Regulation 122* and so can be given no weight. Both the AONB Executive and RSPB have confused noise units and the former have made incorrect assumptions about heights. The only expert noise assessment indicates that there would be no material change to the noise climate in the AONB where existing flightpaths would be used. Noise levels from a trial flight were around 83dB LA<sub>max</sub>, 7dB less than the measured SEL level, from a noisier aircraft than is likely to be flown from LAA. There is little evidence that there would be any significant effect on the visitor experience along the western boundary of the RSPB Reserve.<sup>[14.10.21-29]</sup>
- 15.1.23. In terms of transportation, based on CAA data LAA would reduce car mileage by passengers by an average of 40% saving 800 tonnes of CO<sub>2</sub> pa. Most passengers and staff would use cars but measures to improve accessibility by walking and cycling, and a shuttle bus from Ashford and the railway, would be secured by a Section 106 Agreement. Modelling has been based on traffic generation coinciding with peak traffic times and includes service vehicles to give a robust assessment. The coastal route through Camber would be the subject of a signage strategy, and monitoring, with traffic calming to be introduced if found necessary. The Hammonds Corner junction on the A257 would be improved, and the junction of the access road with the B2075 would be monitored and improved if necessary.<sup>[14.11.1-3]</sup>
- 15.1.24. A Travel Plan was submitted in line with policy. Although concerns have been raised that it might be altered without public scrutiny, it is not

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unusual for Travel Plans to be monitored and amended where found necessary. Both SDC and KCC would be involved in this process. The methodology for car parking provision has been agreed by KCC and the Highways Agency and there is no reason to believe that provision would be inadequate. The applications were accompanied by a TA and concerns raised by the highway authorities have been addressed such that, subject to conditions and a S106 Agreement, there is no objection from any statutory body on highways grounds. The proposals would not have any significant effect on highway safety.<sup>[14.11.4-6]</sup>

- 15.1.25. Turning to Planning Policy, although some parts of the ATWP are out of date, particularly in respect of climate change and support for additional runways at London's major airports, the weight to be given to other sections is undiminished. Some development at smaller airfields is specifically noted. The starting point is making best use of existing airport capacity. This does not preclude runway extensions or new terminals. Indeed, permission was given in March 2010 for a runway extension at Southend. Expansion at LAA would accord with national policy. Notwithstanding that it should attract limited weight at this stage, the draft NPPF supports sustainable growth but notes that development likely to have a significant effect on sites protected by the *Habitats Directive* would not be sustainable.<sup>[14.12.1-9]</sup>
- 15.1.26. Development plan support for LAA has been consistent for many years. The RSS broadly reflects the ATWP. RSS Policy T9 does not mention LAA but the explanatory text indicates that smaller airports, including LAA, could play a valuable role in contributing to regional economic development reflecting RSS Policy NRM5. Recent documents identify the role of HS rail but do not undermine support for aviation. LAA and Manston serve different catchments and KCC continues to support the expansion of both airports.<sup>[14.12.10-13]</sup>
- 15.1.27. The LP predates the ATWP and RSS but LP Policy TR15 supports development at the Airport, provided there would be no significant impact on internationally important wildlife communities. Paragraph 11.40 of the supporting text recognises the Airport as a source of employment and paragraph 11.41 gives an indication of the scale of development envisaged. Both saved LP Policies SD1 and CO1 set out a number of criteria but there would be no material conflict with them. SDC's CSPSD attracts very little weight at this stage. Although LP Policy TR15 has not been rolled forward into the *Core Strategy*, SDC's appearance at the Inquiry indicates it has not 'gone wobbly' on the Airport as has been suggested. There is clear policy support at all levels for the principle of expansion at the Airport.<sup>[14.12.14-20]</sup>
- 15.1.28. The materiality of the topics in the 1992 decision by the SoS are dependent on the amount of change that has occurred. Operational changes have increased the safety situation and many constraints would be tighter than in 1992 with less flights over the Reserve. The 1992 decision is still relevant.<sup>[14.12.27]</sup>
- 15.1.29. The *Localism Act 2011* received Royal Assent after the close of the Inquiry. The proposals have divided local opinion but although most representations at application and Inquiry stage have objected to the proposals, the local

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MP and Councillors, who have a clear view of local opinion, and where the public interest lies, have supported the applications.<sup>[14.13.1, 14.13.2, 14.13.3]</sup>

- 15.1.30. The Section 106 Agreement would meet the tests in *CIL Regulation 122*, with the exception of the contribution to Greatstone School and the Jobs and Business Strategy. Similarly, the suggested conditions for each application meet the tests in *Circular 11/95*. Many of the measures led to the withdrawal of a number of objections and are necessary to make the proposals acceptable in planning terms.
- 15.1.31. There would be no likely significant effects on the designated sites, and even if there were there is little evidence that there would be any adverse impact on their integrity as a whole. The proposals would have no significant effect on nuclear safety, landscape or tranquillity and the Airport would be safe from flooding. Any transportation effects would be mitigated. Although some properties would be affected by noise, they would be relatively few and this would not outweigh the creation of jobs, albeit relatively modest in number, and the benefits to the local economy and regeneration.
- 15.1.32. Even if the proposals were considered to interfere with the human rights of some local residents this must be considered against the rights and freedoms of others and, in the light of the conclusions reached, if the proposals were implemented the effect on those local residents would not be disproportionate.
- 15.2. **Recommendations**
- 15.2.1. In the light of the conclusions, I recommend that planning permission be granted for Application A, "the construction of a runway extension and a 'starter extension' to the north/south runway", subject to the conditions set out in Appendix 4 and the Section 106 Agreement dated 26 September 2011 (CD17.28).
- 15.2.2. I also recommend that planning permission be granted for Application B, "the erection of a passenger terminal together with a car park on the existing Bravo apron comprising a car park", subject to the conditions set out in Appendix 5 and the Section 106 Agreement dated 26 September 2011 (CD17.28).

*K D Barton*

Inspector



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## APPENDIX 1 - APPEARANCES

### FOR LONDON ASHFORD AIRPORT LIMITED:

Peter Village QC

Instructed by Pinsent Masons LLP

Assisted by James Strachan of  
Counsel

They called

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Jo Dear BSc DipHort(Kew)                      Lead Coastal Conservation Adviser, Natural  
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**FOR LYDD AIRPORT ACTION GROUP:**

Trudy Auty, Louise Barton, and  
Mark Watts

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**FOR PROTECT KENT (CPRE):**

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Graeme Willis  
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Rural Policy Officer CPRE

Nick Levinson (Landscape  
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Brian Lloyd (Planning)

Senior Planner, Protect Kent

Cllr Valerie Loseby  
(Quality of Life)

Cllr Roger Joynes (Quality  
of Life)

Paul Black (Noise and  
Quality of Life)

Chairman of the Board of Governors, Greatstone  
Primary School

**FOR KENT WILDLIFE TRUST:**

Richard Moyse BSc(Hons) (Ecology)

Head of Conservation and Policy, Kent Wildlife  
Trust

**INTERESTED PERSONS:**

Damian Collins MP

Brian Oxley

Mrs Molloy

Rodney Watts

David Plumstead

Shepway Environment and Community Network

Maureen Tomison

Kent County Labour Party and Shepway Labour  
Party

Mr Godfrey

Friends of Lydd Airport Group (FLAG)

Peter Ford

David Wimble

Lynne Beaumont

Cllr Alex Phillips on behalf of  
Keith Taylor MEP

John Hinchcliffe

Tony Bingham

Claire Williams

Colin Brown

Ted Last

David Watts

Robin Gordon

Valerie Jarvis

Cllr Carole Waters

Pat Davis

John Harrison

Ken Dixon

Tim Crompton

John Atkins

Robert Ball

Mr Boulden

Kate Chesterman

William Meade

Mal Gray

Wendy Nevard

Julia Raguin

Mark Skillbeck

Chris Lepine

Rosemary Boucherat

Mr Aviss

Mrs Aviss

Mark Duberry

Mrs Castle

Pauline Pogson

Rob Ryan

Mr Pearce (?)

Dave Schmitt (?)

Gill Moore

Towards the end of the evening session contributions were made by some members

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of the public who had not previously indicated that they wished to speak. Whilst their names were taken, it has not been possible to confirm the spellings by reference to the attendance sheet, or to letters submitted. The Inspector apologises if any names are spelled incorrectly.

## **APPENDIX 2 - DOCUMENTS**

### **Core Document**

#### **Application Documents**

CD1.1	Cover letter and application form for proposed runway extension
CD1.2	Cover letter and application form for proposed terminal building
CD1.3	Cover letter dated 2 April 2007 and Ownership letter dated 3 April for both applications
CD1.4 a-e	Planning Application Drawings - Runway Extension
CD1.5 a-q	Planning Application Drawings – Terminal Building
CD1.6	Transport Assessment – Terminal Building
CD1.7	Transport Assessment – Runway Extension
CD1.8	Planning Statement – Terminal Building
CD1.9	Planning Statement – Runway Extension
CD1.10	Stakeholder Consultation Strategy
CD1.11	Architectural Design and Access Statement
CD1.12	Flood Risk Assessment Report – Terminal Building
CD1.13	Airport Safety Management Document relating to planning applications for a Runway Extension and New Terminal Building
CD1.14	Environmental Statement – Terminal Building
CD1.15	Environmental Statement Non Technical Summary – Terminal Building
CD1.16	Environmental Statement Figures – Terminal Building
CD1.17	Environmental Statement - Runway Extension
CD1.18	Environmental Statement Non Technical Summary – Runway Extension
CD1.19	Environmental Statement Figures and Plates – Runway Extension
CD1.20	Cover Letter detailing 2007 submission
CD1.21	Response to Consultation Volume 1 of 4
CD1.22	Non Technical Summary Volume 2 of 4
CD1.23 a-q	Technical Appendices Volume 3A of 4
CD1.24 a-c	Technical Appendices Volume 3B of 4
CD1.25 a-d	Statements to Inform on the Predicted Impacts from the proposed Runway Extension and New Terminal Building on the Dungeness to Pett Level SPA and the Dungeness SAC Volume 4 of 4
CD1.26	Cover letter detailing purpose and content of 2008 submission package
CD1.27 a-u	Application drawings
CD1.28	Supplementary Environmental Information, Volume 1 of 8 Overview and Planning Policy Update
CD1.29	Supplementary Environmental Information, Volume 2 of 8 Non Technical Summary and revised Schedule of Mitigation Measures
CD1.30	Supplementary Environmental Information, Volume 3 of 8 Revised Design and Access Statement (Terminal Building)
CD1.31	Supplementary Environmental Information, Volume 4 of 8 Landscape Strategy

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CD1.32	Supplementary Environmental Information, Volume 5 of 8 Lighting Impact Assessment
CD1.33 a-g	Supplementary Environmental Information, Volume 6 of 8 Invertebrates Study, Extended Phase 1 Habitat Survey and Assessment of Hammonds Corner, Impact on Designated Sites, Drainage Ditches and Great Crested Newts, Ornithology Study, Biodiversity Action Plan, Construction Environmental Management Plan (Runway) and Sewerage Report
CD1.34 a-d	Supplementary Environmental Information, Volume 7 of 8 Noise Study, Air Quality and Human Health, Nitrogen Deposition, Carbon Management Report
CD1.35 a-b	Supplementary Environmental Information, Volume 8 of 8 Transport Assessment Additional Analysis and Revised Outline Travel Plan
CD1.36	Geomorphological Assessment for the Proposed Runway Extension September 2008
CD1.37	Cover letter detailing the purpose and content of 2009 submission package dated 11 March 2009
CD1.38	Overview of Applications and Supporting Material Volume 1 of 5
CD1.39	Non Technical Summary Volume 2 of 5
CD1.40 a-b	Supplementary Information Volumes 3 of 5 Socio Economic Update 2009 and Aircraft Crash Risk to Dungeness Nuclear Power Stations (Runway and Terminal)
CD1.41 a-b	Supplementary Information Volumes 4 of 5 Community Noise Assessment (Runway and Terminal)
CD1.42 a-b	Supplementary Information Volumes 5 of 5 Surface Water Drainage Supply (Runway) and Proposed Foul Water Solutions (Terminal)
CD1.43	Cover letter detailing the purpose and content of 2009 submission dated 11 December 2009
CD1.44	London Ashford Airport's Response to SDC's letter dated 15 October 2009
CD1.45	London Ashford Airport's Response to SDC's letter dated 15 October 2009 – Technical Appendices December 2009
CD1.46	Secretary of State Decision 1992
CD1.47	Call-In Letter dated 22 June 2010
CD1.48	Officer's Report to Committee dated 24 September 2009
CD1.49	LAA's response to the Officer's Report August 2009
CD1.50	Council's Response to LAA's Response to the Officer's Report dated 15 October 2009
CD1.51	Supplementary Report to the Officer's Report to Committee 3 March 2010
CD1.52	Minutes of Committee Meeting 3 March 2010 including the reasons for approval
CD1.53	Consolidated Appropriate Assessment dated June 2010
CD1.54	Letter from SDC dated 5 March 2008
CD1.55	See LAA/1

### **Application Related Documents**

CD2.1	Bureau Veritas Appropriate Assessment June 2009
CD2.2	Bureau Veritas, Initial Response to Applicants Rebuttal for Shepway District Council October 2009
CD2.3	Bureau Veritas Revised Appropriate Assessment
CD2.4	Not Used

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CD2.5	Unofficial transcript from SDC determination meeting 3 March 2010 transcribed by uktranscription.com
CD2.6	Not Used
CD2.7	Planning Application Documents – Scoping Opinion
CD2.8	Planning Application Documents – BV Technical Reports and Advice
CD2.9	Planning Application Documents – Key Correspondence
CD2.10	Planning Application Documents – Council Reports, minutes/resolution and late representations
CD2.11	Surface Water Drainage Strategy by WSP
CD2.12	Revised FRA by WSP
CD2.13	Lydd Airport Bird Control Manual 2010

### **Responses and Correspondence Relating to the Applications**

CD3.1	RSPB correspondence with SDC relating to the planning applications 2005-2007
CD3.2	LAAG response to the planning applications December 2006
CD3.3	LAAG response to the first set of Supplementary Environmental Information October 2007
CD3.4	LAAG response to the second set of Supplementary Environmental Information August 2008
CD3.5	LAAG response to the third set of Supplementary Environmental Information March 2009
CD3.6	LAAG response to the fourth set of Supplementary Environmental Information December 2009
CD3.7	NE responses to SDC consultation on LAA's Environmental Impact Assessment including responses to Supplementary Information Consultations
CD3.8	Natural England formal correspondence with SDC related to the planning applications 2006-2010
CD3.9 a-e	Letters from CPRE to SDC 2007-2010

### **Statements of Common Ground**

CD4.1	Statement of Common Ground between LAA and SDC on General Matters
CD4.2	Statement of Common Ground between LAA and NE on Air Quality
CD4.3	Statement of Common Ground between LAA and KWT on General Matters
CD4.4	Statement of Common Ground between LAA and LAAG on General Matters
CD4.5	Statement of Common Ground between LAA and NE on Birdstrike Risk Assessment and Mitigation Matters
CD4.6	Statement of Common Ground between LAA, NE and RSPB on General Matters
CD4.7	Supplementary Statement of Common Ground between LAA and SDC on Planning Policy, Local Socio-Economic Context and Noise Assessments
CD4.8	Statement of Common Ground between LAA and CPRE on Flood Risk and Sea Level Rise including the Predicted Impacts of Climate Change
CD4.9	Supplementary Statement of Common Ground between LAA and NE on Air Quality
CD4.10	Statement of Common Ground between LAA and KWT on Air Quality
CD4.11	Supplementary Statement of Common Ground between LAA and NE on Great Crested Newts



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CD4.12	Supplementary Statement of Common Ground between LAA and NE on Ditch Mitigation Strategy
CD4.13	Supplementary Statement of Common Ground between LAA and KWT on Airfield Biodiversity Action Plan
CD4.14	Supplementary Statement of Common Ground between LAA and KWT on Lighting Impacts on Moths
CD4.15	Statement of Common Ground between SDC, LAA and RSPB on the Planning History for Lydd Airport
CD4.16	Supplementary Statement of Common Ground between LAA and NE on Protected Species
CD4.17	Statement of Common Ground between LAA, NE and RSPB on Habitats and Species

