

DEADLINE 9 SUBMISSION – ANNEX 2

STONE HILL PARK LTD’S COMMENTS ON THE EXAMINING AUTHORITY’S SECOND DRAFT DCO

PINS APPLICATION REFERENCE: TR020002

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- 1.1 SHP has reviewed the ExA’s second draft dDCO published on 14 June 2019;
- 1.2 Over the course of the examination, SHP has submitted extensive comments on the dDCO and proposed amendments. A list of the submissions was previously included as part of SHP’s Comments on the Applicant’s Revised dDCO and the ExA’s Initial dDCO [REP7-015].
- 1.3 In the period since Deadline 7 (17 May 2019), other relevant submissions from SHP include;
- 1.3.1 SHP’s comments on the Applicant’s answers to third written questions (REP7a-044);
- 1.3.2 SHP’s Written Summary of Oral Representations put at the dDCO hearing [REP8-033]; and
- 1.3.3 SHP’s Written Summary of Oral Representations put at the Compulsory Acquisition hearing [REP8-030].
- 1.4 In its previous submissions, SHP expressed concern that the issues it had raised had not been reflected in the ExA’s initial dDCO. Whilst the ExA’s second draft DCO does not address these issues, SHP welcomes confirmation from the ExA that it is giving consideration to the issues raised by SHP (both following receipt of the Written Summary of Oral Representations put at the dDCO Hearing [REP8-033] and through fourth written questions).
- 1.5 SHP would note that there are a number of comments coded yellow, which SHP have objected to throughout its submissions.
- 1.6 The Table below summarises SHP’s comments on the second dDCO;

Relevant Section of dDCO	SHP Comments
Article 2 - Definition of “airport related”	SHP has provided an explanation in its previous submissions as to why the definition provided by the

Relevant Section of dDCO	SHP Comments
(change proposed by the Applicant)	<p>Applicant cannot be accepted on the basis it would allow development that falls outside of what is permitted under the Planning Act 2008.</p> <p>SHP would refer the ExA to its most recent submissions on this matter as set out in;</p> <ul style="list-style-type: none"> • SHP’s comments on the Applicant’s answers to second written questions CA.2.18, DCO.2.10, DCO.2.34 and DCO.2.44 [REP7-014]; • paragraphs 3.1 – 3.5 of SHP’s Written Summary of Oral Representations put at the dDCO hearing [REP8-033]; • section 7 of SHP’s Written Summary of Oral Representations put at the Compulsory Acquisition Hearing [REP8-030]; <p>SHP further notes that further changes would be required to Schedule 1 list of works (and their classification) and Requirement 19.</p>
Article 9(1)(a) – adequacy of the sum secured	<p>SHP notes that the ExA has advised that it is seeking to examine the adequacy of the sum through its fourth written questions. SHP has previously made detailed submissions on this matter, including, but not limited to, the report by Avison Young contained in Appendix 6 of SHP’s Written Representations [REP3-025], its Written Summary of Oral Representations put at the 1st CA hearing [REP5-031] and SHP’s Written Summary of Oral Representations put at the dDCO hearing [REP8-033], and will provide further submissions in its response to written questions at Deadline 9.</p>
Article 9(2)(f) – type of security	<p>SHP would respectfully note that this is not accepted by SHP. This matter was discussed at the dDCO Hearing on 7 June 2019 and SHP would refer the ExA to paragraphs 4.1-4.10 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033].</p> <p>SHP would note that in the Applicant’s Written Summary of Oral Submissions put at the DCO Hearing [REP8-015] it asserted that SHP has suggested parent company guarantees had been provided in</p>

