



# Department for Transport

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9 July 2020

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED MANSTON AIRPORT DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the report dated 18 October 2019 of the Examining Authority, a Panel of four examining inspectors consisting of Kelvin MacDonald, Martin Broderick, Jonathan Hockley and Jonathan Manning (“the ExA”), who conducted an examination into the application made by your clients, RiverOak Strategic Partners Limited (“the Applicant”) for the Manston Airport Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”) (“the Application”);
- representations received in response to the Secretary of State’s further consultation letter of 17 January 2020; and
- other late representations received by the Secretary of State following the close of the examination.

2. The Application was accepted for examination on 14 August 2018 and it was completed on 9 July 2019. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by eight issue-specific hearings, two compulsory acquisition hearings and four open floor hearings held in Margate and Sandwich in Kent. The ExA also conducted one unaccompanied site inspection on 8 January 2019 and one accompanied site inspection on 19 March 2019.

3. The existing Manston Airport site is located west of the village of Manston and north east of the village of Minster in Kent. Margate lies approximately 5km to the north of the 296 hectares (732 acres) site, with Ramsgate approximately 4km to the east and Sandwich Bay approximately 4 to 5km to the south east.

4. The DCO as applied for under the 2008 Act would grant development consent for the reopening and development of Manston Airport into a dedicated air freight facility able to handle at least 10,000 air cargo movements per year whilst also offering passenger,

executive travel, and aircraft engineering services. The proposals include the use of some of the remaining decommissioned airport infrastructure and the introduction of new facilities including: the upgrade of Runway 10/28 and re-alignment of the parallel taxiway to provide European Aviation Safety Agency compliant clearances for runway operations; construction of 19 European Aviation Safety Agency compliant Code E stands for air freight aircraft with markings capable of handling Code D and F aircraft in different configurations; installation of new high mast lighting for aprons and stands; construction of 65,500m<sup>2</sup> of cargo facilities; construction of a new air traffic control tower; construction of a new airport fuel farm; construction of a new airport rescue and firefighting service station; development of the Northern Grass Area for airport-related businesses; highway improvement works; extension of passenger service facilities including an apron extension to accommodate an additional aircraft stand and increasing the current terminal size; an aircraft maintenance, repair and overhaul facility and end-of-life recycling facilities; a flight training school; a fixed base operation for executive travel; and business facilities for aviation-related organisations (“the Development”).

5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings, Conclusions and Recommendations to the Secretary of State (“the ExA’s Report”) as amended by the Errata Sheet (Ref TR0200020). The ExA’s findings and conclusions are set out in sections 4 to 10, and the ExA’s summary conclusions and recommendation are set out in section 11.

### **Summary of the ExA’s Recommendation**

6. The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:

- a) need for the Development;
- b) air quality;
- c) archaeology and the historic environment;
- d) biodiversity;
- e) climate change;
- f) ground conditions;
- g) landscape, design and visual impact
- h) noise and vibration;
- i) operational matters;
- j) socio-economics;
- k) traffic and transport;
- l) habitats regulations assessment; and
- m) compulsory acquisition.

7. The ExA recommended that the Secretary of State should not grant development consent.

### **Summary of the Secretary of State’s Decision**

8. The Secretary of State has carefully considered the ExA’s Report and has decided, under section 114(1)(a) of the 2008 Act, to make, with modifications, a DCO granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116(1)(a) of the

2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“the 2009 Regulations”) - which apply to the Application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017<sup>1</sup>.

9. Please note that, although this letter refers to the decision of “the Secretary of State”, the Rt Hon Grant Shapps has not personally been involved in this decision because of a conflict of interest, following previous statements of support made prior to his appointment as the Secretary of State for Transport. The decision has in practice been allocated to and taken by the Minister of State for Transport, Andrew Stephenson, but by law has to be issued in the name of the Secretary of State.

### **Secretary of State’s consideration of the Application**

10. The Secretary of State has considered the ExA's Report, the responses to the further consultation and the other late representations received after the close of the ExA's examination, and all other material considerations. The Secretary of State's consideration of the ExA Report and the further representations is set out in the following paragraphs. Where not stated, the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations. All “ER” references are to the specified paragraph in the ExA's Report. Paragraph numbers in the ExA's Report are quoted in the form “ER x.xx.xx” as appropriate.