### **European and National Legislation and Guidance**

CD5.1	Directive 79/409/EEC
CD5.2	Directive 92/43/EEC
CD5.3	Directive 2009/147/EC
CD5.4	Directive 85/337/EEC (as amended by Council Directive 97/11/EC)
CD5.5	Not Used
CD5.6	Not Used
CD5.7	Not Used
CD5.8	Not Used
CD5.9	European Commission's 2001 "Assessment of plans and projects significantly affecting Natura 2000 sites"
CD5.10	European Commission, April 2000 Managing Natura 2000 sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC
CD5.11	European Commission, January 2007, Guidance Document on Article 6(4) of the Habitats Directive 92/43/EEC (clarification of the concepts of alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence and opinion of the Commission)
CD5.12	Wildlife and Countryside Act 1981
CD5.13	The Natural Environment and Rural Communities Act 2006
CD5.14	Climate Change Act 2008
CD5.15	Conservation (Natural Habitats) Regulations 2010
CD5.16	Conservation (Natural Habitats & c) Regulations 1994 superseded by CD15.15
CD5.17	Air Quality Standards Regulations
CD5.18	Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as amended
CD5.19	Circular 05/2005 Planning Obligations
CD5.20	Circular 11/95 The Use of Conditions in Planning Permissions
CD5.21	Circular 2/99 Environmental Impact Assessment
CD5.22	Circular 1/03 The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosive Storage Areas) Direction 2002
CD5.23	ODPM Circular 6/2005 biodiversity and geological conservation – statutory obligations and their impact within the planning system
CD5.24	The Future of Aviation White Paper 2003

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CD5.25	The Future of Air Transport Progress Report December 2006
CD5.26	The Localism Bill
CD5.27	Adding Capacity at Heathrow, DfT
CD5.28	Air Passenger Demand and CO <sub>2</sub> Forecasts, DfT
CD5.29	Air Quality (England) Regulations 2000
CD5.30	Air Quality (England)(Amendment) Regulations 2002
CD5.31	Air Quality Strategy
CD5.32	CROW Act
CD5.33	Directive 2009/71/EURATOM
CD5.34	Guidance on Preparation of Airport Master Plans
CD5.35	Reform of Air Passenger Duty: a consultation
CD5.36	Developing a Sustainable Framework for UK Aviation: Scoping Document
CD5.37	Planning for Growth, DCLG
CD5.38	Government Response to the Committee on Climate Change Report on Reducing CO <sub>2</sub> Emissions from UK Aviation to 2050
CD5.39	UK Aviation Forecasts

### **National Policy Guidance**

CD6.1	PPS1 Delivering Sustainable Development
CD6.2	Supplement to PPS1: Planning and Climate Change Dec 2007
CD6.3	PPS4 Planning for Sustainable Economic Growth
CD6.4 a-b	PPS7 Sustainable Development in Rural Areas and Annex E
CD6.5	PPS9 Biodiversity and Geological Conservation
CD6.6	PPG13 Transport
CD6.7	PPG15 Planning and the Historic Environment
CD6.8	PPG16 Archaeology and Planning
CD6.9	PPG21 Tourism
CD6.10	PPG17 Planning for Open Space, Sport and Recreation
CD6.11	PPS22 Renewable Energy
CD6.12	PPS23 Planning and Pollution Control
CD6.13	PPS24 Planning and Noise
CD6.14 a-b	PPS25 Development and Flood Risk and Practice Guide
CD6.15	The Government Response to the Consultation on the Draft National Policy Statements for Energy Infrastructure
CD6.16	The Planning System: General Principles

### **Regional and Local Policy and Strategy**

CD7.1	Regional Spatial Strategy for the South East
CD7.2	Regional Economic Strategy 2006-2016 (SEEDA)
CD7.3	Not Used
CD7.4	Kent Prospects – An Economic Development and Regeneration Framework for Kent
CD7.5	Shepway District Local Plan
CD7.6	Shepway Local Development Framework Core Strategy Preferred Options

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CD7.7	Draft Shepway Employment Land Review
CD7.8	Shepway Economic Regeneration Strategy 2007-2017
CD7.9	Shepway Strategic Flood Risk Assessment
CD7.10	Shepway District Council, Local Air Quality Management Updating and Screening Report
CD7.11	Report to SDC Cabinet 13 April 2011 Shepway LDF Core Strategy – Key Decision and relevant appendices
CD7.12	Extract from Shepway LDF Core Strategy

### **Reports, Notes and Guides**

CD8.1	Planning for Biodiversity and Geological Conservation: a guide to good practice
CD8.2	Ramsar Sites in England – A Policy Statement, DETR, 2000
CD8.3	Environmental Impact Assessment: A guide to good practice and procedures DCLG, June 2006
CD8.4	Not Used
CD8.5	Interim Advice Note 61/05 Guidance for Undertaking Environmental Assessment of Air Quality for sensitive ecosystems in Internationally Designated Nature Conservation Sites and SSSIs (Supplement to DMBR 11.3.1) Highways Agency, March 2005
CD8.6	Section 52 Agreement (Secretary of State Decision 1992)
CD8.7	Conservative Liberal Democrat Coalition Negotiations: Agreements reached
CD8.8	The Future Development of Air Transport in the UK: South East, Second Edition, February 2003
CD8.9	Breaking the Holding Pattern – A New Approach to aviation policy making in the UK (Sustainable Development Commission)
CD8.10	BS5228-1 Code of practice for noise and vibration control on construction and open sites – Part 1 Noise
CD8.11	Public Experience of and Attitudes Towards Air Travel, DfT Report
CD8.12	DfT Business Plan 2011-2015
CD8.13	Secretary of State for Transport, Speech to the Airport Operators Association Conference
CD8.14	“Aircraft on the Ground CO <sub>2</sub> Reduction Programme”, Sustainable Aviation
CD8.15	“Guidance Manual: Airport Greenhouse Gas Emissions Management”, Airports Council International
CD8.16	Regional Transport Strategy (Chapter 9 of Regional Planning Guidance for the South East)
CD8.17	Towards a Sustainable Transport System
CD8.18	National Infrastructure Plan
CD8.19	Specialised Instrument Approach Plates for Helicopters and Cat A Aeroplanes, gCAP Limited
CD8.20	Guidelines for Narrow Runway Operations, Boeing
CD8.21	Location of Shoots around the Airport
CD8.22	Air Traffic Review and Airport Capacity Assessment associated with the London 2012 Olympics and Paralympics, DfT
CD8.23	Business Aviation in Europe 2009
CD8.24	Aircraft and Road Noise and Children’s Cognition and Health: A Cross-National Study

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CD8.25	ERCD Report 0908 Aircraft Noise and Children's Learning
CD8.26	Children and Noise
CD8.27 a-d	Inspector's report and Secretary of States decision letter in respect of first Lydd Airport Inquiry
CD8.28a-e	David Elvin QC's legal opinion and the Secretary of State's decision letter in respect of the former RAF Staff College, Bracknell Inquiry and David Elvin QC's legal opinion to NW Leicestershire D C in respect of the River Mease
CD8.29	Building Bulletin 93 – Acoustic Design for schools – A Design Guide

### **Case Law**

CD9.1	Dibden Bay Decision (2004)
CD9.2&2a	R (o.a.o. Morge) v Hampshire CC [2010] EWCA Civ 608 & Judgement [2011] UKSC 2
CD9.3	Waddenzee Case C-127/02
CD9.4	Berkeley v SSE [2001] 2 AC 603
CD9.5	R v Cornwall CC, ex p Hardy [2001] Env LR 25
CD9.6	Smith v SSETR [2003] EWCA Civ 262
CD9.7	Commission v UK ECJ Case C-6/04
CD9.8	Commission v Portugal ECJ C-293/04
CD9.9	Millgate Developments v SSCLG [2008] EWHC 1906 (Admin)
CD9.10	R (Hart DC) v SSCLG [2008] EWHC 1204 (Admin)
CD9.11	R (Woolley) v Cheshire East BC [2009] EWHC 1227 (Admin)
CD9.12	Elvington Aerodrome Decision APP/C2741/A/08/2069665 14 January 2009
CD9.13	R (Akester) v DEFRA [2010] EWHC 232 (Admin)
CD9.14	R (Hillingdon LBC) v SST [2010] EWHC 626 (Admin)
CD9.15	Commission v UK Case C-6/04
CD9.16	Commission v French Republic Case C-256/98 [2000]
CD9.17	Advocate-General Elmer in Commission v Federal Republic of Germany Case C-431/92
CD9.18	Kraaijveld – Dutch Dykes Case C-72/95
CD9.19	Case C-142/07 Ecologistas en Accion CODA v Ayuntamiento de Madrid 2009
CD9.20	Paul and Sackman, Francis Taylor Building, 2009
CD9.21	Final Judgement – The Queen, Newham BC & London Airport EWCH 53 (Admin)
CD9.22	Secretary of State Decision Farnborough Airport
CD9.23 a-b	Secretary of State Decision and Inspector's Report on Little Cheyne Windfarm

### **Airport Master Plans**

CD10.1	Cardiff International Airport's Response to the Government White Paper on the future of aviation – Master Plan 2006
CD10.2	Stansted Airport Interim Master Plan
CD10.3	Gatwick Airport Interim Master Plan
CD10.4	Southampton Airport Master Plan
CD10.5	Bristol International Airport Master Plan

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CD10.6	Humberside Airport Master Plan
CD10.7	Bournemouth Airport – The Master Plan
CD10.8	Inverness Airport Master Plan
CD10.9	The Future – Blackpool International Airport Master Plan
CD10.10	Glasgow Prestwick Airport Draft Master Plan
CD10.11	Newquay Cornwall Airport – Draft Master Plan
CD10.12	Exeter International Airport Master Plan
CD10.13	Leeds Bradford Master Plan

### **Economic Related Documents**

CD11.1	News Flash – Release of Indices of Deprivation (KCC Research and Analysis)
CD11.2	Kent Prospects – Economic Indicator Updates
CD11.3	Annual Survey of Hours and Earnings – Resident Analysis (ONS)
CD11.4	Unemployment Change in Kent
CD11.5	Letter from Dover Harbour Board dated March 2007
CD11.6	Letter from Kent Invicta Chamber of Commerce dated 23 September 2010
CD11.7	Letter from Channel Chamber of Commerce dated 15 October 2010
CD11.8	Economic Impacts of Glasgow Prestwick Airport, SQW Consulting
CD11.9	Airport Jobs, False Hopes, Cruel Hoax, Brendon Sewill, Aviation Environment Federation 2009
CD11.10	LAA Marketing Document – Closer to You, Closer to the Market
CD11.11	The Economic Contribution of the Aviation Industry in the UK (OEF)
CD11.12	The Impact of Airports on Regional Economies (Sustainable Development Commission)
CD11.13	Social and Economic Impacts of Airports in Europe (ACI)
CD11.14	European Cities Monitor (Cushman and Wakefield)
CD11.15	Perceptions of Kent as a Business Location (Locate in Kent) and associated background data
CD11.16	Coastal Southeast, A Framework for Action SEEDA
CD11.17	Vision for Kent, Kent Partnership
CD11.18	Unlocking Kent's Potential, KCC
CD11.19	Sharing in Success – A Community Plan for Shepway, Shepway Community Partnership
CD11.20	Lighting the Way to Success, East Kent Local Strategic Partnership
CD11.21	Employment Generated by Tourism in Britain, Caledonian Economics for Visit Britain
CD11.22	Not Used
CD11.23 & .1	Growth without Gridlock, An Integrated Transport Strategy for Kent plus Summary
CD11.24	Not Used
CD11.25	Not Used
CD11.26	Unlocking the Potential (KCC/ECC) A proposal for a Kent & Greater Essex Local Enterprise Partnership
CD11.27	21 <sup>st</sup> Century – A blueprint for the County's Future

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CD11.28 Local Transport Plan for Kent 2011-2016, KCC

## **Environmental Related Documents**

- CD12.1 Interim Advice Note 61/05 Guidance for Undertaking Environmental Assessment of Air Quality for Sensitive Ecosystems in Internationally Designated Nature Conservation Sites and SSSIs (Supplement to DMRB 11.3.1 (See CD 8.5)
- CD12.2 Not Used
- CD12.3 CERC,ADMS-Airport user guide Version 2.3
- CD12.4 Department for Environment, Food and Rural Affairs (DEFRA) Local Air Quality Management Technical Guidance (2009)
- CD12.5 Department for Transport, Project for Sustainable Development of Heathrow, Report of the Airport Air Quality Technical Panels
- CD12.6 Ferry et al. Dungeness: a vegetation survey of a shingle beach. Reasearch and survey in nature conservation No 26 NCC Peterbrough
- CD12.7 International Civil Aviation Organisation Convention on International Civil Aviation 9<sup>th</sup> Edition Doc 8 7300/9 Annexe 14 Aerodrome Design and Operations
- CD12.8 Remke, E. Impact of nitrogen deposition on lichen-rich, costal dune grasslands PhD thesis, Radboud University, Nijmegen 2009
- CD12.9 UNECE, Empirical Critical Loads for Nitrogen – Expert Workshop, Berne 2002 Eds. Acherman and Bobbink. Environmental Documentation No 164, SAEFL Van den Berg, L., Bobbink, R. and Roelofs, J. G. M. (2005) Effects of nitrogen enrichment in coastal dune grassland: a mesocosm study. Environmental Pollution 138, 77-85
- CD12.10 Folkestone to Cliff End Flood and Erosion Strategy
- CD12.11 Rother and Romney Marsh Catchment Flood Management Plan
- CD12.12 South Foreland to Beachy Head SMP
- CD12.13 Investing for the Future: Flood and Coastal Risk Management in England
- CD12.14 Adapting to Climate Change: helping key sectors to adapt to climate change
- CD12.15 Committee on Climate Change: Building a Low Carbon Economy
- CD12.16 Committee on Climate Change: Meeting the UK Aviation Target
- CD12.17 Committee on Climate Change: Meeting Carbon Budgets
- CD12.18 Committee on Climate Change: Reducing Emissions Through the 2020s
- CD12.19 Airports Council International, "Guidance Manual: Airport Greenhouse Gas Emissions Management" (See CD8.15)
- CD12.20 Sustainable Aviation, "Aircraft on the Ground CO<sub>2</sub> Reduction Programme (See 8.14)
- CD12.21 Great Crested Newt Monitoring, London Ashford Airport, 2009 by Swift Ecology for Natural England
- CD12.22 Water Voles – The Law in Practice. Guidance for Planners and Developers Natural England
- CD12.23 Reptiles – Guidance for Developers Natural England
- CD12.24 Empirical N critical loads for natural and semi-natural ecosystems: 2010 update and review background document R. Bobbink et al.
- CD12.25 United Nations Economic and Social Council, ECE/EB.AIR/WG. 1/2010/14, Empirical critical loads and dose-response relationships, prepared by the Coordination Centre for Effects of the International Cooperation Programme on Modelling and Mapping Critical Levels and Loads and Air Pollution Effects, Risks and Trends

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CD12.26	Not Used
CD12.27	LAA's List of Ornithology References
CD12.28	Response to "Assessment of the Air Pollution Impacts from an Expanded Lydd Airport" Cresswell Associates, October 2008
CD12.29	Federal Aviation Administration, U.S. Department of Transportation, Advisory Circular
CD12.30	Daily Bird Control Data
CD12.31	Daily Bird Control Data
CD12.32	Extracts from A Climate Atlas of European Breeding Birds
CD12.33	International Birdstrike Committee – Recommended Practices No 1 – Standards for Aerodrome Bird/Wildlife Control
CD12.34	Birds Likely to Colonise due to Climate Change (The Climate Change Atlas Huntley et al 2007
CD12.35 a-b	Daily Bird Control Data
CD12.36	Articles on Marsh Harriers and Terns
CD12.37	UK Birdstrike Committee Meeting (UKBSC) Notes of Meeting 23 April 2009
CD12.38	Birds likely to extend their range from the south (RSPB list) and shift their range north (LAA list)
CD12.39	Correspondence from NE dated 4 August 1997 and RSPB dated 13 December 2000
CD12.40	Table of principal sites taken from Waterbirds in the UK 2009 The Wetland Bird Survey
CD12.41	A Review of Disturbance Distances in Selected Bird Species, M. Ruddock & D. P. Whitfield 2007
CD12.42	Rare Breeding Birds in the United Kingdom in 2007, Mark Holling and the Rare Breeding Birds Panel
CD12.43	Commissioned Report 369, Whooper Swan (Cygnus Cygnus) Distribution and Habitat use in the Black Cart Flood Plain During Winter 2008/9, Scottish Natural Heritage
CD12.44	Extract from Natural England's Protected Species Standing Advice
CD12.45	Bat Conservation Trust (2007) Bat Surveys Good Practice Guidelines
CD12.46	Extract from Water Vole Conservation Handbook, 2 <sup>nd</sup> Edition Wild CRU, University of Oxford, Strachan, R. and Moorhouse, T. (2006)

