

Additional Written Submission by Dr. R. John Pritchard
On Climate Change Issues related to the Manston Airport DCO

1. A number of Interested Parties and Persons Interested in Land, including Stone Hill Park Ltd. and Five10Twelve Ltd.,¹ have suggested that the House of Commons' May Day 2019 Declaration (that the United Kingdom and the planet face a Climate Change Emergency) must in some way be taken into account by the Examining Authority in its Report and Recommendation on the Application by RiverOak Strategic Partners Ltd. for development consent to regenerate and reopen Manston Airport as a Nationally Significant Infrastructure Project. This Written Submission sets out to prove that these contentions by these IPs and PIL are wholly untrue.
2. The May Day 2019 Declaration, a Resolution introduced by the Rt. Hon. Jeremy Corbyn, MP, in the House of Commons and moved by the Rt. Hon. Nicholas Brown, MP,² is non-binding and does not constitute an Act of Parliament. It is acknowledged that no legislation to give effect to that Declaration will be brought before the House of Commons or the House of Lords, much less enacted if it were to be tabled, before the matter of Brexit is resolved.
3. The Chancellor of the Exchequer, the Rt. Hon. Philip Hammond, MP, has warned that implementing provisions to make the UK 'carbon neutral' would cost in excess of £1 trillion.³ There is no chance that the aspiration to lay proposals before Parliament "to deliver a circular, zero waste economy" could be achieved without Treasury support, and it is exceedingly unlikely that such support would be won any time soon. Given the direct and indirect costs of Brexit, that is an unthinkable level of expenditure for the present and next British Government to undertake this side of any General Election. The Civil Service can then be counted upon to take a great deal of time to study these questions exhaustively before any draft implementing legislation can be laid before Parliament, and even that would be unlikely without regard for what other countries will do within the same time-frame.
4. The Planning Act 2008 (as amended), of course, governs the whole development consent regime in respect to Nationally Significant Infrastructure Projects.

1 Anti-aviation or anti-Manston Airport or anti-RiverOak IPs or PIL who have produced Written Submissions concerning Climate Change since the May Day 2019 Declaration have included Adem Mehmet, Cathy Rogers, Ceri Diffley, Chris Lowe (twice), Christopher Bradley, Cllr. Anne Marie Nixey, Deborah Shotton, Five10Twelve Ltd. (thrice), Georgina Rooke, and Stone Hill Park (twice).

2 <https://www.bbc.co.uk/news/uk-politics-48126677>. The debate in the House of Commons can be found here: <https://hansard.parliament.uk/Commons/2019-05-01/debates/3C133E25-D670-4F2B-B245-33968D0228D2/EnvironmentAndClimateChange> and <https://hansard.parliament.uk/Commons/2019-05-01/debates/85FE0864-18D1-42BA-9D3C-CB2D0958D067/EnvironmentAndClimateChange>. The Resolution put before the House and agreed was: "That this House declares an environment and climate emergency following the finding of the Inter-governmental Panel on Climate Change that to avoid a more than 1.5°C rise in global warming, global emissions would need to fall by around 45 per cent from 2010 levels by 2030, reaching net zero by around 2050; recognises the devastating impact that volatile and extreme weather will have on UK food production, water availability, public health and through flooding and wildfire damage; notes that the UK is currently missing almost all of its biodiversity targets, with an alarming trend in species decline, and that cuts of 50 per cent to the funding of Natural England are counterproductive to tackling those problems; calls on the Government to increase the ambition of the UK's climate change targets under the Climate Change Act 2008 to achieve net zero emissions before 2050, to increase support for and set ambitious, short-term targets for the roll-out of renewable and low carbon energy and transport, and to move swiftly to capture economic opportunities and green jobs in the low carbon economy while managing risks for workers and communities currently reliant on carbon intensive sectors; and further calls on the Government to lay before the House within the next six months urgent proposals to restore the UK's natural environment and to deliver a circular, zero waste economy."