11. The Development site lies within the local government area of Thanet District Council within the administrative county of Kent. The Secretary of State has had regard to the Local Impact Reports (“LIRs”) submitted by Kent County Council (“KCC”) [ER 4.3.14 – 4.3.21] and Thanet District Council (“TDC”) [ER 4.3.22 – 4.3.23], who are the relevant local authorities for the area of the Development, and the Development Plan and the emerging Development Plan for the area of the Development [ER 3.10 and 4.5]. He has also had regard to the LIRs submitted by Canterbury City Council (“CCC”) [ER 4.3.2 – 4.3.9] and Dover District Council (“DDC”) [ER 4.3.10 – 4.3.13] and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

12. The Secretary of State notes 2052 relevant representations (“RR”) were received in the RR period and all those who submitted RRs were provided an opportunity to become involved in the ExA's examination as Interested Parties [ER 1.4.26]. There were also 23 submissions which were purported to be RRs but could not be treated as such because they were either late or not in the prescribed form or both that were accepted as Additional Submissions to the examination. Apart from Canterbury City Council, which as a Local Authority is an Interested Party, the parties who made the representations were treated as Other Persons for the purposes of the Examination [ER 1.4.27]. In all, the ExA accepted 585 representations as Additional Submissions, which were considered by the ExA to be

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<sup>1</sup> The Applicant submitted a scoping report before the 2017 EIA Regulations came into force and so the 2009 EIA Regulations continue to apply to the Application in accordance with transitional arrangements. Further to advice issued by the Planning Inspectorate on behalf of the Secretary of State in a scoping opinion dated 10 August 2016, the Applicant took account of the 2017 EIA Regulations in relation to the production and content of its Environmental Statement. However, it did not request a new scoping opinion [ER 1.5.2 and 1.5.6].

potentially important and relevant to the examination [ER 1.4.28]. The Applicant, Interested Parties and Other Persons were provided with opportunities to make Written Representations, comment on Written Representations from the Applicant and other Interested Parties, summarise their oral submissions made during the examination in writing, and comment on documents issued for consultation by the ExA. All Written Representations and other examination Documents were also taken into account by the ExA [ER 1.4.29 – 1.4.30]. The Secretary of State has considered the findings, conclusions and recommendations of the ExA as set out in the ExA’s Report in reaching his own conclusion on the Application. The reasons for the Secretary of State’s decision are set out in the following paragraphs.

## **Secretary of State’s consideration of the ExA’s findings and conclusions in relation to the planning issues**

### Need for the Development

13. The ExA notes that ‘Airport National Policy Statement: new runway capacity and infrastructure at airports in the South East of England’ (“ANPS”), which was designated on 26 June 2018, did not have effect in relation to the Application. The examination was therefore conducted under section 105 of the 2008 Act, which applies to decisions in cases where no National Policy Statement has effect [ER 3.1.2].

14. In deciding the Application, section 105(2) requires the Secretary of State to have regard to: (a) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2); (b) any matters prescribed in relation to development of the description to which the Application relates; and (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State’s decision.

15. The Court of Appeal ruled on 27 February 2020 (i.e. after the close of the examination) that when designating the ANPS, which was backed by Parliament, the previous Government did not take account of the Paris Agreement, non-CO<sub>2</sub> emissions and emissions post 2050. As part of its judgment, the Court also declared that the ANPS is of no legal effect unless and until the government carries out a review under the Planning Act 2008. Government had taken the decision not to appeal this judgment and accordingly the Secretary of State has afforded the ANPS no weight in his decision.

16. The Secretary of State notes that the Applicant’s Statement of Reasons considers that there is an urgent need for dedicated air cargo capacity in the South East of England for the following reasons:

- that *“there is significant unmet need for local air cargo capacity which is currently either not being met at all or being met by trucking cargo through the Channel Tunnel to and from airports on mainland Europe”*;
- that *“the existing airports in the region are primarily passenger airports with few cargo-only flights, which are often first to be displaced when there is disruption or delay”*; and
- that *“the main airport to carry cargo is Heathrow, which carries around 95% [of the cargo it carries] in the holds of passenger aircraft, restricting it to the destinations and timetables served by passenger flights.”* [ER 5.2.1]

17. The Secretary of State notes that none of the Local Impact Reports provided by KCC, TDC, DDC or CCC make any specific comments on the need for the Development [ER 5.2.8-ER 5.2.14]. Whilst TDC's Local Impact Report states the adopted Thanet Local Plan 2006 allocates the use of Manston Airport for aviation use [ER 8.2.12], its emerging Local Plan takes a neutral stance and the Application site is not allocated for aviation or any other use so as not to prejudice the Application [ER 8.2.14]. Given the above, the ExA concludes that the principle of the Development is supported by the adopted development plan and does not conflict with the emerging Local Plan. However, the ExA notes for the Development to be compliant with the Development Plan as a whole, it must be acceptable in other regards as set out in Policy EC2 of the Local Plan [ER 8.2.15].