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	<p>respect of both Hinkley Point C and Thames Water Utilities Ltd DCO's. That is incorrect. SHP confirmed that a parent guarantee was offered on Hinkley Point C (as noted in paragraphs 4.4-4.6 of SHP's Written Summary [REP8-033]).</p> <p>In respect of the Thames Water Utilities DCO, SHP made the point that the entity had a regulatory capital value approaching £11 billion (the inference being that there was no need for a parent company guarantee) yet the ExA in that case still felt unable to make a judgement on the security of funding for the implementation of the project. The ExA is referred to SHP's comments on the Applicant's answer to third written question F.3.11 [REP8-035] for a more comprehensive summary.</p>
Article 18(7) and (8)	<p>SHP does not agree that the yellow code paragraphs 18(7) and 18(8) have been accepted by all parties.</p> <p>SHP has made a number of previous submissions on this point, prior to the matter being discussed in the dDCO Hearing on 7 June 2019 - SHP would refer the ExA to paragraphs 4.11-4.17 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033]. SHP's submission included proposed drafting for amendments to this Article and it is noted that the ExA has requested the Applicant comment on this drafting in written question DCO.4.11.</p> <p>SHP has explained both the practical difficulties with the drafting (as it refers to the operation of the Parking Services Agreement with the DfT) and the inappropriate nature of the powers that would be conferred upon the Applicant (given its past conduct).</p> <p>SHP has submitted detailed evidence to the examination regarding the Applicant's conduct (which has been highly prejudicial to SHP). SHP would note that the ExA has not directed any questions to either SHP or the Applicant on this matter, nor has the Applicant elected to comment on, or challenge, any of the evidence submitted by SHP. It is not surprising to SHP that the Applicant wishes to gloss over issues regarding its past conduct.</p> <p>SHP consider that the ExA must have regard to the Human Rights Act 1998, which expressly</p>

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	<p>incorporates Article 1 of the first protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This places certain obligations on the State not to, inter alia, interfere with the peaceful enjoyment of property or deprive a person of their possessions. Any interference by the State must be in pursuit of the public interest, be in accordance with law and proportionate. It is SHP's view that the Applicant's previous unreasonable and aggressive behaviour must be a consideration of the ExA and Secretary of State.</p>
Article 19	<p>SHP would refer the ExA to paragraphs 3.6-3.10 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033]. This included suggested drafting of new paragraphs 3 – 7 of Article 19, which SHP notes that the Applicant has been asked to comment on in fourth written questions issued by the ExA.</p>
Article 26	<p>SHP notes the ExA intends to examine this further following submissions of SHP and discussion at the dDCO hearing. SHP notes that the ExA has asked the Applicant to comment on the amendments proposed by SHP.</p> <p>SHP has summarised its submissions on this matter in paragraphs 4.18-4.23 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033].</p>
Article 29	<p>SHP would refer the ExA to proposed amendments to paragraphs 4.24-4.25 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033].</p> <p>SHP notes that the ExA has asked the Applicant to comment on the amendments proposed by SHP.</p>
Schedule 1	<p>SHP has made extensive submissions regarding;</p> <ul style="list-style-type: none"> • the requirement for the dDCO to only include those works that can rightfully form part of the application under s115 of the Planning Act 2008; • the Applicant's decision to include works as claimed NSIP development that do not meet the

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	<p>requirements of section 14 and 23 of the Planning Act 2008;</p> <ul style="list-style-type: none"> • the inclusion of works that do not satisfy the Associated Development criteria; • the failure of the Applicant to honour its commitment, given at the first dDCO hearing on 10 January 2019, to provide an explanation and justification of all works that it claims comprise the NSIP development and associated development. <p>SHP would refer the ExA to its most recent submissions on this matter as set out in;</p> <ul style="list-style-type: none"> • SHP’s comments on the Applicant’s answers to second written questions CA.2.18, DCO.2.10, DCO.2.34 and DCO.2.44 [REP7-014]; • paragraphs 3.1 – 3.5 of SHP’s Written Summary of Oral Representations put at the dDCO hearing [REP8-033]; • section 7 of SHP’s Written Summary of Oral Representations put at the Compulsory Acquisition Hearing [REP8-030]. <p>SHP would note that on pages 12-14 of the Applicant’s Written Summary of Oral Representations put at the DCO Hearing [REP8-016], the Applicant again seeks to change its position on what constitutes the principal development. This lack of consistency was highlighted in paragraph 3.4 of SHP’s Written Summary [REP8-033].</p> <p>The Applicant’s flip flopping and ever shifting position (even at this late stage in the examination) is exactly the reason why it should have provided to the examination the explanation and justification of every Work No. that it had categorised as NSIP development and Associated Development. This should have been included as part of its application, but certainly no later than it had committed to do at the dDCO Hearing held on 10 January 2019.</p>