3 <https://www.bbc.com/news/uk-politics-48540004>

5. Part 2 of the Planning Act 2008 refers to National Policy Statements and their effect and in Section 5 sets out the procedure by which any NPS may be laid before Parliament and be approved by a Positive or Negative Resolution of the both Houses of Parliament.

6. Under the Planning Act 2008, Section 5 sets out requirements for National Policy Statements that ‘set out national policy in relation to one or more specified descriptions of development’ that may qualify for development consent. Within that section, sub-section 5(7) states “A national policy statement must give reasons for the policy set out in the statement. And s. 5(8) states that **“The reasons in particular include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change.”**⁴ That obligation, of course, precedes the May Day 2019 Declaration, but in reality the two things are very different and should not be conflated.

7. Section 6 of the Planning Act 2008 concerns Review(s) of each national policy statement, and such reviews would be required if the May Day 2019 Declaration were to become bedded into the Planning Act 2008 regime: sub-section 6(1) states that “The Secretary of State must review each national policy statement whenever the [relevant] **Secretary of State** thinks it appropriate to do so. Further sub-sections 6(2) through 6(5) set out what the Secretary of State must take into consideration, how he may review existing policy, and what actions he may then take. Before taking any such steps under s. 6(6) the Secretary of State is required to ‘carry out an appraisal of the sustainability of the policy set out in the proposed amendment’.

8. Anything done under Section 6 of the Planning Act 2008 requires under sub-section 6(7) a full process of consultation, and the final text must then be laid before both Houses of Parliament as a positive or negative resolution.

9. None of the provisions of Sections 5 or 6 of the Planning Act for amending the Airports National Policy Statement have been satisfied or are currently underway since the Airports NPS was published. Given the current state of uncertainty regarding extraordinarily complicated and expensive Airport DCO Projects that are currently moving forward, and the fact that the challenges of Brexit are fully occupying the attentions of Parliament, and that the nation is a present gripped with the question of who will be the next Conservative Prime Minister in place of the Rt. Hon. Theresa May, MP, it is hardly surprising that no plans to amend the present Airports National Policy Statement appear to be in the mind of the present Secretary of State. Accordingly, the Examining Authority and the relevant Secretary of State (for Transport) are at present bound to consider Climate Change in relation to Airports only to the extent that is set out in the existing Airports National Policy Statement. To go beyond that would invite judicial review.

10. The relevant provisions of the Airports National Policy Statement are as follows:

“Climate change adaptation

4.41 The Planning Act 2008 requires the Secretary of State to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS.⁵

4.42 This section sets out how the Airports NPS puts Government policy on climate change adaptation into practice, and in particular how the applicant and the Secretary of State will take into account the effects of climate change when developing and considering airports infrastructure applications. Climate change mitigation is essential to minimise the most dangerous impacts of climate change, as previous global greenhouse gas emissions will already mean some degree of continued climate change for at least the next 30 years. Climate

4 My emphasis, added here and elsewhere.

5 Planning Act 2008, section 10(3)(a).

change is likely to mean that the UK will experience on average hotter, drier summers and warmer, wetter winters. There is potentially an increased risk of flooding, drought, heat waves, intense rainfall events and other extreme events such as storms and wildfires, as well as rising sea levels.

4.43 Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the provision of green infrastructure.