### **Nuclear Safety Related Documents**

CD13.1	The Calculation of Aircraft Crash Risk, J P Byrne 1997 HSE Contract Research Note 150/1997
CD13.2	Letter dated 18 December 2007 from British Energy to SDC outlining British Energy's opposition to the Planning Applications
CD13.3	Letter dated 17 December 2007 from Nuclear Installations Inspectorate to SDC outlining development implications for Dungeness C
CD13.4	Letter dated 28 November 2007 from Nuclear Installations Inspectorate to SDC outlining NII's reasons for not opposing the planning applications
CD13.5	Statement of Representations by the Health and Safety Executive
CD13.6	Revised Draft National Policy Statement for Nuclear Power Generation (EN6) Vol 1 of 2
CD13.7	ESR Technology, Lydd Airport Planning Application: Review of Dungeness B Aircraft Impact Hazard Analysis

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- CD13.8 ESR Technology, Lydd Airport Planning Application: Review of Dungeness B Aircraft Impact Hazard Analysis (5<sup>th</sup> redacted version)
- CD13.9 See CD13.8 (Duplicate submitted)
- CD13.10 ESR Technology, Dungeness Aircraft Crash Risk: Updated Review of Assessment February 2009

### **Designations and Proposed Designations**

- CD14.1 Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (Citation)
- CD14.2 Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest Boundary Map
- CD14.3 Dungeness to Pett Level Special Protection Area qualifying interest features (Citation)
- CD14.4 Dungeness to Pett Level Special Protection Area Boundary Map
- CD14.5 Dungeness Special Area of Conservation Reasons for Recommendation (Citation)
- CD14.6 Dungeness Special Area of Conservation Proposed Boundary Map
- CD14.7 Dungeness, Romney Marsh and Rye Bay potential Special Protection Area, Proposed Qualifying Interest Features (Citation)
- CD14.8 Dungeness, Romney Marsh and Rye Bay potential Special Protection Area, Proposed Boundary Map
- CD14.9 Dungeness, Romney Marsh and Rye Bay proposed Ramsar Site, Proposed Qualifying Interest Features (Citation)
- CD14.10 Dungeness, Romney Marsh and Rye Bay proposed Ramsar Site, Proposed Boundary Map

### **Current National Consultations**

- CD15.1 The Government response to the Consultation on the draft NPSs for Energy Infrastructure
- CD15.2 Not Used
- CD15.3 Not Used
- CD15.4 SDC Cabinet Report in response to proposed amendments to the existing Dungeness to Pett Level SPA and the designation of a new Ramsar site (to be finalised)

### **CAA Documents**

- CD16.1 CAP 168 Licensing of Aerodromes (Chapters 3 & 5)
- CD16.2 CAP 772 Birdstrike Risk Management for Aerodromes
- CD16.3 CAP 775 Air Services at UK Regional Airports
- CD16.4 CAP 738 Safeguarding of Aerodromes (No appendices)
- CD16.5 UK Aeronautical Information Publication, AD 2-EGMD-8-3: Instrument Approach Chart for RNAV (GNSS) approach procedure for Runway 21 for Category A and B aircraft
- CD16.6 UK Aeronautical Information Publication, AD 2-EGMD-8-4: Instrument Approach Chart for RNAV (GNSS) approach procedure for Runway 21 for Category C aircraft
- CD16.7 UK Aeronautical Information Publication, AD 2-EGMD-8-5: Instrument Approach Chart for NDB approach procedure for Runway 21
- CD16.8 Memorandum of Understanding between LAA and Headquarters Defence Training Estate South East (HQ DTE-SE) regarding Danger Areas EG D044 (4,000ft) Lydd Range & EG D141 (3,200ft) Hythe Range, Issue 1



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CD16.9	"FAXED MANDATE" To Confirm Non-Firing or Range Closure to Lydd Range Complex Danger Area (EG D040)
CD16.10	UK Aeronautical Information Publication, AD 2-EGMD: Lydd
CD16.11	UK Aeronautical Information Publication, AD 2-EGMD-2-1: Lydd Aerodrome Chart
CD16.12	UK Aeronautical Information Publication, AD 2-EGMD-8-1: Instrument Approach Chart for RNAV (GNSS) approach procedure for Runway 03
CD16.13	UK Aeronautical Information Publication, AD 2-EGMD-8-2: Instrument Approach Chart for ILS approach procedure for Runway 21
CD16.14	Extract from CAP 746 Meteorological Observations at Aerodromes
CD16.15	Aircraft Movements 2010, CAA
CD16.16	Air Passengers by Type and Nationality of Operator 2010 CAA
CD16.17	Extract from Aircraft Performance Summary Tables for the Base of Aircraft Data (BADA) Revision 3.6 European Organisation for the safety of Air Navigation
CD16.18	CAP 680 Aerodrome Bird Control

### **Section 106 Obligation and Conditions**

CD17.1	Draft Section 106 Obligation
CD17.2	Draft Conditions 14/2/11
CD17.3	Draft S106 Obligation 21/7/11
CD17.4	Draft S106 Obligation 21/7/11 track changes
CD17.5	Draft Conditions 21/7/11
CD17.6	Draft Conditions 21/7/11 track changes
CD17.7	Guide to how comments incorporated or otherwise into CD17.3 and CD17.5
CD17.8	Supplemental Deed - Schedule 3 to S106 Obligation 22/8/11
CD17.9	Appendices to CD17.3
CD17.10	Appendices to CD17.5
CD17.11	Appendix 8 to CD17.3
CD17.12	Draft S106 Obligation 6/9/11
CD17.13	Draft S106 Obligation 6/9/11 track changes
CD17.14	Draft Conditions Runway Extension 6/9/2011
CD17.15	Draft Conditions Runway Extension 6/9/2011 track changes
CD17.16	Draft Conditions Terminal Building 6/9/2011
CD17.17	Draft Conditions Terminal Building 6/9/2011 track changes
CD17.18	Guide to how comments on CD17.3 and CD17.5 have been incorporated or otherwise into CD17.12, CD17.14 and CD17.16
CD17.19	S106 Obligation Proposed Final Form track changes
CD17.20	Suggested Conditions Runway Extension track changes
CD17.21	Suggested Conditions Terminal Building track changes
CD17.22	Guide to how comments on CD17.12, CD17.14 and CD17.16 have been incorporated or otherwise into CD17.23, 24 and 25
CD17.23	S106 Obligation Proposed Final Form
CD17.24	Suggested Conditions Runway Extension
CD17.25	Suggested Conditions Terminal Building

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CD17.26	Summary Note on S106 and Conditions
CD17.27	Schedule of Mitigation Measures
CD17.28	Signed Section 106 Agreement

### **Inquiry Documents**

ID/1	Pre-Inquiry Meeting Agenda 28 October 2010
ID/2	Guidance for Document Preparation and Numbering
ID/3	Notes of Pre-Inquiry Meeting 28 October 2010
ID/4	Inspector's comments on draft Section 106 Obligation and Conditions
ID/5	Note in relation to Evidence on the Council's handling of the applications
ID/6	Ruling on Evidence relating to the Council's handling of the applications
ID/7	Bundle of 902 representations received at Inquiry Stage (5 volumes)
ID/8	Written copies of statements made by interested persons and organisations on 5 July 2011
ID/9	Copies of representations at Application stage provided by the Council

### **London Ashford Airport's Documents**

LAA/1	London Ashford Airport's Statement of Case
LAA/2	London Ashford Airport's Opening Statement
LAA/3A	Proof of Evidence of Tim Maskens on Airport Operations
LAA/3B	Summary Proof of Evidence of Tim Maskens on Airport Operations
LAA/3C	Appendices to Proof of Evidence of Tim Maskens on Airport Operations
LAA/3D	Rebuttal Proof of Evidence of Tim Maskens on Airport Operations
LAA/3E	Appendices to Rebuttal Proof of Evidence of Tim Maskens on Airport Operations
LAA/3F	Note on Evidence given on 9, 10 & 11 March on Aviation and 25 March on noise
LAA/4A	Proof of Evidence of Louise Congdon on Socio-Economic Case
LAA/4B	Summary Proof of Evidence of Louise Congdon on Socio-Economic Case
LAA/4C	Appendices to Proof of Evidence of Louise Congdon on Socio-Economic Case
LAA/4D	Rebuttal Proof of Evidence of Louise Congdon on Socio-Economic Case
LAA/4E	Appendices to Rebuttal Proof of Evidence of Louise Congdon on Socio-Economic Case
LAA/4F	Summary Rebuttal Proof of Evidence of Louise Congdon on Socio-Economic Case
LAA/4G	Supplementary Proof of Evidence of Louise Congdon on Socio-Economic Case
LAA/4H	Note re Runways of similar length to that proposed by LAA
LAA/4I	Note on matters raised during evidence from Louise Congdon
LAA/4K	Note in Response to LAAG/11D
LAA/4L	Note on the Implications of the latest Government Air Traffic Forecasts and the Response to the Committee on Climate Change
LAA/5A	Proof of Evidence of Richard Perkins on Noise
LAA/5B	Summary Proof of Evidence of Richard Perkins on Noise
LAA/5C	Appendices to Proof of Evidence of Richard Perkins on Noise

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LAA/5D	Rebuttal Proof of Evidence of Richard Perkins on Noise
LAA/5E	Note on Noise in response to comments at the Inquiry
LAA/5F	Note in Response to points raised in cross examination of Mr Perkins on 25 March
LAA/5G	Note in relation to Noise from Historic Aircraft Operating from LAA
LAA/6A	Proof of Evidence of Nigel Deacon on Ornithology and Bird Control
LAA/6B	Summary Proof of Evidence of Nigel Deacon on Ornithology and Bird Control
LAA/6C	Appendices Proof of Evidence of Nigel Deacon on Ornithology and Bird Control
LAA/6D	Rebuttal Proof of Evidence of Nigel Deacon on Ornithology and Bird Control
LAA/6E	Appendices to Rebuttal Proof of Evidence of Nigel Deacon on Ornithology and Bird Control
LAA/7A	Proof of Evidence of Dr Roy Armstrong on Ornithology
LAA/7B	Summary Proof of Evidence of Dr Roy Armstrong on Ornithology
LAA/7C	Note to Inquiry
LAA/7D	Rebuttal Proof of Evidence of Dr Roy Armstrong on Ornithology
LAA/7E	Supplementary Information to Proof of Evidence of Dr Roy Armstrong on The Predicted Impacts of Aircraft Noise and Visual Disturbance on Bird Species of Conservation Importance Near to LAA
LAA/7F	Appendices to Supplementary Information to Proof of Evidence of Dr Roy Armstrong on The Predicted Impacts of Aircraft Noise and Visual Disturbance on Bird Species of Conservation Importance Near to LAA
LAA/7G	Dr Armstrong's Response to Dr Underhill-Day's 2 <sup>nd</sup> Rebuttal Proof of Evidence
LAA/7H	Appendices 1-4 to Dr Armstrong's Response to Dr Underhill-Day's 2 <sup>nd</sup> Rebuttal Proof of Evidence
LAA/7I	References Cited in Dr Armstrong's Response to Dr Underhill-Day's 2 <sup>nd</sup> Rebuttal Proof of Evidence
LAA/7J	Additional documents submitted by Dr Armstrong
LAA/8A	Proof of Evidence of Dr Bethan Tuckett-Jones on Air Quality (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/8B	Summary Proof of Evidence of Dr Bethan Tuckett-Jones on Air Quality
LAA/8C	Appendices to Proof of Evidence of Dr Bethan Tuckett-Jones on Air Quality (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/8D	Rebuttal Proof of Evidence of Dr Bethan Tuckett-Jones on Air Quality (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/9A	Proof of Evidence of Dr Mark McLellan on Ecology (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/9B	Summary Proof of Evidence of Dr Mark McLellan on Ecology (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/9C	Appendices to Proof of Evidence of Dr Mark McLellan on Ecology (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/9D	Rebuttal Proof of Evidence of Dr Mark McLellan on Ecology (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/9E	Appendices to Rebuttal Proof of Evidence of Dr Mark McLellan on Ecology (Not presented in evidence following Agreement in Statement of Common Ground)

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	Ground)
LAA/9E.1	Annex Referred to in Appendix 3 to Rebuttal Proof of Evidence of Dr Mark McLellan on Ecology (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/10A	Proof of Evidence of Clive Self on Landscape and Visual
LAA/10B	Summary Proof of Evidence of Clive Self on Landscape and Visual
LAA/10C	Appendices to Proof of Evidence of Clive Self on Landscape and Visual
LAA/10D	Rebuttal Proof of Evidence of Clive Self on Landscape and Visual
LAA/10E	Appendices to Rebuttal Proof of Evidence of Clive Self on Landscape and Visual
LAA/10/E.1	Landscape Assessment of Kent October 2004
LAA/11A	Proof of Evidence of Stuart Coventry on Climate Change (Written Submission)
LAA/11B	Summary Proof of Evidence of Stuart Coventry on Climate Change
LAA/11C	Not Used
LAA/11D	Rebuttal Proof of Evidence of Stuart Coventry on Climate Change (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/11E	Climate Change clarification note from Stuart Coventry
LAA/12A	Proof of Evidence of Keith Sowerby on Transportation
LAA/12B	Summary Proof of Evidence of Keith Sowerby on Transportation
LAA/12C	Appendices to Proof of Evidence of Keith Sowerby on Transportation
LAA/12D	Rebuttal Proof of Evidence of Keith Sowerby on Transportation
LAA/12E	Supplementary Note on Traffic Assessments
LAA/12F	Supplementary Note on Kent Rail Services
LAA/13A	Proof of Evidence of Christopher Mead on Flood Risk (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/13B	Summary Proof of Evidence of Christopher Mead on Flood Risk
LAA/13C	Appendices to Proof of Evidence of Christopher Mead on Flood Risk (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/13D	Rebuttal Proof of Evidence of Christopher Mead on Flood Risk (Not presented in evidence following Agreement in Statement of Common Ground)
LAA/13E	Further Note on Flood Risk and EDA Guidance
LAA/14A	Proof of Evidence of Sean McGrath on Planning Policy
LAA/14B	Summary Proof of Evidence of Sean McGrath on Planning Policy
LAA/14C	Appendices to Proof of Evidence of Sean McGrath on Planning Policy
LAA/14D	Rebuttal Proof of Evidence of Sean McGrath on Planning Policy
LAA/14E	Appendices to Rebuttal Proof of Evidence of Sean McGrath on Planning Policy
LAA/14F	Supplementary Note on Planning Issues
LAA/14G	Response to Submission from Mr Bingham
LAA/15A	Not Used
LAA/15B	Not Used
LAA/15C	Not Used
LAA/15D	Rebuttal Proof of Evidence of David Nicholls on Nuclear Safety

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LAA/15E	Appendices Rebuttal Proof of Evidence of David Nicholls on Nuclear Safety
LAA/15F	References in Rebuttal Proof of Evidence of David Nicholls on Nuclear Safety
LAA/15F.1	References 5 and 6 in Rebuttal Proof of Evidence of David Nicholls on Nuclear Safety
LAA/16A	Not Used
LAA/16B	Not Used
LAA/16C	Not Used
LAA/16D	Rebuttal Proof of Evidence of Chris Roberts on Nuclear Safety with regard to Flight Operations
LAA/17A	Written submission relating to LAAG/11A
LAA/17B	Joint opinion on planning applications for proposed new terminal building and extension to runway
LAA/18A	Response to written submission from Kent Downs AONB Executive
LAA/100	List of Appearances for LAA
LAA/101	Newspaper advertisements regarding Boeing 737-300 flight trial
LAA/102	Airport Movement Statistics
LAA/103	Not Used
LAA/104	Aircraft Movements 2005
LAA/105	Details of Airline Fleets
LAA/106	Not Used
LAA/107	Not Used
LAA/108	Information from Lydd Airport Action Group Website
LAA/109	Letter to Inspector in respect of evidence relating to SDC's Handling of the Planning Applications
LAA/110	Letter to Inspector regarding LAAG and the Nuclear Session
LAA/111	Appeal by Taylor Wimpey Ltd and Beazer Homes (Reigate) Ltd App Ref CR/98/0039/OUT
LAA/112	Letter dated 19 August 2011 regarding costs
LAA/113	RSPB Old Marshes Update
LAA/114	Predation by a March Harrier on Yellow-legged Gull Nests, Albert Bertolero
LAA/115	Lucky Sparrow Update
LAA/116	Note on Compliance with EIA Regulations
LAA/116a	Legal Opinions relating to Bracknell Staff College by Timothy Straker QC
LAA/117	Response to LAAG/124 re security fencing
LAA/118	Legal Submissions on behalf of LAA
LAA/119	Closing Submissions on behalf of LAA
LAA/120	Great Trippetts Estate Limited High Court Decision
LAA/120.1	Great Trippetts Estate Limited Court of Appeal Decision