18. The Secretary of State also notes that written representations relating to need for the Development were also received from: York Aviation employed by Stone Hill Park Ltd ("SHP"), the majority landowners of the site during the examination, but who completed the sale of its freehold interests in land at Manston Airport to RiverOak MSE Ltd, a subsidiary of the Applicant, on the final day of the examination [ER 9.6.10]; a local interest group, 'No Night Flights'; and from other Interested Parties. Some Interested Parties also stated their support for the re-opening of the airport for General Aviation, including flight training, noting that some General Aviation companies had moved to other airports since its closure. The ExA notes that such comments also showed a desire to move back to Manston should the airport re-open [ER 5.2.15-ER 5.2.17].

19. Overall, the ExA considers that the levels of freight that the Development can be expected to handle are modest and could be catered for at existing airports (Heathrow, Stansted and EMA, and others if demand existed). The ExA considers that the Development appears to offer no obvious advantages to outweigh the strong competition that such airports offer. The ExA has therefore concluded that the Applicant has failed to demonstrate sufficient need for the Development, additional to (or different from) the need which is met by the provision of existing airports [ER 5.7.28].

20. Whilst noting the ExA's consideration of need [ER 5] and conclusion that the Applicant's failure to demonstrate sufficient need weighs substantially against the case for development consent being given [ER 8.2.25 - 8.2.26], the Secretary of State disagrees and concludes that there is a clear case of need for the Development which existing airports (Heathrow, Stansted, EMA and others able to handle freight) would not bring about to the same extent or at all. The Secretary of State concludes that significant economic and socio-economic benefits would flow from the Development to Thanet and East Kent as well as more widely including employment creation, education and training, leisure and tourism, benefits to general aviation<sup>2</sup> and regeneration benefits. In addition, as a result of the Development, the potential exists for Manston Airport to develop and grow into a transport asset for the UK which would provide a number of significant benefits locally, regionally and nationally, complementary and in addition to those able to be provided by existing airports. These include increased capacity available in North Kent for import and export of freight by air to, from and within the UK including support for high value and time-critical transport of goods, increased connectivity to the North Kent area, benefits which flow from its location in terms of its accessibility, enhanced access to markets and to end users, the facilitating of

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inward investment, support for the advanced manufacturing sector in which the UK is looking to build competitive strength, and the provision of a passenger and executive airport in North Kent. The Secretary of State gives substantial weight to the above public benefits both individually and cumulatively.

21. In addition, it is to be concluded that the Development would support the government's policy objective to make the UK one of the best-connected countries in the world and for the aviation sector to make a significant contribution to economic growth of the UK<sup>3</sup>. It is the Government's aviation policy that airports should make the best use of their existing capacity and runways, subject to environmental issues being addressed<sup>4</sup>. Substantial weight is given by the Secretary of State to the conclusion that the Development would be in accordance with such policies and that granting development consent for the Development would serve to implement such policy. Although the Secretary of State considers the Development would also be consistent with the aims of emerging aviation policy<sup>5</sup>, he considers that as such, it should be afforded limited weight.

### Archaeology and the Historic Environment

22. The ExA's consideration of archaeology and the historic environment is set out in Chapter 6.3 and its conclusion is that that the impact on heritage assets of the Development weigh moderately against the case for development consent being given [ER 8.2.103]. The Secretary of State notes that the ExA has concluded the public benefits outweigh the harm caused by the Development, to which it has ascribed considerable weight [ER 8.2.99]. However, given the ExA's conclusions on sufficient need and noting heritage assets are irreplaceable, it does not consider clear and convincing justification for that harm has not been demonstrated by the Development [ER 8.2.102].

