

Dear Sirs,

A. Summary of Applicant's latest funding position

In its most recent Funding Statement [REP7a-007] the Applicant has made the following updates:

1. *"The conservative estimate of the number of properties eligible for noise insulation has been set at 275 rather than 225 (the actual figure being 232, as noted in the summary of case put at the noise Issue Specific Hearing (REP5-010))*
2. *"The resultant cost figures [...] increased to reflect this correction in the number of properties:*
 - a. *Noise insulation costs of 275 x £10,000 = £2.75M rather than £2.25M;*
 - b. *Noise mitigation costs of £1.6M + £2.75M = £4.35M rather than £3.85M; and*
 - c. ***Compensation and noise mitigation costs of £4.35M + £7.5M = £11.85M rather than £11.35M***

At paragraph 12 of the Funding Statement [REP7a-007] the Applicant states that the funder of the project is a Belize registered company M.I.O Investments Limited, and that the company is committed through a revised Joint Venture Agreement [REP5-011] to fund compulsory acquisition and noise mitigation required by the DCO as detailed in the summary below paragraph 29 of the funding statement (reproduced below):

Type of funding	Estimated amount	When secured	How secured
Blight claims	£0.5M	Now	In Accountant's account now
Land acquisition	£7.5M	Now	Joint Venture allows draw-down of this amount
Noise mitigation	£4.35M	Now	
Project capital costs	£306M	Upon grant of DCO	Funders to be selected from parties who have already expressed interest and who may subsequently do so

The Applicant goes on to state that **whilst the summary totals £11.85M¹, the Joint Venture [REP5-011] commits M.I.O Investments Limited to £15M.** The Applicant claims that this means it has more than 25% contingency [REP7a-007, para 13]

According to the Applicant each of the funding categories covers the following costs:

Type of funding	Costs covered
Blight claims	Statutory blight pursuant to paragraph 24(c) of Schedule 13 to the Town and Country Planning Act 1990 covering three types of land owners: small businesses, owner-occupiers and agricultural units. The Applicant maintains CBRE has advised that there is no land under compulsory acquisition under this application in any of these categories [REP7a-007, para 28]

¹ Contrary to the Applicant's calculations the summary totals £12.35M (excluding Capital costs).

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Land acquisition	Budget to cover ‘the necessary land for the project, valued in the ‘no-scheme world’” ²
Noise mitigation	Applicant’s noise mitigation measures Successful Part I claims i.e. for loss in market value due to operation of the project [REP7a-007, para20] <ul style="list-style-type: none"> • Insulation policy and Part I claims: £2.75M (up to 275 properties at £10,000 each) • Relocation policy: £1.6M (up to 8 properties)
Project capital costs	Phase 1: £186M. “Bring the airport back into use” [REP7a-007, para 17] Phases 2-n(TBC): £120M. “Remaining phases [...] over a 15 year period” [REP7a-007, para 17] Total: £306M To include [REP7a-077, para 2] (phasing unstated): <ul style="list-style-type: none"> a. An area for cargo freight operations including 19 additional stands able to handle at least 10,000 movements per year; b. Facilities for other aviation related development, including: <ul style="list-style-type: none"> i. A passenger terminal and associated facilities ii. An aircraft recycling facility iii. A flight training school iv. A base for at least one passenger carrier v. A fixed base operation for executive travel vi. Business facilities for airport related activities

B. Funding obligations under ExA’s second draft Development Consent Order

Article 9 of the dDCO – Guarantees in respect of payment of compensation etc. requires the following:

*1.—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 19 to 33, until—
(a) subject to paragraph (3), security of £13.1 million has been provided in respect of the liabilities of the undertaker”*

The **liabilities of the undertaker** are set out in Part 2 Principal Powers Article 9 Guarantees in respect of payment of compensation etc, as follows:

- (i) **To pay compensation, to landowners in connection with the acquisition of their land or of rights over their land** by the Applicant exercising its powers under Part 5 of this Order; and
- (ii) **To pay noise insulation costs and relocation costs as required by Requirement 9 of Schedule 2** to this Order; [...]