### **Shepway District Council's Documents**

SDC/1	Shepway District Council's Statement of Case
SDC/2	Shepway District Council's Opening Statement
SDC/3A	Proof of Evidence of Jeremy Whittaker on Socio-economic Matters
SDC/3B	Appendices to Proof of Evidence of Jeremy Whittaker on Socio-economic

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	Matters
SDC/3C	Summary Proof of Evidence of Jeremy Whittaker on Socio-economic Matters
SDC/4A	Proof of Evidence of Terry Ellames on Planning Policy
SDC/4B	Appendices to Proof of Evidence of Terry Ellames on Planning Policy
SDC/4C	Summary Proof of Evidence of Terry Ellames on Planning Policy
SDC/100	Extract from Shepway Worklessness Assessment February 2010
SDC/101	Extract from Dungeness A Site Summary 2006/7 Lifetime Plan
SDC/102A	Comments on Conditions and Section 106 Obligation
SDC/102B	Appendices to Comments on Conditions and Section 106 Obligation
SDC/103	Update on Conditions and Section 106 Obligation including Bureau Veritas Briefing Note
SDC/104	Note to Inspector in respect of evidence on SDC's handling of the planning applications
SDC/105	Notes on S106 and Conditions
SDC/106	Further Notes on CD17.14 and 17.16 (S106 and Conditions)
SDC/107	Legal Submissions on Behalf of SDC
SDC/108	Closing Submissions on Behalf of SDC

### **Natural England's Documents**

NE/01	Natural England's Statement of Case
NE/02	Natural England's Opening Statement
NE/03	Addendum to Natural England's Statement of Case
NE/04	Closing Submissions on behalf of NE
NE/1A	Proof of Evidence of Dr John Allan on Birdstrike Risk
NE/1B	Appendices to Proof of Evidence of Dr John Allan on Birdstrike Risk (within NE/1A)
NE/1C	Summary Proof of Evidence of Dr John Allan on Birdstrike Risk
NE/1D	Rebuttal Proof of Evidence of Dr John Allan on Birdstrike Risk
NE/1E	Appendices (1-6) to Rebuttal Proof of Evidence of Dr John Allan on Birdstrike Risk
NE/1E.1	Additional Appendix (vantage point survey maps) to Rebuttal Proof of Evidence of Dr John Allan on Birdstrike Risk
NE/1F	Dr Allen's Proof of Evidence in the Finningley Airport Inquiry
NE/1G	Extract from the Inspector's report of the Finningley Airport Inquiry
NE/2A	Proof of Evidence of John Heaver on Invertebrates (Not presented in evidence following Statement of Common Ground)
NE/2B	Appendices to Proof of Evidence of John Heaver on Invertebrates (within NE/2A) (Not presented in evidence)
NE/2C	Summary Proof of Evidence of John Heaver on Invertebrates (Not presented in evidence)
NE/2D	Rebuttal Proof of Evidence of John Heaver on Invertebrates(Not presented in evidence)
NE/2E	Appendices to Rebuttal Proof of Evidence of John Heaver on Invertebrates (Not presented in evidence)

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NE/3A	Proof of Evidence of Jo Dear on Ecology
NE/3B	Appendices to Proof of Evidence of Jo Dear on Ecology
NE/3C	Summary Proof of Evidence of Jo Dear on Ecology
NE/3D	Rebuttal Proof of Evidence of Jo Dear on Ecology
NE/3E	Appendices to Rebuttal Proof of Evidence of Jo Dear on Ecology
NE/100	Maps showing the boundaries of all the designated and proposed areas (SPA, pSPA, SSSI, SAC etc) and names for all the water bodies mentioned in the proofs of evidence
NE/101	Natural England's comments on draft S106 Obligation and conditions
NE/102	Response to NPPF
NE/103	Letter dated 25 July from NE to Dr Armstrong
NE/104	Comments on CD17.1 and CD17.2 S106 Obligation and Conditions dated 14 February 2011
NE/105	Legal Submissions on Behalf of NE
NE/106	Note on Total Goose and Swan Overflight Figures 2007-2010
NE/107	Plan indicating overflights from Vantage Point Surveys
NE/108	Note on Evidence to be withdrawn following Statements of Common Ground

### **RSPB's Documents**

RSPB/1	RSPB's Statement of Case
RSPB/1A	Addendum to RSPB's Statement of Case
RSPB/2	RSPB's Opening Statement
RSPB/3A	Proof of Evidence of Frederick Gomes on the RSPB Reserve
RSPB/3A.1	Revised Table 2 to Proof of Evidence of Frederick Gomes on the RSPB Reserve
RSPB/3B	Summary Proof of Evidence of Frederick Gomes on the RSPB Reserve
RSPB/3C	Appendices to Proof of Evidence of Frederick Gomes on the RSPB Reserve
RSPB/3C.1	Annotated Map 7 Appendix 1 RSPB/3C
RSPB/4A	Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/4A.1	Errata to Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/4B	Summary Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/4C	Appendices Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/4D	Rebuttal Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/4E	Appendices to Rebuttal Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/4E.1	Appendix 5 to Rebuttal Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/4F	Second Rebuttal Proof of Evidence of Dr Underhill-Day on Ornithology
RSPB/5A	Written representation on Climate Change
RSPB/6	Closing Submissions on Behalf of RSPB
RSPB/100	Marsh Harrier Notes
RSPB/101	RSPB comments on draft S106 Obligation and conditions
RSPB/102	Letter to Inspector dated 25/8/2011 regarding LAA/113 & 114
RSPB/103	Comments on S106 Obligation
RSPB/104	Bewick's Swans at City of Derry Airport

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RSPB/105 E-mails between Dr Underhill-Day and Dr Armstrong

RSPB/106 Legal Submissions on Behalf of RSPB

### **Lydd Airport Action Group's Documents**

LAAG/1 Lydd Airport Action Group's Statement of Case

LAAG/2 Lydd Airport Action Group's Opening Statement

LAAG/3A Proof of Evidence of Trudy Auty on Nuclear Safety

LAAG/3B Appendices to Proof of Evidence of Trudy Auty on Nuclear Safety

LAAG/3C Summary Proof of Evidence of Trudy Auty on Nuclear Safety

LAAG/3D Rebuttal Proof of Evidence of Trudy Auty to LAA/6C on Ornithology and Bird Control

LAAG/3E Trudy Auty's Supplementary Proof of Evidence on ESR Technology Reports

LAAG/3F Appendices to Trudy Auty's Supplementary Proof of Evidence on ESR Technology Reports

LAAG/3G Background Crash Rate Definitions

LAAG/3H Nuclear Assessment Criteria

LAAG/3I Appendix to Nuclear Assessment Criteria

LAAG/3J Precaution, Consequence Decisions and Inherent Risk

LAAG/4A Proof of Evidence of John Large on Nuclear Safety

LAAG/4B Summary Proof of Evidence of John Large on Nuclear Safety

LAAG/4C Appendices to Proof of Evidence of John Large on Nuclear Safety

LAAG/4D Further Proof of Evidence of John Large on Nuclear Safety

LAAG/4E Summary to Further Proof of Evidence of John Large on Nuclear Safety

LAAG/4F Appendices to Further Proof of Evidence of John Large on Nuclear Safety

LAAG/4G Further Proof of Evidence of John Large on Section 106 Heads of Terms and Dungeness Aircraft Crash Report

LAAG/4H Appendices to Further Proof of Evidence of John Large on Section 106 Heads of Terms and Dungeness Aircraft Crash Report

LAAG/4I Statement by John Large on Dungeness Aircraft Crash Report ESRT/D0010905 18 July 2007  
Statement by John Large on Dungeness Aircraft Crash Report ESRT/D0010905 18 July 2007

LAAG/4J Appendices to Statement by John Large on Dungeness Aircraft Crash Report ESRT/D0010905 18 July 2007

LAAG/4K Further Proof of Evidence of John Large on Demographic Siting Assessments

LAAG/4L Appendices to Further Proof of Evidence of John Large on Demographic Siting Assessments

LAAG/4M Supplementary Statement on Further Examples of the application of Site Issues to Planning Controls and Restrictions Nearby Nuclear Licensed Sites

LAAG/4N Appendices to Supplementary Statement on Further Examples of the application of Site Issues to Planning Controls and Restrictions Nearby Nuclear Licensed Sites

LAAG/4O Key to Statements by John Large

LAAG/4P Rebuttal of the Rebuttal Proof of Evidence of David Nicholls

LAAG/5A Proof of Evidence of Dr David Pitfield on Nuclear Safety

LAAG/5B Summary Proof of Evidence of Dr David Pitfield on Nuclear Safety

LAAG/6A Proof of Evidence of Louise Barton on Changes since 1992



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LAAG/6B	Appendices to Proof of Evidence of Louise Barton on Changes since 1992
LAAG/6C	Summary Proof of Evidence of Louise Barton on Changes since 1992
LAAG/7A	Proof of Evidence of Louise Barton on Need for the Development
LAAG/7B	Summary Proof of Evidence of Louise Barton on Need for the Development
LAAG/8A	Proof of Evidence of Louise Barton on Economic Impact
LAAG/8B	Appendices to Proof of Evidence of Louise Barton on Economic Impact
LAAG/8C	Summary Proof of Evidence of Louise Barton on Economic Impact
LAAG/8D	Rebuttal Proof of Evidence of Louise Barton on Economic Impact to Louise Congdon
LAAG/8E	Rebuttal Proof of Evidence of Louise Barton on Economic Impact to Jeremy Whittaker
LAAG/8F	Summary Rebuttal Proof of Evidence of Louise Barton on Economic Impact to Louise Congdon
LAAG/8G	Summary Rebuttal Proof of Evidence of Louise Barton on Economic Impact to Jeremy Whittaker
LAAG/9A	Proof of Evidence of Louise Barton on Conformity with Aviation White Paper
LAAG/9B	Appendices to Proof of Evidence of Louise Barton on Conformity with Aviation White Paper
LAAG/10A	Proof of Evidence of Malcolm Spaven on Airport Operations and Nuclear Safety
LAAG/10B	Summary Proof of Evidence of Malcolm Spaven on Airport Operations
LAAG/10C	Summary Proof of Evidence of Malcolm Spaven on Nuclear Safety
LAAG/10D	Appendices to Proof of Evidence of Malcolm Spaven on Airport Operations and Nuclear Safety
LAAG/10E	Rebuttal and Supplementary Proof of Evidence of Malcolm Spaven on Airport Operations
LAAG/10F	Summary Rebuttal and Supplementary Proof of Evidence of Malcolm Spaven on Airport Operations
LAAG/10G	Erratum to Proofs of Evidence LAAG/10A & LAAG/10E
LAAG/10H	Second Supplementary Proof of Evidence of Malcolm Spaven on Airport Operations
LAAG/10I	Appendices to Second Supplementary Proof of Evidence of Malcolm Spaven on Airport Operations
LAAG/10J	Note in response to matters raised in Cross-examination 11 March 2011
LAAG/10K	E-mail from Defence Estates clarifying opening hours of the Lydd and Hythe Ranges and status of radar
LAAG/10L	Comments on information in letter of 14 January 2010 in CD3.6
LAAG/11A	Proof of Evidence of Mark Watts on 2 mppa, conformity to EIA and Habitat Regulations
LAAG/11B	Appendices to Proof of Evidence of Mark Watts on 2 mppa, conformity to EIA and Habitat Regulations
LAAG/11C	Summary Proof of Evidence of Mark Watts on 2 mppa, conformity to EIA and Habitat Regulations
LAAG/11D	Rebuttal of LAA/17A
LAAG/11E	Appendices to Rebuttal of LAA/17A
LAAG/11F	Supplementary Proof of Evidence in relation to 2mppa

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LAAG/12A	Proof of Evidence of Louise Barton on Shepway's Consideration of the Applications
LAAG/12B	Appendices to Proof of Evidence of Louise Barton on Shepway's Consideration of the Applications
LAAG/12C	Summary Proof of Evidence of Louise Barton on Shepway's Consideration of the Applications
LAAG/13A	Rebuttal Proof of Evidence of Louise Barton on Airport Operations (complement to LAAG/10E)
LAAG/100	Speech to Transport Times Aviation Conference by the Rt Hon Theresa Villiers 26 January 2011
LAAG/101	Extract from Lydd Airport's website 2 August 2005 – Launch of FAL Aviation UK
LAAG/102	FAL Aviation UK Ltd, Abbreviated accounts for year ending 31 December 2009
LAAG/103	Lydd Golf Club and Driving Range Ltd, Abbreviated accounts for year ending 31 December 2009
LAAG/104	Phoenix Aero Engineering Ltd, Abbreviated accounts for year ending 31 December 2009
LAAG/105A	Comments on Conditions and Section 106 Obligation
LAAG.105B	Appendix to Comments on Conditions and Section 106 Obligation
LAAG/106	Additional comments on Conditions and Section 106 Obligation
LAAG/107	Note on LAAG Membership
LAAG/108	E-mail from CAA to LAAG dated
LAAG/109	LAAG letters dated 31 March and 4 April re SDC's handling of the applications
LAAG/110	Note to Inspector in respect of evidence on SDC's Handling of the Planning Applications
LAAG/111	Letter to John Large dated 20 April 2011
LAAG/112	Letter to Inspector dated 26 April 2011 re New LAA Witness
LAAG/113	Letter to Inspector dated 3 May 2011 re Missing Copies of Nicholl's References
LAAG/114	Visitor Numbers on Dungeness
LAAG/115	E-mail dated 9 May 2011 re use of Dungeness National Nature Reserve by Fashion and Film Crews
LAAG/116	Applying the Fukushima prefecture atmospheric dispersion to Dungeness
LAAG/117	Review of Air Crash rates 2006
LAAG/118	Response to LAA/110
LAAG/119	Travel Trends
LAAG/120	21/7/2010 Press Release on Euro Tunnel
LAAG/121	Press Release after Fukushima EU Stress Tests start 1 June 2011
LAAG/122	Additional comments on Conditions
LAAG/123	Economic Evidence
LAAG/124	Letter regarding Security Fence
LAAG/125	Letter dated 9 August regarding "attitudes of local residents to the proposed development of Lydd Airport"
LAAG/126	Comments on S106 Obligation

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LAAG/127	Note re Demographic Siting Assessment
LAAG/128	Declaration of ENSREG
LAAG/129	Note on Legal Submissions
LAAG/130	R(Carol Candlish) v Hastings Borough Council
LAAG131	Littlewood v Bassetlaw District Council
LAAG/132	Closing Submissions on Behalf of LAAG including response to LAA/117

### **CPRE Protect Kent's Documents**

CPRE/01	Protect Kent's Statement of case
CPRE/02	Protect Kent's Opening Statement
CPRE/1A	Proof of Evidence of Brian Lloyd on Planning Policy
CPRE/1B	Summary Proof of Evidence of Brian Lloyd on Planning Policy
CPRE/1C	Supplementary Proof of Evidence of Brian Lloyd on Planning Policy
CPRE/1D	Supplementary and Rebuttal Statement of Brian Lloyd on Policy
CPRE/1E	Summary of Supplementary and Rebuttal Statement of Brian Lloyd on Policy
CPRE/1F	Appendices to Supplementary and Rebuttal Statement of Brian Lloyd on Policy
CPRE/2A	Proof of Evidence of Graeme Willis on Tranquillity
CPRE/2B	Summary Proof of Evidence of Graeme Willis on Tranquillity
CPRE/2C	Graeme Willis's Rebuttal of Clive Self's Proof
CPRE/2D	E-mails submitted by Mr Willis
CPRE/3A	Proof of Evidence of Nick Levinson on Cultural Landscape
CPRE/3B	Summary Proof of Evidence of Nick Levinson on Cultural Landscape
CPRE/3C	Nick Levinson's Rebuttal of Clive Self's Proof
CPRE/4A	Proof of Evidence of Cllr Valerie Loseby on Quality of Life
CPRE/5A	Proof of Evidence of Gareth Thomas on Transport and Access
CPRE/5B	Summary Proof of Evidence of Gareth Thomas on Transport and Access
CPRE/5C	Rebuttal Proof of Evidence of Gareth Thomas on Transport and Access
CPRE/5D	Leeds/Bradford Airport Figures
CPRE/6A	Proof of Evidence of Sean Furey on Greenhouse Gas Emissions (Written Submission)
CPRE/6B	Summary Rebuttal and Further Proof of Evidence of Sean Furey on Flood Risk and Sea Level Rise
CPRE/6C	Not Used
CPRE/6D	Written Rebuttal on Greenhouse Gas Emissions
CPRE/7A	Proof of Evidence of Sean Furey on Flood Risk and Sea Level Rise
CPRE/7B	Not Used
CPRE/7C	Summary Proof of Evidence of Sean Furey on Flood Risk and Sea Level Rise
CPRE/7D	Rebuttal and Further Proof of Evidence of Sean Furey on Flood Risk and Sea Level Rise
CPRE/7E	Appendices to Rebuttal and Further Proof of Evidence of Sean Furey on Flood Risk and Sea Level Rise
CPRE/7F	Revised Summary Proof of Evidence of Sean Furey on Flood Risk and Sea Level Rise