4.44 The Government has published a set of **UK Climate Projections**, and every five years prepares a statutory **UK Climate Change Risk Assessment and National Adaptation Programme**.⁶ In addition, the **Climate Change Act 2008** adaptation reporting power has been used by Government to invite reporting authorities (a **defined list of public bodies and statutory undertakers, including airports**) to consider the impact on them of current and predicted climate change, and to report on progress implementing adaptation actions.⁷ **Successive strategies for adaptation reporting will be laid alongside five yearly updates to the National Adaptation Programme.**

4.45 New airports infrastructure will typically be a long-term investment which will need to remain operational over many decades, in the face of a changing climate. Consequently, **the applicant must consider** the impacts of climate change when planning design, build and operation. **Any accompanying environmental statement should set out how the proposal will take account of the projected impacts of climate change.**

4.46 Detailed **consideration**⁸ must be given to the range of potential impacts of climate change using **the latest UK Climate Projections available at the time**,⁹ and to ensuring any environmental statement that is prepared identifies appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure. Should a new set of UK Climate Projections¹⁰ become available after the preparation of any environmental statement, the Examining Authority should consider whether it needs to request additional information from the applicant.

4.47 Where transport infrastructure has safety-critical elements, and the design life of the asset is 60 years or greater, the applicant should apply the latest available UK Climate Projections, considering at least a scenario that reflects a high level of greenhouse gas

6 Climate Change Act 2008, section 58.

7 Climate Change Act 2008, section 62.

8 My gloss: in conventional terms as used in decision-making, ‘consideration’ means it ‘should be taken into account’ by the **Applicant** without prejudice to the weight to be given to it which is a matter for the largely unfettered **decision-maker** to determine: in this context that can only be decided by the Secretary of State for Transport.

9 That is, I submit, whatever may be the then **current** UK Climate Projections laid before Parliament by the relevant Secretary of State with responsibilities under the Climate Change Act 2008, nothing less. As a professional historian, I fully understand and confirm that in such matters policy would flow from interdepartmental consideration held in camera by ministerial committees, official committees and mixed committees of ministers and senior civil servants in Whitehall. By convention these committee deliberations, their participants and their conclusions are subject to the Official Secrets Act and normally only come to light at The National Archives after the lapse of at least 30 years. They do not play to the gallery of public opinion. These are not matters on which any Applicant or Interested Party may presume to ‘know’ what will be communicated to Parliament in due course. Pragmatism, viability and costs of desired outcomes are always given great weight when balancing conflicting interests: what is ‘emergent policy’ will always be clear in retrospect, not as predicted, particularly when the personalities and policies of departments and Governments are subject to change. One would be most unwise to found any judicial review on a presumption that an ‘emergent policy’ should have prevailed when it didn’t.

10 Again, the term “UK Climate Projection”, like the term “UK Climate Change Risk Assessment” has a very specific meaning within the meaning of the Climate Change Act 2008 and does not mean any other climate change forecast or risk assessment.

emissions at the 10%, 50% and 90% probability levels, to assess the impacts of climate change over the lifetime of the development.

4.48 The applicant should demonstrate that there are no critical features of infrastructure **design**¹¹ which may be seriously affected by more radical changes to the climate beyond those projected in the latest set of UK Climate Projections. Any potential critical features should be assessed, taking account of the latest credible scientific evidence on, for example, sea level rise, and on the basis that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime through potential further mitigation or adaptation.

4.49 Any adaptation measures should be based on the latest set of UK Climate Projections,¹² the most recent UK Climate Change Risk Assessment,¹³ consultation with statutory consultation bodies, and any other appropriate climate projection data. Any adaptation measures must themselves also be assessed as part of any Environmental Impact Assessment and included in the environmental statement, which should set out how and where such measures are proposed to be secured.

4.50 If any proposed adaptation measures themselves give rise to consequential impacts, the Secretary of State will consider the impact in relation to the application as a whole and the assessment principles set out in the Airports NPS.

4.51 Adaptation measures can be required to be implemented at the time of construction where necessary and appropriate to do so.

4.52 Where adaptation measures are necessary to deal with the impact of climate change, and that measure would have an adverse effect on other aspects of the project or the surrounding environment, the Secretary of State may consider requiring the applicant to ensure that the adaptation measure could be implemented **should the need arise**, rather than at the outset of the development.”