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	<p>The ExA may also be familiar with the approach Heathrow is taking to principal development and associated development within its Statutory Consultation documentation (which was published on 18 June 2019). SHP would particularly draw the ExA’s attention to the following;</p> <ul style="list-style-type: none"> • Heathrow will be seeking approval for its DCO under s23(5)(a) of the Planning Act 2008. Heathrow would satisfy this test as the effect of its proposal is <i>“to increase by at least 10 million per year the number of passengers for whom the airport is capable of providing air passenger services.”</i> • 95% of freight handled by Heathrow is carried in the belly-hold of passenger aircraft. Heathrow note that belly-hold cargo typically contributes 5-10% of revenues on long-haul passenger flights, making a significant contribution to the fixed costs, and therefore viability, of a flight route. • Belly-hold cargo in passenger aircraft forms an intrinsic part of Heathrow’s business model, and is therefore key to delivering the increase in passenger throughput. It is clear that a direct relationship between cargo facilities and the principal development at Heathrow, and it is therefore appropriate for Heathrow to categorise the cargo related development as associated development – see paragraph 4.9.9 of the Preferred Masterplan document. • For the Applicant to now to be claiming that passenger related infrastructure is principal development is extraordinary. Furthermore, there would not even be the type direct relationship that exists between cargo and passengers at Heathrow - freight can travel in the belly-hold passenger aircraft but passengers cannot be serviced by dedicated freight aircraft. • It is apparent from the documentation published as part of its Statutory Consultation that Heathrow is also taking a very careful, evidenced approach to every square metre of claimed associated development (which is principally on land within its ownership and control). <u>Heathrow has explicitly stated that only associated development that is essential for the successful operation of the airport has been included.</u> SHP will include further relevant detail on

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	<p>the Heathrow proposal as part of SHP's Deadline 11 submission commenting on the Applicant's answers to fourth written questions.</p> <ul style="list-style-type: none"> The contrast between Heathrow's evidence based approach (which seeks to minimise land requirements) contrasts sharply with the cavalier approach taken by this Applicant - which appears to be based on maximising land take without explanation or justification.
Schedule 2 – Requirement 2	SHP would refer the ExA to paragraphs 5.1-5.2 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033], why the time period permitted to commence development should be reduced in line with the drafting provided in paragraph 5.2.
Schedule 2 – Requirement 9b	<p>SHP would note that the proposed developments at both Stansted and Heathrow propose that residential properties within the 57 dB LAeq (16 hour) day time contour will be eligible for noise insulation compensation. The information on Stansted was appended as Appendix 3 to SHP's Written Summary of Oral Representations put at the HRA, biodiversity and other environmental issues hearing held on 5 June 2019 [REP8-032].</p> <p>It is important to note that an equivalent noise contour for Manston would be based on less frequent but far noisier disturbance events than those within the equivalent 57 dB LAeq (16 hour) day time contour near Stansted / Heathrow.</p> <p>Accordingly, restricting compensation to those in the 60 dB contour would provide the local community in Thanet (and Ramsgate in particular) with far less protection than be afforded communities near Stansted and Heathrow. It is also noted that other airports, such as London City Airport and Bristol Airport operate schemes from 57 dB LAeq (16 hour).</p> <p>The ExA may also be aware that paragraph 3.122 of the Government's Aviation 2050 green paper goes further in proposing that for;</p>