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CPRE/7G	Technical note on Flood Risk and Sea Level Rise
CPRE/8A	Proof of Evidence of Cllr Roger Joynes on Quality of Life
CPRE/8B	Note on Facilities that could be Affected
CPRE/9A	Proof of Evidence of Dr Geoff Meaden on Sea Level Rise and Climate Change
CPRE/9B	Summary Proof of Evidence of Dr Geoff Meaden on Sea Level Rise and Climate Change
CPRE/9C	Letter from Dr Meaden
CPRE/10A	Proof of Evidence of Paul Black on Quality of Life
CPRE/10B	Description of Construction of Greatstone Primary School
CPRE/10C	Sound Insulation Performance Review Report
CPRE/10D	Comments on S106 Obligation
CPRE/10E	Comments on SDC/105
CPRE/11A	Rebuttal Proof of Evidence of Gareth Thomas on Airport Operations
CPRE/100	Towards Recovery and Growth: First Report of the Sandwich Economic Development Task Force
CPRE/101	Protect Kent's comments on S106 Obligation and conditions
CPRE/102	Comment on draft NPPF
CPRE/103	Hand written comments on S106 Obligation and Conditions
CPRE/104	Closing Submissions on Behalf of CPRE

### **Kent Wildlife Trust's Documents**

KWT/1	Kent Wildlife Trust's Statement of Case
KWT/2	Kent Wildlife Trust's Opening Statement
KWT/3A	Summary Proof of Evidence of Richard Moyse (Not presented in evidence following Statement of Common Ground)
KWT/3B	Proof of Evidence of Richard Moyse (Not presented in evidence)
KWT/3C	Appendices to Proof of Evidence of Richard Moyse (Not presented in evidence)
KWT/3D	Rebuttal Proof of Evidence of Richard Moyse on Air Quality (Not presented in evidence)
KWT/3E1	Appendix 1 to Rebuttal Proof of Evidence of Richard Moyse on Air Quality (Not presented in evidence)
KWT/3E2	Appendix 2 to Rebuttal Proof of Evidence of Richard Moyse on Air Quality (Not presented in evidence)
KWT/3F	Rebuttal Proof of Evidence of Richard Moyse on Ecology (Not presented in evidence)
KWT/3G	Kent Wildlife Trust's comments on S106 Obligation and conditions
KWT/100	E-mail dated 19 May 2011 regarding withdrawal of evidence
KWT/101	Letter regarding S106 Obligation

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### APPENDIX 3 – SCHEDULE OF SITE VISITS

Tuesday 15 February	Littlestone Golf Club, Creedy House Residential/Nursing Home, New Romney Caravan Park	Accompanied
Wednesday 16 February	RSPB Reserve dawn flock movements, view from top of Old Lighthouse at Dungeness, Dungeness National Nature Reserve, Lade Pits, Walland Marsh, Cheyne Court Wetland, Scotney Court Pits, Belgar Farm on boundary with Airport	Accompanied
Thursday 17 February	RSPB Reserve dawn movements, Hookers Pit, RSPB Visitor Centre, Veolia water treatment site and walk along the shingle public footpath	Accompanied
Friday 18 February	Garden of house in Dunes Road, Greatstone Primary School, Dungeness Nuclear Complex, Drive through town of Lydd and around the perimeter of Lydd Ranges, Hammonds Corner, Airport Entrance SSSI, Airside tour of airport including a bird scaring demonstration, full airfield tour to see ditches, Pond A, & areas of shingle	Accompanied
Wednesday 23 March	Roads from Ashford International Station to Lydd Airport	Unaccompanied
Monday 4 July	Lydd to Rye via A259 and Rye to Lydd via Camber	Unaccompanied
Monday 12 September	Sites 1-8 and A-E identified in Statement of Common Ground CD4.17	Accompanied

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## **APPENDIX 4 – SCHEDULE OF CONDITIONS SHOULD THE SECRETARY OF STATE BE MINDED TO APPROVE APPLICATION A**

[References to Annexes and Appendices are to those in the Draft Conditions (Runway Extension) CD17.24, which also includes definitions]

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents

### **Drawings**

- a) FSB92590A/204 — Existing Runway, prepared by Parsons Brinckerhoff, December 2006;
- b) FSB92590A/205 — Site of Proposed Runway Extension, prepared by Parsons Brinckerhoff, December 2006;
- c) FSB92590A/206 — Existing Runway with Proposed Extension, prepared by Parsons Brinckerhoff, December 2006;
- d) FSB92590A/207 — Proposed Runway Extension General Arrangement, prepared by Parsons Brinckerhoff, December 2006; and
- e) FSB92590A/PL0018 Rev B — Site Plan, prepared by Parsons Brinckerhoff, December 2006.

### **Documents**

- a) Revised Outline Travel Plan, prepared by Steer Davies Gleave, August 2008;
- b) Schedule of Mitigation Measures prepared by Indigo Planning, March 2010;
- c) Planning Control Measures, prepared by Indigo Planning, February 2010;
- d) Draft Construction Environmental Management Plan;
- e) Draft Airfield Biodiversity Action Plan;
- f) Landscape Strategy;
- g) Lighting Impact Assessment;
- h) Surface Water Drainage Strategy; and
- i) Bird Control Management Plan

together with the description of development contained in the application and any other plans, drawings, documents, details, schemes or strategies when approved by the Local Planning Authority pursuant to the conditions to this permission.

- 3) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority after consultation with Natural England. The CEMP shall include the measures set out in the Draft Construction Environmental Management Plan submitted in support of the application, the measures set out in the construction management strategy contained in Annex 1 to CD17.24 and shall also include the following details:

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- a) Monitoring of, and measures to control, the environmental impact of the development during the construction phase including control of contamination, water-resource protection and control of noise, vibration and dust emissions from plant and machinery and construction traffic, including wheel washing;
  - b) A dust-ecology inspection strategy for specific areas of ecological sensitivity, such areas to be agreed as part of the submission process for the CEMP, covering:
    - i) Construction programme optimisation with regard to reducing seasonal impact on specific areas of ecological sensitivity;
    - ii) Ambient weather conditions under which visual inspection frequency is increased;
    - iii) Dust particle monitoring;
    - iv) The implementation of an active alarm threshold for the dust particle monitoring; and
    - v) Remedial mitigation measures.
  - c) A habitat management plan to protect important flora and fauna habitats during the construction phase;
  - d) A Solid Waste Management Plan; and
  - e) Construction method statements including details of how any soil and ground arising will be managed and re-distributed.

The development shall be carried out in accordance with the approved CEMP.

- 4) No development shall be commenced until a scheme of geological monitoring and recording, and a programme of archaeological work, has been submitted to, and approved in writing by, the Local Planning Authority after consultation with Kent County Council and Natural England. Such scheme and programme shall include the identity of the appointed contractor, the methodology for the geological monitoring and archaeological work, a timetable and reporting requirements for such monitoring and work, including the completion of a geomorphological survey below the proposed runway extension footprint plus a 10m offset surrounding it, and a watching brief where any additional groundworks or permanent hardstands are required. The scheme and programme shall also include:
  - a) A methodology setting out details of the survey to be completed in order to document the topography and sedimentology of the buried gravel and the overlying marsh sediments;
  - b) A methodology for dating and for laboratory analyses which are to be undertaken as part of documenting the nature of the overlying marsh sediments should Holocene marsh sediments of significance to the SSSI designation be found (such as dateable peat beds and/or bracketing sands above and below the gravel);
  - c) Details of how a site archive is to be delivered that will include all records, reports and photographs produced from the scheme of geological monitoring and recording and a programme of archaeological work; and
  - d) The format of the monitoring and recording.

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The scheme of geological monitoring and recording and programme of archaeological work shall be carried out in accordance with the approved details.

- 5) The hours of construction at the Airport site shall be 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays and there shall be no work outside these hours.
- 6) The runway extension shall not come into operation until an Environmental Management System (EMS) has been submitted to, and approved in writing by, the Local Planning Authority. This system shall include details of solid waste management and details of procedures to prevent spill and risk control measures to avoid any potential contaminants entering watercourses. The development shall be carried out and operated in accordance with the approved EMS and an Environmental Management System Manager shall be assigned prior to the runway extension coming into operation and shall manage, monitor and review the EMS and its operation in cooperation with the Local Planning Authority and relevant stakeholders.
- 7) No development shall be commenced until written details of the surface water drainage system, including means of pollution control for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to, and approved in writing by, the Local Planning Authority after consultation with the Environment Agency, the Internal Drainage Board and Natural England. The system shall include details of how the scheme shall be maintained and managed after completion and how site drainage is operated during emergencies. The system shall subsequently be implemented in accordance with the approved details before the development hereby permitted is brought into use.
- 8) No development shall be commenced until:
  - a) A ground water quality monitoring programme to be undertaken within the footprint of the runway extension has been submitted to, and approved in writing by, the Local Planning Authority after consultation with the Environment Agency;
  - b) The programme approved under a) has been undertaken and all of the protective measures identified at any stage of that programme have been submitted to, and approved in writing by, the Local Planning Authority after consultation with the Environment Agency; and
  - c) The protective measures approved under b) have been carried out, and approved in writing by, the Local Planning Authority.
- 9) No development shall be commenced until details of the facilities required for any storage of oils, fuels, or chemicals, including means of spillage control and a spillage response plan, in connection with the development have been submitted to, and approved in writing by, the Local Planning Authority after consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.
- 10) No works related to the infill of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of water vole has been undertaken of all the water bodies within the Airport site, including of the full ditch length within the



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Airport site and not just the parts directly proposed to be under the runway extension footprint, such survey to be undertaken during the month of May. The survey shall be in accordance with the methodology used in the environmental statement surveys submitted in support of the application with the methods recommended in *The Water Vole Conservation Handbook 2<sup>nd</sup> Edition* (Strachan and Moorhouse) adopted as the minimum standards of survey.

- 11) No works related to the infill of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of grass snake has been undertaken of all the water bodies within the Airport site, including of the full ditch length within the Airport site and not just the parts directly proposed to be under the runway extension footprint, such survey to be undertaken during the month of May. The survey shall be in accordance with the methodology used in the environmental statement surveys submitted in support of the application and undertaken at the appropriate time of year following the most recent up to date good practice guidelines published by Natural England at the time of the survey and shall include:
- a) Identification and mapping of potential refugia;
  - b) Identification of basking sites; and
  - c) Placement of reptile refugia to attract basking and sheltering grass snake. Refugia will be corrugated metal sheets with dimensions of 0.5 by 0.5 metre. In addition, roofing felt refugia with dimensions of 1 metre by 0.5 or 1 metre will be placed. The refugia will be held down by small stones.
- 12) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of common lizard has been undertaken within the Airport site, such survey to include:
- a) Placing squares of roofing felt 0.5 by 0.5 metres in favourable basking areas with southern or predominantly south-facing aspects on sloping ground and on terraced areas, the squares of roofing felt to be folded over from one corner with the fold being held down with a small stone; and,
  - b) Binocular viewing from a distance beyond that likely to cause disturbance followed by a final survey approach without binoculars.

The survey shall be in accordance with the methodology used in the environmental statement surveys submitted in support of the application with the methods recommended in the Herpetofauna Groups of Britain and Ireland advisory note (1998) – Evaluation local mitigation/translocation programmes: maintaining best practice and lawful standards adopted as the minimum standards of survey and the survey shall be undertaken at the appropriate time of year following the most recent up to date good practice guidelines for reptiles published by Natural England at the time of the survey.

- 13) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of medicinal leech and a survey for the presence of nesting birds has been undertaken of all the water bodies within the Airport site, including of the full ditch length within the Airport site and not just the parts directly proposed to be under the runway extension footprint,

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such surveys to be undertaken in accordance with the methodology used in the environmental statement surveys submitted in support of the application and include survey maps and a minimum of two surveys to be conducted between June and July using standard splash sampling technique, using pond netting to aid capture, and searching for water bird nests during daylight hours.

- 14) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until:
- a) An updated survey of the aquatic emergent and bank vegetation of the ditches within the Airport site has been conducted with identification of higher plants, macrophytes and including the duckweed *Wolffia arrhiza*. The amounts and distribution of each plant species shall be assessed using the DAFOR system and % cover, estimate of constancy of occurrence, and density including height of plant growth. The methodology for the survey required under this condition shall follow the NVC survey requirements. No such survey shall be carried out until the methodology has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Natural England.
  - b) An aquatic habitat chemical analyses of the ditches and water bodies within the Airport site has been conducted to determine water pH, BOD (Biological Oxygen Demand), turbidity, and chemical analysis to determine nitrogen, potassium, phosphate, calcium, and other soluble element contents such as magnesium and sodium as part of a wide chemical spectrum analysis including particulate and dissolved organic matter. No such survey shall be carried out until the methodology for the analyses required under this condition, together with a plan identifying all the water bodies to be analysed, has been agreed, and approved in writing by, the Local Planning Authority in consultation with Natural England.
- 15) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until surveys of aquatic and amphibious invertebrates to species level have been conducted at water bodies and along ditch lengths divided into sections of 100 metres within the Airport site to enable comparisons to be made with the invertebrate survey results submitted in support of the application and subsequent monitoring results. No such surveys shall be carried out until the number of replicated sections for each ditch and the methodology for such surveys has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Natural England.
- 16) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until a construction species protection plan for each of water vole, grass snake, common lizard, medicinal leech, and duckweed *Wolffia arrhiza* has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England, such construction species protection plans to be informed by the results of the surveys carried out pursuant to Conditions 10 to 15 inclusive the results of which shall be submitted to the Local Planning Authority with the construction species protection plans. The construction species protection plans shall include the provision to control ditch water levels, modify habitats and/or design translocation as appropriate depending on the species and the results of the surveys carried out pursuant to Conditions 10 to 13 inclusive and in respect of:

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- a) The construction species protection plan for water vole, the plan shall include the details set out in Annex 4 to CD17.24;
  - b) The construction species protection plan for grass snake, the plan shall include the details set out in Annex 5 to CD17.24; and
  - c) The construction species protection plan for common lizard, the plan shall include the details set out in Annex 6 CD17.24.

The ditch construction works shall be carried out in accordance with the approved details.

- 17) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until a ditch construction method statement has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England, such ditch construction method statement to be informed by and reference the construction species protection plans required pursuant to Condition 16. The ditch construction method statement shall specify that the ditch construction works shall only be carried out during the autumn and winter and shall include the details set out in Annex 7 to CD17.24. The ditch construction works shall be carried out in accordance with the approved details.
- 18) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until full design details of the 1300m replacement ditch length required as a result of the development hereby approved have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. Such details are to incorporate the design presented in the Surface Water Drainage Strategy as refined by Appendix 5 of LAA/9/E and the details set out in Annex 8 to CD17.24. The 1300m replacement ditch length shall be carried out in accordance with the approved details.
- 19) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until the following details, which may be submitted as part of the wider ABAP, have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England:
  - a) Full details of the proposed mitigation (as proposed in Annex 4 to CD17.24) for water vole;
  - b) Full details of the proposed mitigation (as proposed in Annex 5 to CD17.24) for grass snake;
  - c) Full details of the proposed mitigation (as proposed in Annex 6 to CD17.24) for common lizard;
  - d) Full details of the proposed mitigation (as proposed CD4.12) for medicinal leech;

Such mitigation to include the methodology of any proposed translocation, capacity of the receptor site, any exclusion measures for the development site and a plan for the ongoing positive management for the 1300m replacement ditch length, receptor sites and water bodies both new and proposed pursuant to this condition. The mitigation shall be carried out in accordance with the details approved pursuant to this condition.