² No-scheme world: The case of Transport for London (formerly London Underground Limited) v Spierose Limited (in administration) [2009] UKHL44 decided by The Appellate Committee of the House of Lords found that hope value for development should be valued on the basis of a sliding scale. In short, the valuation must take into account the potential of the land, including its potential for development; and the development potential must be valued in the normal way, by discounting for future uncertainties.

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Requirement 9 of Schedule 2 of this Order states:

- (1) **The noise mitigation plan must be carried out in full**
- (2) The authorised development must be operated in full accordance with the noise mitigation plan

C. In view of the Applicant's funding obligations is £13.1M adequate?

In the ExA second draft Development Consent Order under TABLE 5 - *Table of provisions in the dDCO which will be subject of further examination in the ExA's Fourth Written Questions*, the Examining Authority states against A9 that it will, "**further examine the adequacy of the sum secured in Article 9(1)(a)**"

As at 26 June 2019, less than two weeks to the end of this Examination, the Applicant has failed to provide proof of:

- Existence of £13.1M of funds for this project
- Named investors in M.I.O Investments (the alleged funding source for £15M of funds)
- Named investors' consent to invest £15M of funds in this project
- HLX Directors Limited's authority to act on behalf of M.I.O Investments and legally bind investors in M.I.O Investments under the Joint Venture Agreement to provide £15M of funds [REP5-011]
- HLX Directors Limited's relationship to Helix Fiduciary AG, the company that controls the Investor bank accounts alleged to hold £15M of liquid assets for this project
- Helix Fiduciary AG's authority to release £15M of named investors' assets for this project
- Ability to fund shortfalls in land acquisition and project costs should they exceed £15M [REP7a-007, para 13].

We nevertheless thank the Examining Authority for recognising the likely and significant risk that £13.1M is not sufficient for the Applicant to meet its obligations under Part 2 Principal Powers Article 9 Guarantees in respect of payment of compensation etc and Requirement 9 of Schedule 2 of this Order. It is reassuring that the Examining Authority seeks to assess this risk irrespective of whether the Applicant is able to provide evidence of £13.1M.

The remainder of this D9 submission provides a list of known un-costed, un-budgeted items that relate to (1) landowners in connection with the acquisition of their land or of rights over their land by the Applicant exercising its powers under Part 5 of this Order, or (2) noise insulation costs and relocation costs as required by the noise mitigation plan. It also provides a list of (3) Other unresolved items that relate to these two requirements that are not currently provided for in the dDCO (e.g. cost associated with the relocation of HDRF which is linked to the compulsory acquisition of Crown Land).

A list was first provided at Deadline 8 [and can be found on pages 12-15 of the written submission [REP 8-064]. This list has been further refined following concerns raised at the Issue Specific Hearings, 03 – 07 June 2019, and the Examining Authority's Fourth Written Questions.

Please see tables below for cost shortfall estimates.

D. Conclusions from this analysis

The Applicant is seeking to compulsorily acquire land and land rights to deliver a Nationally Strategic Infrastructure Programme. As I have argued in a separate Deadline 9 submission entitled 'Objection' [Ref to be assigned], early-stage companies such as this Applicant present an extremely high risk profile for many reasons, including but not limited to resource constraints (financial and human). On balance a start-up is extremely unlikely to succeed in delivering a Nationally Strategic Infrastructure Programme.

The financial constraints of this Applicant are demonstrated in the cost shortfall estimates below. This analysis shows that the Applicant has grossly underestimated its financial responsibilities in delivering a programme of this complexity, size and scale in such close proximity to small but densely populated conurbations.

The analysis suggest the Applicant requires upward of £68M to meet its obligations under the DCO with respect to Landowner compensation and noise mitigation compensation. As the analysis shows this is a conservative figure. The Applicant is currently struggling to show evidence of £13.1M. £13.1M is wholly inadequate for this application.