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	<p data-bbox="936 336 2040 440"><i>“airspace changes which lead to significantly increased overflight, to set a new minimum threshold of an increase of 3dB LAeq, which leaves a household in the 54dB LAeq 16hr contour or above as a new eligibility criterion for assistance with noise insulation.”</i></p> <p data-bbox="824 480 2040 544">It would seem logical that this lower threshold should apply to an airport that would have been closed for at least 8 years.</p> <p data-bbox="824 587 2040 727">SHP would also refer the ExA to its submission [AS-207], which demonstrates that Appendix ISH6-21 of the Applicant’s Written Summary of Oral Representation put to ISH 6 [REP8-015] provides a wholly misleading perspective of the levels at which Noise Insulation provisions will apply at other UK airports.</p>
Schedule 2 – Requirement 9c.	<p data-bbox="824 807 2040 903">SHP would refer the ExA to paragraphs 2.14-2.16 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033]. This provides an explanation as to why a quota count of 3,028 would provide no effective control on operations.</p>
Schedule 2 – Requirement 9d.	<p data-bbox="824 946 2040 1042">SHP would note that placing area restrictions on the 50dB(A) Leq16hr (0700-2300) and 40dB(A) Leq8hr noise contours would not provide affective control of operations, particularly given the proximity of Ramsgate to the airport site.</p> <p data-bbox="824 1086 2040 1150">Accordingly, in order to provide adequate protection, noise contour caps should relate to higher ranges (e.g. 57dB(A) Leq16hr) with a consequential reduction in the area covered.</p> <p data-bbox="824 1193 2040 1327">The Applicant has consistently shown a complete lack of transparency regarding the noise impacts having not followed normal practice – the Applicant has not provided noise contours at 3 dB intervals, did not use the independent ERCD to prepare the noise contours and it has been extremely difficult for the local community to understand how, and by how much, they could be affected by aircraft</p>

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	<p>noise.</p> <p>It has therefore been left to interested parties such as Five10Twelve Ltd and NNF to submit reports prepared by the independent ERCD. These showed the noise contours at 3 dB intervals and highlighted material issues with the contours submitted by the Applicant.</p> <p>With regard to the robustness of the ERCD analysis, the ExA is referred to paragraph 9.175 of the Uttlesford DC planning committee report relating to the expansion of Stansted (included within the Appendix 3 referred to in the commentary on Requirement 9b. above), which states;</p> <p style="text-align: center;"><i>“For the purposes of the ES aircraft noise modelling has been produced by the CAA’s Environmental Research and Consultancy Department (ERCD), using their Aircraft Noise Contour (ANCON) model (current version 2.3). The ERCD is a specialist body within the CAA with national and international expertise on the assessment of aircraft noise. They produce noise contours for the designated London airports, and they generated the noise contours used by the Airports Commission. Their work is robust, authoritative and also impartial.”</i></p>
Schedule 2 – Requirement 19	<p>SHP would note that this is coded yellow but there remains significant issues with this drafting.</p> <p>SHP would refer the ExA to its comments above on the definition of “airport-related” in Article 2 and the issues with Schedule 1 as drafted. In summary, Works Nos. 1 to 11 and 13 are not all NSIP development, and the requirement for Works No.s 15, 16 and 17 to merely support the operation of those works would not satisfy the tests for associated development.</p>
Schedule 2 – Requirement 19a.	<p>SHP would refer the ExA to paragraphs 2.1-2.13 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033]. This explains the risks associated with the <u>erroneous fleet mix assessed by the Applicant</u>, and suggests that a sub-cap restricting cargo aircraft movements to no more than 12,860, would be required to provide a more robust protection for the local community. This would also need to work in tandem with a far more robust noise contour cap as discussed on</p>

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	comments on Requirement 9d above.
Schedule 2 – new DIO requirement	SHP would refer the ExA to paragraphs 5.3-5.4 of its Written Summary of Oral Representations put at the dDCO Hearing [REP8-033]. This explains why development with safeguarded areas in relation to the existing HRDF Beacon should not commence until the DIO has a replacement HRDF Beacon that is operational and has been shown to deliver equivalent or better technical performance.