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- 20) During the month of May immediately following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, water vole relative population estimate monitoring of the 1300m replacement ditch length and any receptor site for water vole shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 10. The population estimate monitoring shall be carried out annually during the month of May for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and during the month of May every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 10 and submitted to the Local Planning Authority.
- 21) In the event that the results of any of the monitoring carried out pursuant to Condition 20 show that the population of water vole is not at least to the level of the results of the survey carried out pursuant to Condition 10, an assessment for habitat suitability for water vole within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.
- 22) Following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, grass snake relative population estimate monitoring of the 1300m replacement ditch length and any receptor site for grass snake shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 11 and undertaken at the appropriate time of year following the most recent up to date good practice guidelines published by Natural England at the time of the survey. The population estimate monitoring shall be carried out annually for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 11 and submitted to the Local Planning Authority.
- 23) In the event that the results of any of the monitoring carried out pursuant to Condition 22 show that the population of grass snake is not at least to the level of the results of the survey carried out pursuant to Condition 11, an assessment for habitat suitability for grass snake within the Airport site, an assessment for management remedial measures, and a timetable for their implementation, shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.

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- 24) Following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, common lizard relative population estimate monitoring of the 1300m replacement ditch length and any receptor site for common lizard shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 12 and undertaken at the appropriate time of year following the most recent up to date good practice guidelines for reptiles published by Natural England at the time of the survey. The population estimate monitoring shall be carried out annually for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 12 and submitted to the Local Planning Authority.
- 25) In the event that the results of any of the monitoring carried out pursuant to Condition 24 show that the population of common lizard is not at least to the level of the results of the survey carried out pursuant to Condition 12, an assessment for habitat suitability for common lizard within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.
- 26) During the months of June and July immediately following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, medicinal leech population estimate monitoring of both new water bodies and of existing water bodies within the Airport site, including a chemical analysis of Pond A, shall be carried out to assess the success of the mitigation approved pursuant to Condition 19, such population estimate monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 13. The assessment of the monitoring results is to include consideration of spatial distribution of populations as well as total population numbers. The survey monitoring shall be carried out annually during the months of June and July for the first three years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and during the months of June and July every five years thereafter. The results of each population estimate monitoring carried out pursuant to this condition shall be compared against the results of the survey carried out pursuant to Condition 13 and submitted to the Local Planning Authority. The monitoring shall be carried out in accordance with the details approved pursuant to this condition.
- 27) In the event that the results of any of the monitoring carried out pursuant to Condition 26 show that the population of medicinal leech is not at least to the level of the results of the survey carried out pursuant to Condition 13, an assessment for habitat suitability for medicinal leech within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the monitoring being completed. The approved management remedial

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- measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.
- 28) In the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19:
- a) Surveys of the aquatic emergent and bank ditch vegetation of the ditches within the Airport site shall be conducted with identification of higher plants, macrophytes and including stonewort algae to species level, the methodology of such surveys to be the same as under Condition 14 a). The surveys shall be conducted annually for a period of eight years starting in the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19. The results of each survey carried out pursuant to this condition shall be compared against the results of the surveys carried out pursuant to Condition 14 a) and submitted to the Local Planning Authority.
  - b) Aquatic habitat chemical analyses of the retained water bodies, ditch sections and new ditches and water bodies within the Airport site shall be conducted for the same chemical and physical conditions and using the same methods as specified in Condition 14 b). Such analyses shall be conducted annually for a period of eight years starting in the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19. The results of each analysis carried out pursuant to this condition shall be compared against the results of the analysis carried out pursuant to Condition 14 b) and submitted to the Local Planning Authority. The monitoring shall be carried out in accordance with the details approved pursuant to this condition.
- 29) The surveys and analyses carried out pursuant to Condition 28 shall record any changes in habitat since the surveys and analyses carried out pursuant to Condition 14 that could affect the invertebrate fauna of the water bodies and ditches. These shall include any clear signs of water quality deterioration, exceptionally high turbidity, the recent occurrence of dredging and bank vegetation cutting, shading by woody vegetation, and excessive numbers of water birds or other wildlife including large fish, American mink and other noteworthy fauna. A photographic record of each water body and 100 metre ditch section will be made for each survey undertaken pursuant to Condition 28.
- 30) In the event that the results of any of the survey monitoring carried out pursuant to Condition 28 show that the population of any of the species (including the duckweed *Wolffia arrhiza*) surveyed are in decline, an assessment for habitat suitability for such species within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England within 28 days of the survey monitoring being completed. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.
- 31) Following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19, surveys of aquatic and

amphibious invertebrates to species level shall be conducted at water bodies and along ditches delineated into 100 metre sections within the Airport site. The methodology of such surveys and the number of replicated sections to be the same as approved under Condition 15. The surveys shall be conducted annually for a period of eight years starting in the first summer following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 19 and shall be carried out at the same times of the year as the surveys carried out under Condition 15 to enable valid comparisons of results between years to be made for the detection of changes in species assemblages. The results of each annual survey shall be compared against the results of the surveys carried out pursuant to Condition 15 and submitted to the Local Planning Authority.

- 32) Samples of invertebrates that cannot be identified during the surveys carried out pursuant to Condition 31 shall be retained for laboratory identification and preserved for the duration of monitoring to be carried out pursuant to Condition 31.
- 33) In the event that the results of any of the survey monitoring carried out pursuant to Condition 31 show that the population of aquatic and amphibious invertebrates is below a median Species Conservation Status Score value of 1.38 in defined 100 metre ditch sections, an assessment for habitat suitability for aquatic invertebrates within the Airport site, an assessment for management remedial measures, and a timetable for their implementation shall within 28 days of completion be submitted to the Local Planning Authority for written approval in consultation with Natural England. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.
- 34) On bringing the 1300m replacement ditch length into use, the remaining ditch lengths that are within the Airport Site and in the SSSI and the new 1300m replacement ditch length shall not be netted.
- 35) No works related to the infill, or creation, of ditches and water bodies pursuant to the development hereby approved shall be commenced until an updated relative population estimate survey of great crested newts has been undertaken of the water bodies within the Airport site, the area to be used as mitigation, and the terrestrial habitat around drainage ditches to be lost/realigned. The survey shall be in accordance with the methodology used in the environmental statement surveys submitted in support of the application with the methods recommended in the *Great Crested Newt Mitigation Guidelines* (English Nature 2001) for the great crested newt population size-class assessment adopted as the minimum standards of survey.
- 36) No works related to the infill of or creation of ditches and water bodies pursuant to the development hereby approved shall be commenced until the following details, which may be submitted as part of the wider ABAP, have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England:
  - a) Full details of the location, which shall not be on the SSSI or the SAC, and construction of great crested newt refugia (hibernacula) including size and construction material and including the details set out in Annex 2 to CD17.24;

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- b) Full details of the mitigation wetland features as detailed in Annex 2 to CD17.24 which may affect any habitat used by great crested newt including design of the water body, proposed access route, proposed machinery type and proposed methods of avoiding disturbance to the nearby SSSI vegetation;
  - c) Full details of exclusion methods and any amphibian fencing proposed;
  - d) The timing for carrying out all the details submitted pursuant to a) to c) above; and
  - e) Full details of the ongoing management proposals for the great crested newt refugia provided pursuant to this condition so as to benefit great crested newts for the long-term, such details to include the proposals set out in Annex 3 to CD17.24.

The development shall be carried out in accordance with the approved details.

- 37) In the spring months immediately following completion of the 1300m replacement ditch length, and the mitigation approved pursuant to Condition 35, great crested newt monitoring, involving relative population estimate surveys of great crested newts, of all water bodies both new and existing within the Airport site shall be carried out to assess the success of the mitigation approved pursuant to Condition 36 and to prevent water quality decline to existing newt breeding sites, such survey monitoring to be carried out using the same methodology used for the survey carried out pursuant to Condition 35. The monitoring shall be carried out annually during the spring months for the first five years following completion of the 1300m replacement ditch length and the mitigation approved pursuant to Condition 36 and every three years thereafter during the spring months. The results of each survey monitoring shall be compared against the results of the survey carried out pursuant to Condition 35 and submitted to the Local Planning Authority.
- 38) In the event that the results of any of the monitoring carried out pursuant to Condition 37 show that the population of great crested newt is not at least to the level of the results of the survey carried out pursuant to Condition 35, an assessment for habitat suitability for great crested newt within the Airport site and an assessment for management remedial measures shall be undertaken and submitted to the Local Planning Authority for written approval in consultation with Natural England. The approved management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval.
- 39) No development shall commence until an updated relative population estimate survey of moths has been undertaken within the Airport site, such survey to comprise light-trapping and searching for larvae and to ensure as a minimum that the following moth species are included:
  - a) *Cynaeda dentalis*
  - b) *Hadena albimacula*
  - c) *Coleophora galbulipennella*
  - d) *Gelechia muscosella*
  - e) *Ethmia bipunctella*
  - f) *Ethmia terminella*



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The updated relative population estimate survey of moths shall not be carried out until the methodology for the survey has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Kent Wildlife Trust, the Butterfly Conservation and Natural England.

- 40) Moth survey monitoring shall be carried out annually for a period of ten years commencing in the first year following the commencement of development. The survey monitoring shall be at the same time of year, use the same methodology, and survey the same species, as the survey carried out pursuant to Condition 39. The results of each annual survey monitoring shall be compared against the results of the survey carried out pursuant to Condition 39 and shall include an assessment based on the principles detailed in Annex 9 to CD17.24. The results and assessment shall be submitted to the Local Planning Authority, in consultation with Kent Wildlife Trust, the Butterfly Conservation and Natural England, for written approval.
- 41) No development shall commence until an updated bat foraging and commuting behaviour survey has been undertaken within the Airport site, such survey to comprise a series of transect walks across the Airport site to ascertain how bats are using the Airport. No survey required under this condition shall be carried out until the methodology for the survey has been agreed with, and approved in writing by, the Local Planning Authority in consultation with Natural England.
- 42) No development shall commence until the results of the survey carried out pursuant to Condition 41 has been submitted to the Local Planning Authority and, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 43) Any netting of waterbodies within the Airport site must be in accordance with the provisions in Annex 10 to CD17.24.
- 44) The annual number of aeroplane movements shall not exceed 40,000 movements per annum in any calendar year, excluding the Air Show. In the event that the runway extension comes into operation part way through a calendar year, the movements shall be reduced proportionately to the period remaining in the calendar year.
- 45) The annual number of helicopter movements shall not exceed 1,200 movements per annum in any calendar year, excluding the Air Show. In the event that the runway extension comes into operation part way through a calendar year, the movements shall be reduced proportionately to the period remaining in the calendar year.
- 46) Following the runway extension coming into operation, and until the terminal building is in occupation, passenger numbers using the Airport shall not exceed 300,000ppa in any calendar year. In the event that the runway extension comes into operation part way through a calendar year, the passenger numbers shall be reduced proportionately to the period remaining in that calendar year.
- 47) There shall be no more than one Air Show, lasting no longer than three days, in any calendar year.

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- 48) No aircraft exceeding 80 tonnes maximum take-off weight shall be permitted to land or take-off at the Airport.
- 49) There shall be no flight movements, except in relation to emergency and governmental activities, as defined in CD17.24, at the Airport during the period 23:00 to 07:00 hours.
- 50) The throughput of passengers at the Airport shall not exceed 30,000ppa in any calendar year until details for improvement works to the highway at the junction of the B2075 and A259 (known as Hammonds Corner) have been submitted to, and approved in writing by, the Local Planning Authority, such details to also include supplemental surveys covering:
- a) An updated phase 1 habitat survey to identify any change in habitat since the phase 1 habitat survey for Hammonds Corner that was submitted in support of the application was carried out; and
  - b) Species specific surveys, to include as a minimum water vole and bats, to establish whether a protected species is present on any of the land affected, or likely to be affected, by the improvement works under this condition.

Where a protected species is shown to be present, no improvement works to Hammonds Corner shall be begun until a scheme for protection and mitigation measures has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. The improvement works to Hammonds Corner shall be carried out in accordance with the approved scheme.

- 51) The throughput of passengers at the Airport shall not exceed 30,000ppa in any calendar year until the improvements works to Hammonds Corner as approved under Condition 50 have been carried out.
- 52) The runway extension shall not come into operation until a lighting scheme for the car park areas and associated roads has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. The lighting scheme shall be in accordance with the Lighting Impact Assessment submitted in support of the application and shall include:
- a) Details of how the external and internal lighting will be minimized during the period 23:00 to 07:00 hours;
  - b) Details of how any security lighting will be linked to movement sensors, dimmed to their minimum intensity and hooded to prevent light spillage;
  - c) Details as to how the lighting scheme proposed takes into account the Airport's existing lighting; and
  - d) Details of the runway extension lighting.

The development shall be carried out in accordance with the approved details.

- 53) Aeroplane engine power checks shall not take place within the Airport site except within the areas known as "Hold B" and "Hold C" as shown marked "B" and "C" on the plan in Annex 2 of CD17.25.
- 54) No aeroplane or other aircraft shall be permitted to land on Runways 21 or 03, or depart on Runway 21, whenever a train is in transit between the nuclear flask loading bay at Halfway Bush and Lydd Town Station.

- 55) Departing aeroplanes from Runway 21 that have a take off weight of 5,700kg or more shall turn right upon departure and follow flight path 12.
- 56) Records shall be kept of movements and passenger numbers such that compliance with Conditions 44, 45, 46, 49, 50, and 51 above can be demonstrated for audit by the Local Planning Authority.

## **APPENDIX 5 – SCHEDULE OF CONDITIONS SHOULD THE SECRETARY OF STATE BE MINDED TO APPROVE APPLICATION B**

[References to Annexes and Appendices are to those in the Draft Conditions (Terminal Building) CD17.25, which also includes definitions]

- 1) The development hereby permitted shall begin not later than ten years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

### **Drawings**

- a) FSB92590A/001 Rev B – Location Plan, prepared by Parsons Brinckerhoff, December 2006;
- b) FSB92590A/002 Rev D – Proposed Site Plan, prepared by Parsons Brinckerhoff, August 2008;
- c) FSB92590A/003 Rev C – Proposed Site Plan, prepared by Parsons Brinckerhoff, August 2008;
- d) FSB92590A/004 Rev C – Proposed Ground Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- e) FSB92590A/005 Rev C – Proposed Part Ground Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- f) FSB92590A/006 Rev C – Proposed Part Ground Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- g) FSB92590A/007 Rev C – Proposed First Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- h) FSB92590A/008 Rev C – Proposed Part First Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- i) FSB92590A/009 Rev C – Proposed Part First Floor Plan, prepared by Parsons Brinckerhoff, August 2008;
- j) FSB92590A/010 Rev C – Proposed Part Plant Level Plan, prepared by Parsons Brinckerhoff, August 2008;
- k) FSB92590A/011 Rev C – Proposed Roof Level Plan, prepared by Parsons Brinckerhoff, August 2008;
- l) FSB92590A/012 Rev C – Existing Site Sections, prepared by Parsons Brinckerhoff, August 2008;
- m) FSB92590A/013 Rev C – Proposed Site Sections, prepared by Parsons Brinckerhoff, August 2008;
- n) FSB92590A/014 Rev C – Proposed Elevations, prepared by Parsons Brinckerhoff, August 2008;
- o) FSB92590A/015 Rev C – Proposed Elevations, prepared by Parsons Brinckerhoff, August 2008;
- p) FSB92590A/016 Rev C – Proposed Elevations, prepared by Parsons Brinckerhoff, August 2008;

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- q) FSB92590A/017 Rev B — Site Location Plan, prepared by Parsons Brinckerhoff, December 2006; and
  - r) FSB92590A/018 Rev B — Site Plan, prepared by Parsons Brinckerhoff, December 2006.

**Documents**

- a) Revised Outline Travel Plan, prepared by Steer Davies Gleave, August 2008;
- b) Schedule of Mitigation Measures, prepared by Indigo Planning, March 2009;
- c) Planning Control Measures, prepared by Indigo Planning, February 2010;
- d) Draft Construction Environmental Management Plan;
- e) Landscape Strategy;
- f) Revised Design and Access Statement, 2008;
- g) Lighting Impact Assessment; and
- h) Proposed Foul Water Sewerage Solutions, prepared by Parsons Brinckerhoff, March 2009

together with the description of development contained in the application and any other plans, drawings, documents, details, schemes or strategies when approved by the Local Planning Authority pursuant to the conditions to this permission.