I respectfully request the Examining Authority that Article 9 of the second draft DCO – Guarantees in respect of payment of compensation etc. be amended to contain an appropriate sum for this programme, and would suggest the following:

**1.—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 19 to 33, until—
(a) subject to paragraph (3), security of £68 million has been provided in respect of the liabilities of the undertaker”**

I further respectfully ask the Examining Authority to consider carefully whether this application can proceed further given the funding issues to date, and the extent to which the Applicant has under-estimated its up-front financial responsibilities. This ineptitude on the part of the Applicant to recognise its responsibilities adds further weight to the very serious concerns raised in my Deadline 9 Objection submission, and which I attach below for ease of reference.

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(1) Landowners in connection with the acquisition of their land or rights over their land by the Applicant exercising its powers under Part 5 of this Order				
Landowner	Site Required	Ownership	Current Status	Est. Shortfall
SHP	15 – 21; 23 – 28; 36 – 39; 43; 45 – 50; 53 – 59; 68 – 73; 77 – 81; 83 – 86; 88; 90; 92; 94 – 104; 107 – 109; 111; 113 – 117; 123; 124; 127; 128; 130; 133; 134; 136; 142 – 147; 149; 152 – 155; 159; 160; 162; 165 – 186; 015a; 015b; 016c; 019a; 019b; 020a; 026a; 041a; 043a; 047a; 048a; 049a; 049b; 050a; 050b; 050c; 050d; 050e; 051b; 051c; 053a; 054a; 056a; 070a; 072a; 114a; 177c; 185a; 185b; 185e; 185f	Freehold	Stone Hill Park Ltd’s (SHP) Oral Submissions put at the Compulsory Acquisition Hearing held on 20 March 2019, submitted at Deadline 5 on 29 March [REP5-index number to be allocated] restates part of Appendix 6: Compensation Assessment to SHP’s Written Representations [REP3-025].	Under the dDCO valued at £7M In paragraph 8.2, Avison Young (formerly GVA) states: “The compensation provision made in RSP’s funding statement is insufficient [...] RSP’s most recent offer of £20m excludes any value associated with residential development potential.” Based on a conservative valuation of £20M v current budget of £7M: Est. Shortfall: £13M+
CA.3. 3 Crown Land: MoD Lands [REP7a- 026]	Motor Transport Unit (026)	Freehold	Operational serving the Defence Fire and Rescue Establishment opposite). MoD wishes to retain this facility in its current location.	SHP land accounts for 93% of the total in- scope surface area. It would appear that the Applicant has valued the TOTAL land at the same £/m2 i.e. £7M / 0.93 = £7.5M On this basis all other landowners’ land has been valued at £0.5M
CA.3. 3 Crown Land: MoD Lands [REP7a- 026]	Aerial Farm (038)	Freehold	Redundant although the relevant internal MOD confirmation of this is still awaited. There is also a 150m exclusion zone around the Aerial Farm	On this basis all other landowners’ land has been valued at £0.5M
CA.3. 3 Crown Land: MoD Lands [REP7a- 026]	In excess of 50 further sites: plots 15; 17; 18; 20; 23; 24; 25; 27; 28; 36; 37; 39; 40, 41-50; 54; 55; 58; 68; 69; 70; 102; 103; 114; 15a; 16a; 18a; 18b; 19b; 20a; 26a; 40a; 41a; 42a; 43a; 45a; 45b; 47a; 48a; 48b; 49a; 49b; 50a; 50b; 50c; 50d; 50e; 51b; 53a; 53b; 70a; 114a	Legal Interests	Applicant wants the MoD to release such legal interests as it may have in the land parcels.	Why would this calculation apply to occupied, operational sites? Or to restrictions to peoples’ gardens? Notwithstanding the above, by applying RSP’s own valuation methodology to the land as a whole based