11. Finally, the Airports National Policy Statement makes another very important point in how the Secretary of State should approach these matters, and those, of course, will also constrain what the

11 Emphasis added.

12 <http://ukclimateprojections.metoffice.gov.uk/> has been updated with 2018 projections in place of the 2009 dataset. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727252/national-adaptation-programme-2018.pdf was published in July 2018 and looks forward across the next 25 years. Most of the references in that report to “airports” refer to resilience against risks of flooding due to climate change. Another says only “DfT officials work closely with Highways England (HE) on ensuring that strategic road network planning interacts well with other transport infrastructure developments, such as airports and High Speed Rail developments.” The Government also indicated that “Transport organisations covering: strategic road, rail infrastructure, strategic airports, commercial ports and lighthouses authorities” would be invited to report on how they might adapt to climate change but notes “including such organisations as reporting authorities would be disproportionate. Where appropriate, government will invite umbrella organisations to report on behalf of members. Determining proportionality must occur on case by case basis. Government has not defined a specific threshold for proportionality. The voluntary approach means that there is scope for discussion with government to ensure that the reporting process is proportionate and beneficial.” I would characterise that approach as rather business-friendly, laid-back and relaxed. The only other reference to airports in this report comes in “Key actions and milestones” where it says that HMG expects that “Flood risk will be assessed by Airports with over five million passengers per year through their annual resilience plans.” That’s all. The “dire straits” approach of NNF and other anti-aviation, anti-Manston campaigners is completely absent in **all** of this.

The most recent State of the UK Climate report was published in 2017, nearly two years before the May Day Declaration of 2019.

13 <https://www.gov.uk/government/publications/uk-climate-change-risk-assessment-government-report> was the first of these, published on 25 January 2012, and has now been superseded by [UK Climate Change Risk Assessment 2017 report](#), published on 18 January 2017, and was based on the Met Office’s 2009 dataset, ten years before the May Day Declaration of 1 May 2019. For the purposes of the Manston Airport DCO, however, the defining UK Climate Change Risk Assessment is the January 2017 document. The word “airport” or rather “airports” only appears once in that document, where it notes, in passing, that “Public Health England undertakes invasive mosquito surveillance with 30 seaports and airports and at key goods importers and motorway service stations leading away from ports of entry in south-east England.”

Examining Authority can or should regard as appropriate approaches in its Report and Recommendations:

“4.54 In deciding an application, the Secretary of State should focus on whether the development is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The Secretary of State should assess the potential impacts of processes, emissions or discharges to inform decision making, but should work on the assumption that, in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced. Decisions under the Planning Act 2008 should complement but not duplicate those taken under the relevant pollution control regime.”¹⁴

12. The Airports National Policy Statement IS relevant, and it is expressive of the right approach that **must** govern the determination of the Manston Airport Application for Development Consent as a Nationally Significant Airport Infrastructure Project when it comes to the consideration of Climate Change issues.

13. Any challenge to RiverOak’s Application whether lodged now or in the foreseeable future by any Interested Party on grounds of Climate Change that go beyond the ambit of the Planning Act 2008 regime as it presently exists and relevant approaches set out in the Airports National Policy Statement, must be disregarded as irrelevant, are beyond the powers of the Examining Authority to have regard for on merits, and, if pressed, objectors to these terms of the Act and the Airports NPS should be treated by the Examining Authority as vexatious.

14. The inescapable conclusions that flow from the foregoing are that:

- (a) Climate Change will not in any meaningful sense impact upon the determination of the Manston Airport DCO except in terms of design.
- (b) The scale of the operations of the airport have been limited during the course of the present DCO Examination, and notwithstanding the importance of the DCO in establishing Manston Airport as a Nationally Significant Cargo Hub Airport Infrastructure Project, it will remain a relatively small regional airport in terms of its impacts upon Climate Change.

Accordingly, I submit that the Examining Authority must treat Climate Change as a minor consideration and give no weight to the May Day 2019 Resolution in any significant respects.

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14 Emphasis added.