- 3) No development shall be commenced until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall be commenced until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the local planning authority in consultation with Natural England. The CEMP shall include the measures set out in the Draft Construction Environmental Management Plan submitted in support of the application, the measures set out in the construction management strategy contained in Annex 1 to CD17.25 and shall also include the following details:
  - a) Monitoring of, and measures to control, the environmental impact of the development during the construction phase, including control of contamination, water-resource protection and control of noise, vibration and dust emissions from plant and machinery and construction traffic (including wheel washing);
  - b) A dust-ecology inspection strategy for specific areas of ecological sensitivity (such areas to be agreed as part of the submission process for the CEMP) covering:
    - i) Construction programme optimisation with regard to reducing seasonal impact on specific areas of ecological sensitivity;
    - ii) Ambient weather conditions under which visual inspection frequency is increased;

- iii) Dust particle monitoring;
  - iv) The implementation of an active alarm threshold for the dust particle monitoring; and
  - v) Remedial mitigation measures
- c) A habitat management plan to protect important flora and fauna habitats during the construction phase;
  - d) A Solid Waste Management Plan;
  - e) Construction method statements including details of how any soil and ground arising will be managed and re-distributed; and
  - f) Demolition of the existing terminal building.

The development shall be carried out in accordance with the approved CEMP.

- 5) No development shall be commenced until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the Local Planning Authority.
- 6) No development shall be commenced until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to, and approved in writing by, the Local Planning Authority:
  - a) A preliminary risk assessment which has identified:
    - i) All previous uses;
    - ii) Potential contaminants associated with those uses;
    - iii) A conceptual model of the site indicating sources, pathways and receptors; and
    - iv) Potentially unacceptable risks arising from contamination at the site.
  - b) A site investigation scheme, based on 6(a), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
  - c) The site investigation results and the detailed risk assessment carried out pursuant to the site investigation scheme referred to in 6(b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; and
  - d) A verification plan providing details of the data that will be collected in order to demonstrate that the remediation measures set out in 6(c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to the approved scheme shall require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.

- 7) No development shall be commenced until a verification report demonstrating completion of the works set out in the remediation strategy approved pursuant to Condition 6 of this planning permission and the effectiveness of the remediation has been submitted to, and approved in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the verification plan approved pursuant to Condition 6 of this planning permission to demonstrate that the site remediation

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- criteria have been met. It shall also include a "long-term monitoring and maintenance plan" for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.
- 8) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy approved pursuant to Condition 6 of this planning permission detailing how this unsuspected contamination will be dealt with.
  - 9) The hours of construction at the Airport site shall be 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.
  - 10) The terminal building shall not be occupied until an Environmental Management System (EMS) has been submitted to, and approved in writing by, the Local Planning Authority. This system shall include details of solid waste management and details of procedures to prevent spill and risk control measures to avoid any potential contaminants entering watercourses. The development shall be carried out and occupied in accordance with the approved EMS and an Environmental Management System Manager shall be assigned prior to occupation of the terminal building and shall manage, monitor and review the EMS and its operation in cooperation with the Local Planning Authority and relevant stakeholders.
  - 11) No development shall be commenced until a scheme for the disposal of foul water to the main sewerage system has been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.
  - 12) The throughput of passengers at the Airport shall not exceed 300,000ppa until the scheme for the disposal of foul water approved under Condition 11 has been carried out and completed.
  - 13) Before any new permanent surface drainage infrastructure is installed in connection with the development a Drainage Management Plan, including means of pollution control, shall be submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.
  - 14) No development shall be commenced until:
    - a) A ground water quality monitoring programme to be undertaken within the footprint of the runway extension has been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency;
    - b) The programme approved under a) has been undertaken and all of the protective measures identified at any stage of that programme have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency; and
    - c) The remedial measures approved under b) have been carried out and approved in writing by the Local Planning Authority.

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- 15) No development shall be commenced until details of the facilities required for any storage of oils, fuels, or chemicals (including means of spillage control and a spillage response plan) in connection with the development have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency. The development shall be carried out in accordance with the approved details.
  - 16) The terminal building shall be designed to minimise carbon emissions and energy demand in accordance with the objectives of the Design and Access Statement. No development shall be carried out until details demonstrating that sufficient renewable or low carbon energy generating equipment will be included in, on, or directly adjoining, the terminal building that will achieve at least 10% of the terminal building's total energy requirements from renewable or low carbon sources have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.
  - 17) No development shall be commenced until a certificate issued by, or on behalf of, the Building Research Establishment has been submitted to, and approved in writing by, the Local Planning Authority demonstrating that the design of the Terminal Building will achieve a BREEAM 2006 "Very Good" or "Excellent" rating. The development shall be carried out in accordance with the certified design.
  - 18) No development shall be commenced until details of all hard and soft landscape works have been submitted to, and approved in writing by, the Local Planning Authority. These details, which shall be in accordance with the draft Landscape Strategy submitted in support of the application, shall include:
    - a) The location and species of all trees and other vegetation to be retained;
    - b) Proposed planting, including species, size and provenance (provenance must be local and native to England), in respect of a soil source compatible to that on the site, of stock and planting densities;
    - c) The size, type and appearance of all paving or other hard surfaces, including a sample of the materials to be used;
    - d) Management arrangements, particularly for retained and/or created ecological habitats; and
    - e) Any seating and litter bins.

The hard and soft landscaping works shall be carried out in accordance with the approved details prior to the occupation of the terminal building.
  - 19) The number of aeroplane movements shall not exceed 40,000 per annum in any calendar year excluding the Air Show.
  - 20) The number of helicopter movements shall not exceed 1,200 per annum in any calendar year excluding the Air Show.
  - 21) Following occupation of the terminal building, passenger numbers using the Airport shall not exceed 500,000ppa in any calendar year.
  - 22) There shall be no more than one Air Show, lasting no longer than three days, in any calendar year.
  - 23) No aircraft exceeding 80 tonnes maximum take-off weight shall be permitted to land or take-off at the Airport.



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- 24) There shall be no flight movements, except in relation to emergency and governmental activities as defined in CD17.25, at the Airport during the period 23:00 to 07:00 hours.
- 25) No development shall be carried out until a lighting scheme for the terminal building and car park areas and associated roads has been submitted to, and approved in writing by, the Local Planning Authority in consultation with Natural England. The lighting scheme shall be in accordance with the Lighting Impact Assessment submitted in support of the application and shall include:
- a) Details of how the external and internal lighting will be minimised during the period 23:00 to 07:00 hours;
  - b) Details of how any security lighting will be linked to movement sensors, dimmed to their minimum intensity and hooded to prevent light spillage; and,
  - c) Details of how the proposed lighting scheme takes account of the Airport's existing lighting.

The development shall be carried out in accordance with the approved details.

- 26) Aeroplane engine power checks shall not take place within the Airport site except within the areas known as "Hold B" and "Hold C" as shown marked "B" and "C" on the plan in Annex 2 of CD17.25.
- 27) No aeroplane or other aircraft shall be permitted to land on Runways 21 or 03, or depart on Runway 21, whenever a train is in transit between the nuclear flask loading bay at Halfway Bush and Lydd Town Station.
- 28) Departing aeroplanes from Runway 21 that have a take off weight of 5,700kg or more shall turn right upon departure and follow flight path 12.
- 29) Records shall be kept of movements and passenger numbers such that compliance with Conditions 19, 20, 12 and 24 above can be demonstrated for audit by the Local Planning Authority.

## **APPENDIX 6 – GLOSSARY**

AA	Appropriate Assessment
ABAP	Airfield Biodiversity Action Plan
AE	Adverse Effect
ALARP	As low as reasonably possible
AONB	Area of Outstanding Natural Beauty
AQMAPS	Air Quality \monitoring and Action Plan Strategy
AQMS	Air Quality Management Strategy
ATC	Air Traffic Control
ATWP	Air Transport White Paper
BAP	Biodiversity Action Plan
BCMP	Bird Control Management Plan
BHRA	Bird Hazard Risk Assessment
CAA	Civil Aviation Authority
CPRE	Protect Kent – Council for the Protection of Rural England
CSPSD	Core Strategy Proposed Submission Document
DEFRA	Department for Environment, Food and Rural Affairs
DE	Disturbance effect
DfT	Department for Transport
DI	Disturbance impact
DPD	Development Plan Document
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Assessment
FBO	Fixed base operator
FP	Flight Path
FRA	Flood Risk Assessment
ft	feet
GA	General aviation
GVA	Gross value added
HS	High Speed Rail
HSE	Health and Safety Executive
IBSC	International Bird Strike Committee
ICAO	International Civil Aviation Organisation
ILS	Instrument Landing System

IROPI	Imperative reasons of overriding public interest
Km	Kilometres
KWT	Kent Wildlife Trust
LAA	London Ashford Airport Limited
LAAG	Lydd Airport Action Group
LDA	Landing distance available
LDF	Local Development Framework
LLA	(Romney Marsh) Local Landscape Area
LP	Shepway District Local Plan
mppa	Million passengers per annum
m	metre
MoD	Ministry of Defence
MRO	Maintenance, repair and overhaul
NCA	National Character Area
NDB	Non-directional Beacon
NE	Natural England (formerly English Nature)
Nm	Nautical miles
NNR	National Nature Reserve
NPPF	National Planning Policy Framework
NPS	National Policy Statement
ONR	Office for Nuclear Regulation (formerly the Nuclear Installations Inspectorate) an agency of HSE
pa	Per annum
PAPIs	Precision Approach Path Indicator Lights
PIM	Pre-Inquiry Meeting
ppa	Passengers per annum
PPG24	Planning Policy Guidance Note 24: Planning and Noise
PPS1	Planning Policy Statement 1: Delivering Sustainable Development
PPS9	Planning Policy Statement 9: Biodiversity and Geological Conservation
PPS25	Planning Policy Statement 25: Development and Flood Risk
pRamsar	Proposed Ramsar Site
pSPA	Proposed Special Protection Area
RESA	Runway end safety area
RMAIDB	Romney Marsh Area Internal Drainage Board
RNAV	Area Navigation

RSPB	Royal Society for the Protection of Birds
RSS	East of England Plan
SAC	(Dungeness) Special Area of Conservation
SAPs	Safety Assessment Principles
SDC	Shepway District Council
SE	Serious Effect
SEI	Supplementary Environmental Information
SEL	Single event level
SLA	(Dungeness) Special Landscape Area
SoS	Secretary of State
SCG	Statement of Common Ground
SOR	Start of Roll
SPA	(Dungeness to Pett Levels) Special Protection Area
SSSI	(Dungeness) Site of Special Scientific Interest
TA	Transport Assessment
WHO	World Health Organisation



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



# RECENT PLANNING HISTORY OF LONDON ASHFORD AIRPORT (LAA) AT LYDD

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- 1) In December 2006 two applications were submitted at the Airport for:
  - Application A – the construction of a runway extension and a 'starter extension' to the north/ south runway” in accordance with application reference Y06/1648/SH; and
  - Application B - the erection of a passenger terminal together with a car park on the existing Bravo apron comprising a car park” in accordance with application reference Y06/1647/SH.
- 2) Both applications were supported by environmental impact assessments (EIAs) which considered the impact of the proposed expansion of the Airport on sensitive designated sites of importance for biodiversity on and around the Airport, and nearby residents. The impact of the expansion was assessed to be acceptable.
- 3) The applications were supported by Shepway District Council (now known as Folkestone and Hythe District Council) on 3 March 2010. The Secretary of State ‘called in’ the applications for determination by him in June 2010.
- 4) A public inquiry was held between February and September 2011. In April 2013 both applications were granted consent by the Secretary of State for CLG and the Secretary of State for Transport.
- 5) The Inspector and Secretaries of State agreed that in an area where the prospects of significant regeneration remains precarious, the proposals would have a positive effect. They also concluded that after careful consideration they were satisfied that there would be no likely significant effects on any designated conservation sites, nearby residents, nuclear safety, the landscape or tranquillity. The Secretary of State’s decision was challenged in the High Court, but the challenge was rejected on 16 May 2014.
- 6) The Secretary of States’ decisions and the Inspector’s Report are provided at **Appendix 1**.
- 7) The consent for the runway extension limits the number of aeroplane movements to not exceed 40,000 movements per annum in any calendar year. It also prevents the number of passengers using the Airport to 300,000 passengers per annum (ppa) in any calendar year until the terminal building is in occupation.
- 8) The terminal building consent restricts the Airport to below 500,000ppa in any calendar year.
- 9) A Certificate of Existing Lawful Development was issued on the 1 April 2016 (LPA ref: Y16/0152/SH) confirming that the runway extension permission has been implemented.





[REDACTED]  
[REDACTED] Team  
Folkestone and Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent  
CT20 2QY

[REDACTED]

By email

18 May 2018

[REDACTED]  
[REDACTED]

Dear [REDACTED]

**CONSULTATION ON THE CORE STRATEGY LOCAL PLAN REVIEW AND ASSOCIATED DOCUMENTS**

1. Further to our meeting on 3 May 2018, and on behalf of London Ashford Airport (LAA), we set out below our representations to the consultation on the Core Strategy Local Plan Review (CSLPR), and the accompanying Sustainability Appraisal (SA) and Habitat Regulations Assessment.
2. These representations follow on from our representations to the Places and Policies Local Plan Submission Draft (February 2018), Preferred Options Consultation (October 2016) and the Issues and Options Consultation (January 2015).
3. LAA's key concern is that the Council has chosen not to include a policy addressing LAA in the CSLPR (or the Places and Policies Local Plan). The omission of such a policy is a fundamental failing of the CSLPR which should recognise the importance of LAA and its potential to improve and support Folkestone and Hythe's economy. For this reason, the CSLPR is not sound in its current form and does not comply with paragraph 182 of the National Planning Policy Framework (NPPF).
4. Furthermore, the Places and Policies Local Plan (P&PLP) was published before the CSLPR. This seems to be out-of-sequence as the CSLPR sets out the aims and objectives to be delivered by the P&PLP. In our view, either the P&PLP should follow on from the CSLPR or the consultation period for both documents should have run alongside each other to provide a more cohesive approach.

**Soundness of the Local Plan**

5. Paragraph 182 of the NPPF sets out four considerations to be taken into account when determining whether the local plan is "sound". The local plan must be:

- Positively prepared;
- Justified;
- Effective; and
- Consistent with national policy.

6. As currently drafted, the CSLPR, and the accompanying Sustainability Appraisal and Habitat Regulations Assessment, are not sound for the reasons set out below.

#### Positively Prepared

7. The consultation documents have not been positively prepared as they fail to meet assessed development infrastructure requirements. The CSLPR states that there is social and economic deprivation in the District, and that LAA provides excellent infrastructure and employment benefits. However, the CSLPR provides no policy support for LAA's future improvement and expansion.
8. In ignoring one of the District's key economic drivers, the CSLPR cannot be considered positively prepared and, therefore, it is not in accordance with national guidance.

#### Justification

9. The CSLPR plan period is from 2018/19 to 2036/37. During this period, it is inevitable that there will be further investment in LAA, above and beyond the investment that will be taking place in the next few years. In the context of the socio-economic challenges facing Romney Marsh, it is important that the Council's in principle support for appropriate development is acknowledged.
10. The CSLPR is not sound because there is no justification for excluding a policy acknowledging the importance of LAA. Omitting such an important policy is not the most appropriate strategy for the CSLPR in the short, medium and long term.
11. The Transport Strategy is currently being updated for the CSLPR. The most up-to-date Transport Strategy (February 2011) states that the number of passengers at ports and airports is declining, but paragraph 4.2.5 goes on to state that many people recognise the benefit that LAA brings to Shepway (now known as Folkstone and Hythe District Council). The Transport Strategy evidence base supports promoting the use of ports and airports. It states that the Plan should:

***“PA1: Promote Connections** – This includes both existing links from Shepway's ports and airports to outside the District (e.g. rail and coach services), and new links both within and outside of the District (including to Europe); and,*

**PA2: Support Access to Lydd Airport** – Both in terms of passengers travelling to / from the airport, and flights arriving / departing the airport.”

12. The CSLPR has not addressed the Transport Strategy and has not provided a policy to reflect this evidence base. The omission of a policy dealing with LAA is not justified by the Council in light of the evidence base.