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(1) Landowners in connection with the acquisition of their land or rights over their land by the Applicant exercising its powers under Part 5 of this Order				
Landowner	Site Required	Ownership	Current Status	Est. Shortfall
CA.3.20 Savills, Agents to St John's College, University of Cambridge	Plots 1-9; 11; 13 <i>Thought to be required for the location of Applicant landing lights</i>	Freehold	The applicant had previously confirmed that they had no design details relating to the proposed landing lights and neither were they able to confirm whether they would be looking at a freehold or leasehold acquisition. [...] the Applicant's letters made no attempt to address the points of concern [...]. Therefore the College are unable to take a view on this matter.	on their offer to SHP of £20M (still deemed by SHP to be insufficient) then the remaining land would be valued in excess of £1.5M v current budget of £0.5M Est. Shortfall: £1M+
CA.3.27 RAF Manston Spitfire and Hurricane Memorial Museum	Plot 47	Freehold	RSP verbally committed to: <ul style="list-style-type: none"> • Capital costs of relocating museum to the Northern Grass • Fit-out and removal costs • Re-gifted freehold as soon as the DCO is secured. 	
Various. PSZs have a defined boundary which is used to restrict development. Most types of development within the boundary would normally be refused – particularly if the development will draw more people into the PSZ. Within a smaller, higher risk, area within each PSZ there is a requirement for airports to purchase residential properties so that they are no longer occupied.	The designation [...] of a 1 in 100,000 PSZ would have significant implications for planning policy in the district, and would need to be addressed in the proposed review of the Local Plan (TDC)	Freehold	2 sites allocated for housing development in Ramsgate in the Draft Local Plan would be affected by the boundaries (OP.2.7). <ul style="list-style-type: none"> • One of these sites has current planning permission and has been substantially built out (Lorne Road), • the other site has planning permission for 6 dwellings, and an additional 16 allocated but not covered by a planning permission. (Seafield Road/Southwood Road). <p>As well as these specific allocations, the draft plan makes provision for windfall sites (within the urban confines) to come forward with approximately 2,500 homes by 2031 across the whole district.</p>	RSP has budgeted £1.6M in relocation costs for 8 homeowners which amounts to £0.2M per house. There would be a requirement on RSP to purchase and relocate all homeowners in the PSZ. The number of homes is not known Lorne road: 3 houses Other site: 6 dwellings Additional 16 dwellings = 25 x £0.2M = £1.8M As a benchmark according to Streetcheck there are 150 dwellings on Lorne Road; 157 dwellings on Seafield Road and 155 dwellings on Southwood Road Assuming 500 dwellings within the PSZ then the

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(1) Landowners in connection with the acquisition of their land or rights over their land by the Applicant exercising its powers under Part 5 of this Order				
Landowner	Site Required	Ownership	Current Status	Est. Shortfall
			Relocation of homeowners in the PSZ (DfT)	relocation cost would be £100M We consider an estimated shortfall based on 25 dwellings to be extremely conservative. On this basis the shortfall is: Est. Shortfall: £5M+
Costs associated with the xx zone around a relocated HDRF				Land in Thanet will drop in value. How would landowners be compensated? Est. Shortfall: TBC
Relocation of Caravan owners	Smugglers Leap	Rented / leasehold	Compensation to make provision for static caravan owners to buy out their rental contracts and relocate	On the very crude basis that a static caravan costs £0.03M and an average house in Ramsgate costs £0.2M, and on the basis of 40 caravan owners and the Applicant's homeowner relocation allowance of £0.2M per homeowner then relocation can be estimated at: $40 * 0.03 / 0.2 * 0.2 =$ £1.2M Est. Shortfall: £1.2M+
ESTIMATED LAND ACQUISITION SHORTFALL:				£20.2M+

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(2) Noise insulation costs and relocation costs as required by the noise mitigation plan				
Description	Current NMP Offer	Requirement	Impact	Est. Shortfall
<p>Noise mitigation compensation</p> <p>Applicant estimated incremental cost needed to provide noise insulation at 60dB LAeq(16hr)</p>	<p>Up to 275 homes to receive compensation of £10,000 each by virtue of being in the 63dB LAeq(16hr) noise contour</p>	<p>In the Examining Authority's second draft DCO it is proposing a revised daytime threshold in order to align the daytime noise threshold with current and emerging policy including the Government's proposed changes currently the subject of consultation.</p> <p>New requirement R9b reads: <i>"Residential properties with habitable rooms within the 60dB LAeq (16 hour) day time contour will be eligible for noise insulation and ventilation detailed in Noise Mitigation Plan."</i></p>	<p>Applicant has estimated a cost increase based on its noise contour maps of £8.3M</p>	<p>833 * £10K = £8.33M</p> <p>Est. Shortfall: £5.6M</p>
<p>Noise mitigation compensation</p> <p>Residents' estimated incremental cost needed to provide noise insulation at 60dB LAeq(16hr) to the correct number of impacted households based on CAA Noise Contour Maps</p>	<p>The Applicant states in paragraph 2.28 of its Summary of Applicant's Case put Orally at the Biodiversity and Habitats Regulations Assessments hearing and associated appendices [REP8-015] that:</p> <p><i>"Should the 60dB daytime contour be adopted as the level at which noise insulation and ventilation is provided to affected properties a total of 833 properties would qualify under the Noise Mitigation Plan (NMP) [APP-009]. In this scenario the total cost of noise insulation and ventilation would be £8,330,000."</i></p>	<p>The CAA noise contour maps prove the Applicant noise contour maps to be inaccurate. According to the CAA noise contour maps:</p> <p>100E Leq contours show 2,100 households in >60dB LAeq (16hr)</p> <p>100W Leq contours show 1,150 households in >60dB LAeq (16hr)</p> <p>70%W / 30%E Leq contours show 1,350 households in >60dB LAeq (16hr)</p> <p>30%W / 70%E Leq contours show 1,800 households in >60dB LAeq (16hr)</p>	<p>Applicant estimates 833 households; CAA estimates 4,050 to 8,250 households</p>	<p>Using the UK prevailing wind condition of 30%W / 70%E then a conservative 1,800 households as compared the applicant's estimated 833 fall within the 60dB LAeq(16hr) noise contour.</p> <p>The incremental additional shortfall would therefore be (1,800 – 833) * £10K = £9.7M</p> <p>Est. Shortfall: £9.7M</p>
<p>Noise mitigation compensation</p> <p>Residents respectfully ask the Examining Authority</p>	<p>Up to 275 homes to receive compensation of £10,000 each by virtue of being in the 63dB LAeq(16hr) noise contour</p>	<p>Update requirement R9b reads: <i>"Residential properties with habitable rooms within the 57dB LAeq (16 hour) day time contour will be eligible</i></p>		<p>Using the UK prevailing wind condition of 30%W / 70%E then a conservative 6,500 households fall within</p>

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(2) Noise insulation costs and relocation costs as required by the noise mitigation plan				
Description	Current NMP Offer	Requirement	Impact	Est. Shortfall
to benchmark against noise mitigation plans offered by other expanding UK airports (e.g. LHR; LCY; Bristol; Stanstead) and ensure residents in Thanet are not disadvantaged by this Applicant		<p><i>for noise insulation and ventilation detailed in Noise Mitigation Plan.”</i></p> <p>According to the CAA noise contour maps:</p> <p>100E Leq contours show 8,250 households in >57dB LAeq (16hr)</p> <p>100W Leq contours show 4,050 households in >57dB LAeq (16hr)</p> <p>70%W / 30%E Leq contours show 4,650 households in >57dB LAeq (16hr)</p> <p>30%W / 70%E Leq contours show 6,500 households in >57dB LAeq (16hr)</p>		<p>the 57dB LAeq(16hr) noise contour.</p> <p>Based on a tiered scheme that offers £3,000 to households in 57dB LAeq(16hr) contour (and £10,000 to households from 60dB LAeq(16hr)) then an additional 4,700 households would be eligible for compensation at £3K</p> <p>Est. Shortfall: £14.1M</p>
Noise mitigation compensation for schools	<p>In the revised Noise Mitigation Plan submitted at Deadline 8 [REP8-005] the Applicant states that it will contribute £50K per annum to a Community Trust Fund [REP8-005, para 9.3] and in addition will make a contribution of 1% of the annual budgets of each of the 7 schools predicted to fall within the 50dB noise contour. It goes on to state that this is secured via the Section 106 Contribution.</p> <p>In the Deadline 8 s106 Agreement submission [REP8-006] under Scheule 7 the Applicant defines “Schools Contribution” to mean an annual payment of £139,000. This contribution will be made annually for 20 years</p>	<p>The Applicant is spreading the cost of noise insulation over 20 years. Based on the NMP and the s106 Agreement it commits a total of</p> <p>£1M via Community Trust Fund £2.78M via s106</p> <p>Totalling £3.78M</p> <p>This is to cover noise mitigation for seven schools, meaning an average noise mitigation compensation contribution of £0.54M per school.</p> <p>We respectfully request this sum to be paid up-front and in full under the Noise Mitigation Plan</p>	7 schools	Est. Shortfall in Year 1: £3.6M