#### Effective

13. Paragraphs 1.41 to 1.48 relate to the Romney Marsh Area and in paragraph 1.48, the Airport is described as being well established and having attracted significant investment.
14. Paragraph 5.119 states that the Romney Marsh area’s economy will be closely monitored by the Council, given uncertainty about the Power Stations, as well as the economic impact of the expansion of LAA. It states that if the southern part of the District is substantially affected by these changes, the Council will consider amending the Core Strategy as part of a future review.
15. This is not positive planning. It is a failure to plan. Clearly, the decommissioning of the Power Stations and expansion of LAA will have substantial economic, social and environmental affects and these must be recognised in the CSLPR.
16. Without a policy in place to protect and support LAA, and identifying the benefits that will accrue from its future improvement and expansion, planning policy will not be effective in delivering or protecting LAA’s objective of promoting economic growth in an area that the Council has acknowledged could be badly hit by the decommissioning of the Power Stations.
17. Without a policy addressing LAA and the future of Romney Marsh, the CSLPR will be reactive and will not be effective. It will fail to deliver additional jobs. Only the inclusion of a bespoke policy for LAA will allow the Airport to reach its potential as an economic generator and transport hub for Romney Marsh, the District and beyond.

#### Consistent with National Policy

18. The Council’s failure to take forward a policy acknowledging and supporting LAA in the Places and Policies Local Plan and/or the CSLPR is a failure to meet the Council’s ambitions as set out in the Shepway Economic Development Strategy (2015-2020).
19. The Shepway Economic Development Strategy states:

*“Lydd Airport is set to bring major economic development opportunities in the future, following Shepway District Council’s granting of planning permission for a new terminal building and*

for the extension of the runway. This could act as the catalyst for attracting new support and other service based businesses to this area.”

20. The CSLPR has failed to acknowledge or pursue the ambition of LAA, in terms of its undoubted ability to act as the catalyst for attracting business and economic development to the area.
21. Paragraph 9 of the NPPF states that pursuing sustainable development means making it easier for jobs to be created and improving conditions where people live, work, travel and take leisure. Paragraph 18 and 19 of the NPPF further state that the Government is committed to securing economic growth in order to create jobs and prosperity and is doing everything to support sustainable economic growth.
22. Omitting a policy addressing the future of LAA, which will include the delivery of jobs and travel opportunities, means the CSLPR is contrary to national policy and is unsound. As noted in paragraph 14 above, stating that the Council will monitor the economic situation before considering addressing the socio-economic challenges faced by Romney Marsh in a future Core Strategy review is not encouraging economic development. Conversely, it is potentially acting as an impediment to sustainable growth.
23. We consider that there should be a specific policy addressing LAA, highlighting its importance for the District and supporting its continued enhancement and expansion, subject to the environmental impact being acceptable.
24. Given the socio-economic challenges facing Romney Marsh (see paragraph 4.30 of the SA), we also consider that a policy addressing the Romney Marsh area is also required. It maybe that a wider policy for Romney Marsh could incorporate wording addressing the future of LAA.
25. The following section sets out our proposed amendments to the CSLPR to ensure the plan is sound. This includes justification on why a policy on the LAA and/or Romney Marsh (including support for LAA) is necessary to make the Plan sound and provided a draft working for the policy.

## **Core Strategy Local Plan Review**

### New Policy for LAA

26. The CSLPR’s Strategic Need A states that the Council will build on economic strengths by supporting key sectors and businesses by promoting further investment and maximising opportunities for growth (our emphasis).
27. The CSLPR states that the District has excellent infrastructure and connections, including by air, with specific reference to LAA. It states that the District is, therefore, well placed to capitalise on this outstanding infrastructure by providing opportunities for business growth and inward investment to the

area.

28. Paragraph 1.45 of the CSLPR states that LAA is well established and has attracted significant investment proposals. Table 1.3 sets out the strengths and weaknesses of the Romney Marsh area. One of the weaknesses identified is the limited large-scale employment opportunities. LAA provides stable employment in the area. In order to maximise LAA's opportunities for growth, the CSLPR must acknowledge LAA's potential to expand beyond its current planning consents, if the environmental impacts are acceptable.
29. To ensure that the weakness outlined in Table 1.3 are mitigated, LAA should be acknowledged as an opportunity location. LAA's current positive role as a significant employer in Romney Marsh should be identified as a strength. A specific policy for LAA to recognise its importance and support the principle of further improvements, expansion and investment, subject to environmental considerations, should be included.
30. The CSLPR fails to acknowledge and reasonably balance the long-term economic aspirations of LAA, which will benefit Romney Marsh, with the ecologically and environmental sensitivities of the area. These sensitivities should not be used to unnecessarily or unreasonably fetter the potential for development and expansion in the future.
31. In paragraph 4.128, the key aims of the Transport Strategy include supporting improved access to ports and airports, subject to there being "no adverse environmental consequences". This is simply too onerous and fails to reflect the need to support economic growth. Any adverse environmental consequences of economic development must be considered as part of the planning balance. The text should be amended to state "subject to the environmental impacts being acceptable".
32. Paragraph 4.38 of the CSLPR states that opportunities exist for employment development through the expansion at LAA. Although it is acknowledged that the LAA will be expanding up to the currently consented capacity, the scope for LAA to be expanded beyond this within the plan period is not acknowledged. This potential should be recognised.
33. Paragraph 5.118 of the CSLPR highlights the employment benefits LAA generates, in stating that it:
 

"has been significant in the area for more than 50 years and, by 2019, is expected to have implemented planning consent for extended runways and a new terminal building, to allow passenger flights using aircraft the size of Boeing 737 or Airbus 319, thereby creating up to 200 jobs locally".
34. As a matter of fact, there are two consents and the consent for the runway extension has been implemented. This should be acknowledged and reflected in the CSLPR. More importantly, the consents should not be seen as the limit of future investment or expansion, but as an opportunity to invest

further in the District and continue to improve the links between the UK and mainland Europe.

35. The Council considers that proposals to expand LAA have been granted planning consent so there is no need to maintain a dedicated policy for LAA. This is simply unacceptable and fundamentally conflicts with the aspirations of the NPPF. The CSLPR covers the plan period to 2036/37 and it must support further appropriate expansion and/or improvements to the LAA over and above what is currently consented. For example, if LAA want to improve hangar facilities, there should be clear, unambiguous policy support for this, subject to the impact on biodiversity being acceptable.
36. The current consents demonstrate that LAA can be expanded whilst protecting the environmental and ecological value of the surrounding area. The in-principle support for further expansion must be stated in the CSLPR.
37. In light of the above, we suggest that the following wording for a policy for LAA is appropriate:

*“Proposals to enhance and expand London Ashford Airport (LAA) at Lydd will be supported by the Council unless the impact of development will demonstrably harm the integrity of nearby nationally and internationally important sites of biodiversity value.”*

#### Romney Marsh Area Policy

38. Policy SS1 (District Spatial Strategy) refers to the “Romney Marsh Area”. LAA is located within this area and this should be identified within the relevant part of the policy.
39. As noted above, we consider that given the socio-economic challenges facing Romney Marsh, it is appropriate to have a policy addressing the area. The inclusion of a bespoke Romney Marsh Area policy will ensure that the Romney Marsh Area continues to have a strong economic focus, even after the decommissioning of the Power Stations. The inclusion of this policy will be consistent with Policy SS1.
40. If a policy for Romney Marsh is progressed, it maybe that the wording in respect of LAA could be incorporated as part of a wider policy.

#### **Conclusion**

41. LAA is a positive contributor to the District as it provides a significant number of employment opportunities, and these positive contributions and impacts should be recognised by the CSLPR. Moreover, its improvement and expansion should be explicitly allowed for and supported by the CSLPR. Such a policy would reflect the CSLPR’s evidence base.
42. We have set out a suggested wording for bespoke policy to be incorporated

within the CSLPR to support LAA and the vital role it plays within the local area, the District and the wider regional area.

43. We also consider that, given the socio-economic challenges facing Romney Marsh, it is appropriate to have a policy addressing the area. This would also reflect the CSLPR's evidence base.
44. If adequate support is not provided for LAA within the CSLPR, the plan will be unsound.
45. We trust the information above is clear and that the changes required to make the CSLPR sound are made prior to its submission to the Secretary of State.
46. Finally, we are hoping to meet with officers again to agree appropriate text to address LAA concerns. We look forward to hearing from officers as soon as possible.

Yours sincerely

[Redacted signature block]

[Redacted name]

cc: [Redacted] LAA





Planning Policy Team  
Folkestone & Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent  
CT20 2QY

20 January 2020

[REDACTED]  
[REDACTED] let. [REDACTED]

Dear Sir/Madam

**CONSULTATION ON THE FOLKESTONE AND HYTHE PROPOSED AMENDMENTS TO THE CORE STRATEGY REVIEW HOUSING NEED AND SUPPLY CONSULTATION DOCUMENT (DECEMBER 2019) ON BEHALF OF LONDON ASHFORD AIRPORT**

1. On behalf of our client, London Ashford Airport (LAA), we set out below our representations to the Folkestone and Hythe Proposed Amendments to the Core Strategy Review Housing Need and Supply document and associated documents, following on from our representations to the Core Strategy Local Plan Review (May 2018) and in parallel with our representations to the Issues and Options Consultation (January 2015), Preferred Options Consultation (October 2016) and Submission Draft Consultation (March and May 2018) for the Places and Policies Local Plan Submission Draft.
2. We are pleased to see that the Submission Draft version of the Core Strategy Review that was consulted on in March 2019 has made progress in acknowledging the importance of LAA to the District and supporting its continued improvement. However, we are concerned that the Proposed Amendments to the Core Strategy Review Housing Need and Supply document currently out for consultation does not identify the additional infrastructure that will need to be planned for and accommodated as a result of an increased housing target over the Plan period.

**Our Objections to the Core Strategy Review Submission Version**

Soundness of the Local Plan

3. Paragraph 182 of the NPPF sets out four considerations to be taken into account when determining whether the local plan is 'sound'. The local plan must be:
  - Positively prepared;
  - Justified;
  - Effective; and

- Consistent with national policy.
4. As currently drafted, the Submission Version (SV) of the Core Strategy Review (CSR) and the accompanying Habitat Regulations Assessment Addendum (HRAA) and Sustainability Appraisal Addendum (SAA), remain unsound for the reasons set out below.

#### Positively Prepared

5. The Proposed Amendments to the CSR Housing Need and Supply consultation document states that the aim of the CSR is to ensure that sufficient land is allocated to meet the identified development needs of the District for the Plan period.
6. The amended minimum housing need calculation results in an annual minimum housing need of 738 new homes (an increase of 62 units per annum) a year for the District. Applying this figure from the current year (2019/2020) to the end of the CSR plan period (2036/2037), a period of 18 years, means a total minimum need of 13,284 homes (up from 12,845).
7. The need for an additional 439 homes over the Plan period has been identified and incorporated into the CSR to ensure the document is able to meet its aims. However, our client is concerned with the lack of consideration to the need for additional employment opportunities to meet other identified need of the District for the Plan period.
8. The consultation documents have not been positively prepared as they fail to meet the inevitable increase to development infrastructure requirements as a direct result of the increased housing target.
9. As set out in previous representations, whilst we appreciate the Council's acknowledgement of LAA and the inclusion of additional text to draft Policy SS1, we are still of the opinion that at the very minimum, a high-level policy should be set out in the planning document recognising the economic benefits LAA brings to the District.
10. Paragraph 196 of the NPPF states that the planning system is 'plan-led' and, therefore, in principle policy support for the continued improvement and expansion of LAA, subject to environmental and ecological considerations, should be included within the development plan. Without this, the CSR cannot be considered positively prepared and, therefore, it is not in accordance with national guidance.
11. In summary, we will continue to object to the CSR as we consider that a policy supporting the continued expansion and improvements to LAA should be included within it and that our objection should be considered by the Inspector, especially given the increase in the number of houses proposed within the Plan period. We maintain this objection in respect of the latest consultation given the lack of consideration to the rising infrastructure needs that will directly result from the increased housing

target that has been incorporated into the SV of the CSR.

### LAA Future Plans

12. In the past, officers have indicated that the Council is willing to prepare an Area Action Plan (AAP) which will support the future expansion of LAA. It is welcome that this is recognised in draft Policy SS1: District Spatial Strategy. However, as noted in our letter dated 1 August 2018, we remain concerned that there is no guarantee that the AAP will be prepared and adopted in a timely manner. This could directly conflict with the remainder of the policy wording surrounding the LAA as this could directly hamper the future expansion and/or improvement of LAA.
13. On 1 August 2018, we set out a 'scope', to identify LAA's future expansion and improvement plans beyond the two current consents to be included within the AAP. It is important that the proposed policy and the rest of the CSR and subsequent AAP recognises that LAA is not a new facility but has been fully operational for 64 years. Its role as a regional Airport has long been recognised whilst continuing to function and develop alongside the existing ecological and environmental designations. The current consents demonstrate that LAA can be expanded without damaging the nearby designations.
14. For ease, we set out below again, a broad scope of future expansion and improvements to LAA beyond, or in addition, to the existing consents and LAA's permitted development rights:
  - Expansion and improvements to the existing terminal building for the processing of passengers and accommodating passengers;
  - Improvements to retail and leisure facilities for passengers and visitors;
  - Increased hangar provision;
  - Expansion of aircraft servicing and maintenance facilities;
  - Expansion and improvements of car parking;
  - Support for aviation training programmes and associated facilities;
  - Provision of a new traffic control tower;
  - Improvements to security;
  - Improvements to charter flight facilities;
  - Support for the provision of cargo handling facilities if passenger flights are not viable;
  - Expansion to the taxiway;
  - Support for the delivery of additional jobs through expansion of the Airport; and
  - Improvements to the access routes to the Airport to facilitate ease of movement.
15. This is not an exhaustive list, but gives an idea of the physical changes to LAA which might be required in the future if LAA is to thrive and continue to be an economic driver for the Marsh and the Borough as a whole.
16. We can provide additional information once the preparation of the AAP has

begun.

**Conclusion**

17. We object to the lack of consideration to the infrastructure requirements associated with the increased housing need over the Plan period. We do not consider that the CSR has been positively prepared and do not consider that this meets the aims of the CSR to ensure that sufficient land is allocated to meet the identified development needs of the District. LAA provides much needed employment opportunities for the Borough and should be given significant weight via a standalone policy in the CSR.
18. When we met about the site in 2018 and subsequent letter dated 1 August 2018, it was agreed that a 'Corporation Document' would be produced restating the Council's in principle support for further improvements to LAA. It was agreed that this document would be prepared by the Council in the interim and ahead of the AAP. Although this will have limited planning policy status, it will provide LAA's owners with comfort that the Council wants to encourage and support further investment at LAA. We understood that this document was to be developed over the next few months following the meeting. Unfortunately, we have not been informed of any further progress. We look forward to understanding the process and timeframes required for this document to be finalised. We look forward to working positively with the Council to address these issues.
19. We would be grateful to be informed of the examination hearings to take place before an Inspector with regard to the CSR. Our client would like to appear at these hearings. The covering email with these representations provides the necessary contact details to send notification of the examinations and invitation to speak.
20. If you have any queries, please do not hesitate to contact Nadia Shojaie or myself.

Yours faithfully

[Redacted signature block]

[Redacted line]

cc: [Redacted] WSP | Indigo



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**From:** [REDACTED]

**Sent:** 16 June 2020 17:18

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** Process for preparing an Area Action Plan

Dear [REDACTED]

Thank you for your email dated 1<sup>st</sup> June 2020 with regard to an Area Action Plan (AAP) for Lydd Airport/London Ashford Airport. Apologies for my delayed response.

An Area Action Plan would form part of the Development Plan (such as the Places and Policies Local Plan) and as such would have to follow the plan making process as set out in The Town and Country Planning (Local Planning) (England) Regulations 2012.

This would involve:

- preparing the evidence base for the AAP;
- Publish Regulation 18 draft document for public engagement;
- Publish Regulation 19 document for public consultation; and
- Examination in Public (with a possible further public consultation on any Main Modifications the Planning Inspector may wish to make).

The AAP would also have to be informed by a sustainability assessment, which would inform each stage from the initial scoping at the beginning and through to the adoption. A Habitats Regulations Assessment would also need to be carried out to inform the draft documents.

It is likely that we would have to engage with the statutory consultees (such as English Nature, Environment Agency, Historic England, Highways England, KCC, Town Council, neighbouring authorities) at an early stage in the process.

With regard to the Council's internal processes, approval would be required from the Council's Cabinet for any draft documents being published for public consultation (Regulation 18 & 19 stages). After the Examination in Public and receipt of a favourable Inspector's Report, the final AAP would need to be agreed by the Council's Cabinet and adopted by full Council.

[REDACTED]

Subject to the agreement of our Corporate Management Team, we are willing to work with the Airport on producing an AAP.

If you have any queries or further questions, please feel free to contact me.

Yours sincerely,

[REDACTED]

[REDACTED]  
**Strategy & Policy Senior Specialist.**

Office: [REDACTED]  
Mobile: [REDACTED]  
Email: [REDACTED]



[REDACTED]

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