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(2) Noise insulation costs and relocation costs as required by the noise mitigation plan				
Description	Current NMP Offer	Requirement	Impact	Est. Shortfall
	[REP8-005, Schedule 7 para 2.1.3]			
Noise mitigation compensation for schools	We believe the Applicant has under-estimated the number of schools in the 50dB noise contour and that there are at least 10	To cover noise mitigation for an additional three schools, at the average noise mitigation compensation contribution of £0.54M per school.		Est. Shortfall: £1.6M
Night noise compensation	Currently impossible to assess due to lack of information from the Applicant and lack of robust night flight ban in the DCO / NMP.	New requirement R9c requested of the Examining Authority to make provision for noise mitigation compensation based on a nighttime noise threshold consistent with current and emerging policy including the Government's proposed changes currently the subject of consultation.	TBC	Est. Shortfall: TBC
ESTIMATED NOISE MITIGATION COMPENSATION SHORTFALL:				£34.6M+

(3) Other unresolved items		
Landowner	Requirement	Current Status
CA 2.4 HRDF	Relocation of Nationally strategic infrastructure	"The cost of relocating this and any other costs relating to the MOD's interests does not appear to have been included in the figure for compulsory purchase acquisition submitted by the Applicant" [REP7a-026]
Compensation for costs incurred by other parties due to Applicant's failure to fulfil its obligations during this Examination	SHP Compensation	SHP compensation for costs incurred in defending the DCO, claimed under DCLG, Awards of costs: examinations of applications for development consent orders. Guidance'
	Interested Parties compensation	Interested Parties costs incurred in defending the DCO, claimed under DCLG, Awards of costs: examinations of applications for development consent orders. Guidance'
Business owners	Compensation to make provision for local businesses required to close and/or relocate as a consequence of this project	
Kent County Council	Funding to make provision for KCC requirement for a financial contribution under section 106 of the Town and Country Planning Act 1990 towards the Thanet	

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(3) Other unresolved items		
Landowner	Requirement	Current Status
	Transport Strategy, plus costs to complete a revised apportionment exercise by KCC's specialist consultants (SEE KCC's response to second written question Tr.2.2)	
Kent County Council	Funding to make provision for KCC requirement for necessary monitoring (and implementation if deemed necessary) of a controlled parking zone around the site (SEE KCC TR.3.44).	
Historic England	Funding to address the requirements of Historic Buildings	In its response to Third Written Questions Historic England states: "1.5Historic England has taken the view that because inadequate survey of such buildings and features has been undertaken at Manston it has not been possible to determine whether the individual features or groups of features have strong individual or associational importance; however it is plausible that some of them will be found to have such importance following further survey and analysis. Therefore, we think that the applicant has been too dismissive of the potential importance of historic buildings. [...]1.8 We think it is premature of the applicant to say that their loss can be adequately mitigated by recording of the structures. No clear and convincing justification has been offered, including demonstration that harm has been avoided as far as possible in order to conserve and enhance heritage significance, and little consideration appears to have been given to the contribution their conservation could make to the character of the place and public appreciation.

OBJECTION

I would like to commend the Examining Authority on the process that it has run in relation to this application. You have sought to facilitate a thorough, fair and transparent process in very difficult circumstances.

This being said, it is apparent that the NSIP DCO Planning process is not designed (and therefore not fit-for-purpose) to adequately assess proposals from networks of offshore and onshore privately owned early-stage companies with no assets, no existing operations, and inadequate disclosure of investment.

The NSIP DCO Planning process is clearly intended for applicants that are either from the public sector (local councils, Highways England; Transport for London; Network Rail; Port of London) or are established, well-funded private operators with audited accounts that demonstrate sizable balance sheets (Heathrow Airport; London Luton Airport). See Appendix 1.1.

In view of this inherent weakness in the relevant legislation and given the weightier responsibilities on the Government where Articles under the European Convention for Human Rights are engaged³ it seems inconceivable to the ordinary person that the NSIP DCO process is not adapted to take account of the significant risks of such an Applicant. Early-stage companies present a much higher risk profile for many reasons, including but not limited to resource constraints (financial and human). On balance a start-up is extremely unlikely to succeed in delivering a Nationally Strategic Infrastructure Programme.

I respectfully suggest to the Examining Authority that in spite of the excellence you have shown through this examination, that this Applicant has been assessed under relevant planning legislation and that this has resulted in vital questions going unasked. As a result, the Applicant now presents a significant risk to the Government if its application is approved.

The Applicant is struggling to afford the cost of the most minimal mitigation measures to address the impact of its scheme on Ramsgate, Herne Bay and the Villages. It is tens of millions of pounds short of offering a scheme that delivers parity with other UK Airport Operators currently expanding their operations.

To allow this application to proceed without adequate redress to the infringement of residents' human rights I believe leaves the UK Government exposed as not having done enough to protect residents against the economic interests of this Applicant.

The lack of sufficient due diligence goes to the heart of assessing viability of the Applicant's scheme and its claimed economic benefit. The UK Government is required by law to demonstrate proportionality in weighing the economic contribution of the scheme against the infringement of impacted residents'

³ See *Hatton & Others v The United Kingdom* for evidence that Articles 8 & 13 of the European Convention for Human Rights are engaged in case of aircraft noise. Appendix 1.3 and [REP5-077]

human rights. Due diligence is standard practice in the evaluation of viability, particularly when entering into a transaction with an early-stage company. Due diligence protocols exist to provide a framework of good practice and to safeguard against omissions. It is regretful given the life-changing impacts of this application that relevant legislation failed to require due diligence to be undertaken with the use of a due diligence protocol. Appendix 1.2. The consequence is that this Applicant's management team and its few known investors have not been adequately tested. This would ordinarily have a very significant bearing on the assessment of a start-up company's likely viability.

Whilst I commend this Examining Authority for your tireless attempts to work within the constraints of the relevant legislation, I feel I have no choice but to register a complaint against the NSIP DCO process as relates to Aviation; the relevant legislation has failed to take account of the high level of risk associated with a start-up aspiring to deliver a programme of Nationally Strategic significance and scale that will shatter peoples' **right to respect for our private and family life, and our home**⁴. In such cases relevant legislation should require full and systematic due diligence to be undertaken.

A sample of due diligence *Investor* questions are included in Appendix 1.4. These questions were submitted to the ExA at Deadline 4 [REP4-086]. With four weeks to the end of this examination only Q1 has been asked under the relevant legislation.

Insufficient due diligence was at the heart of the Seaborne Freight scandal. Insufficient due diligence is at the heart of this nationally strategic infrastructure programme application. Seaborne Freight was an embarrassment to the British Government that inflicted humiliation at International scale, but was environmentally harmless. This scheme will irreversibly negatively impact over 40,000 inhabitants across Ramsgate, Herne Bay and the Villages.

We find ourselves with less than four weeks to the end of this examination and it is not without difficulty:

1. **Kent County Council has called the entire DCO process into question** due to inadequacies in the Applicant's submissions and late filing of considerable volumes of technical information. See Appendix 1.5
2. The Ministry of Defence has made clear, "**it is [...] difficult to see how the Planning Inspectorate will be able to confirm the application given the safeguarding concerns that the MoD has expressed.**" Appendix 1.6
3. Residents have **questioned the validity of the Environmental Impact Assessments in view of the CAA Noise Contour maps** submitted by Five10Twelve Ltd and No Night Flights, which prove the inadequacies of the Applicant's noise contour maps
4. Residents have **questioned the sufficiency of the Noise Mitigation Plan when benchmarked against other expanding UK airports which offer compensation for noise mitigation starting at 57dB Leq16** (Appendix 1.7). The Applicant's current 63dB Leq16 threshold is constrained by affordability issues (Second ISH on CA when the Applicant's QC stated that "there is no more money")

⁴ Article 8, European Convention on Human Rights

5. **Residents dispute the Noise Mitigation Plan** in view of CAA Noise Contours submitted by Five10Twelve Ltd and No Night Flights. Indeed, with four weeks remaining it is still unknown what the night noise impacts are likely to be.

175 (one hundred and seventy five) pages of Fourth Written Questions from the ExA with less than four weeks to the end of this Examination are surely also evidence of the extent to which this Applicant is high risk and has failed to provide clear answers and resolution to outstanding issues.

175 (one hundred and seventy five) pages of Fourth Written Questions from the ExA will pale into insignificance when compared with the volume of responses to Fourth Written Questions due on 28 June. It is inconceivable that this volume of information will not raise further material concerns and yet it will be impossible to analyse and respond properly, as Kent County Council and Stonehill Park have made clear.

In view of the considerable flaws of this Applicant it is difficult to see how this application could be accepted by the Secretary of State. However, in the event that it is I wish to register this complaint.

Up-front due diligence would almost certainly have confirmed the decision that resulted in a failed CPO attempt under Thanet District Council by this Applicant, and the conclusions of Kent County Council in regards to this application (see Appendix 1.8) and would have enabled the Examining Authority to bring this application to an early close. It would also have prevented the significant cost and wasted resources incurred by:

- Central government (MOD; Department for Transport)
- Local government (Kent County Council and Thanet District Council)
- Statutory bodies including (but not limited to) Natural England, Historic England, Public Health England, Highways England
- Non-statutory organisations (Met Office; Kent Wildlife Trust)
- Legal land owners and land rights holders including (but not limited to) Stonehill Park Limited; Network Rail; NATS; Nemo Link Ltd; Cogent Land; BT Group; RAF Manston Museum; Southern Gas Networks; Southern Water Services
- The many members of the public that have worked tirelessly, mostly through evenings and weekends and using personal holiday days (unpaid, in the case of the self-employed) to inform and attend this examination and who in the case of Five10Twelve Limited and No Night Flights have funded Civil Aviation Authority noise contour maps due to the lack of credibility of the Applicant's noise contour maps, which favour the Applicant in minimising its financial obligations to fund noise mitigation measures and compensation.

The role of this Applicant's directors in failures of previous incarnations of RSP / Manston Airport have not been tested through this Examination; no written questions have resulted from the many submissions including my Deadline 2 Submission [REP2-010] requesting the ExA to look closely at the Applicant's management team and history. Appendix 1.10. Individual Applicant directors held senior positions in prior Manston operations, that resulted in 'gargantuan' loss of private investor funds. Appendix 1.9

Were the relevant planning laws fit-for-purpose for assessing early-stage, small and medium enterprises aspiring to deliver a NSIP that involves compulsory purchase of land and infringement on residents' enjoyment of their homes, then the history and capability of this management team would have formed an integral part in assessing viability of the current application.

The Government has a responsibility to assure proportionality in this decision; how can this responsibility possibly be deemed upheld when essential due diligence on the applicant management team and investors has not been conducted?