23. The Secretary of State agrees with the ExA that the public benefits outweigh the harm to heritage assets. He accepts that less than substantial harm would be caused to designated heritage assets, that great weight should be given to the assets' conservation, and given that heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. However, in considering the balance to be applied in accordance with government policy in paragraph 196 of the National Planning Policy Framework ("NPPF"), the Secretary of State concludes that there is clear and convincing justification for the Development and that substantial weight should be given to the need and public benefits that would result from the Development and that these would clearly outweigh the heritage harm.

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## Climate Change

24. The Secretary of State notes the ExA considers that, given the evidence presented, climate change issues have been adequately assessed, and that the requirements of the NPPF and 2017 EIA Regulations (and the ANPS) are met [ER 6.5.70]. The ExA's overall conclusion is that the construction and operation of the Development would avoid significant climate effects in accordance with the NPPF (and ANPS). The ExA is satisfied that the mitigation measures secured in the draft DCO by Requirements 4, 6, 7, 8, 10 and 13 (covering: Detailed design; outline Construction Environmental Management Plan; Operational Environmental Management Plan; Ecological mitigation; Landscape; and Surface and foul water drainage) will address the concerns of Interested Parties regarding climate change [ER 6.5.64]. On balance, the ExA concludes there are no matters relating to specific impacts of the Development on climate change which weigh against granting development consent [ER 8.2.73].

25. More widely, the ExA notes that under section 30 of the Climate Change Act 2008 ("CCA08") greenhouse gas emissions from international aviation do not currently count as emissions from sources in the UK for the purposes of carbon targets and budgeting, except as provided by Regulations made by the Secretary of State [ER 6.5.21 and 6.5.44]. However, on 1 May 2019 the UK Government declared a climate emergency and 'Net Zero-The UK's contribution to stop global warming' was published the following day. This publication included the Committee on Climate Change's ("CoCC") recommendation of a new emissions target for the UK of net-zero greenhouse gases by 2050 [ER 6.5.23]. The CCA08 was amended on 26 June 2019 through the Climate Change Act 2008 (2050 Target Amendment) Order 2019 to establish the net-zero greenhouse gas target in law [ER 6.5.25]. The ExA notes that the CoCC is accordingly advising that the planning assumptions for international aviation should be to achieve net-zero emissions by 2050 [ER 6.5.44] and its emerging advice to the UK Government is that this should be reflected in the UK's emerging Aviation Strategy, which means reducing actual emissions in the international aviation sector. The CoCC advises that the UK Government should assess its airport capacity strategy in this context. The ExA notes specifically for the Development, it will need to be demonstrated to make economic sense (i.e. to establish a need case, in a net-zero world and the transition towards it) [ER 6.5.45]. The ExA concludes that the Development's Carbon Dioxide contribution of 730.1KtCO<sub>2</sub> per annum, which according to the Applicant forms 1.9% of the total UK aviation carbon target of 37.5 Mt CO<sub>2</sub> for 2050, will have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets. The ExA concludes that this weighs moderately against the case for development consent being given [ER 8.2.75].

26. For the reasons set out above in paragraphs 20 and 21, the Secretary of State considers there is a clear need and public benefit case for the Development and notes that the ExA's conclusions above appear to be based in part on emerging policy on climate change. However, as the Government is still considering the consequences of the ANPS judgment, and ahead of the publication of the Government's Transport Decarbonisation Plan<sup>6</sup> and new Aviation Strategy to be published later this year, the Secretary of State is satisfied that it would not be appropriate to consider further at this stage. He is content therefore to accept the ExA's view that this is a matter that should be afforded moderate weight against the Development in the planning balance.

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<sup>6</sup> <https://www.gov.uk/government/publications/creating-the-transport-decarbonisation-plan>

## Noise and Vibration

27. The Secretary of State notes that a significant proportion of the relevant representations received raised aviation noise as a concern, with the primary focus of the examination being on operational noise effects [ER 6.8.5]. The Secretary of State notes the ExA's consideration of noise and vibration from construction and operational activities [ER 6.8] and conclusion that the impacts of noise and vibration weigh moderately against the case for development consent being given [ER 8.2.150]. The Secretary of State agrees with the ExA's conclusion, but having regard to the proposed restrictions he intends to impose, this is only marginally overall. He concludes that only limited weight is therefore to be given to such adverse effects.

28. The Secretary of State agrees with the conclusions of the ExA in its Report at paragraphs ER 8.2.121-8.2.123, ER 8.2.127-8.2.135, ER 8.2.137, ER 8.2.139-8.2.141 and ER 8.2.144-8.2.146.

29. The Secretary of State notes that the ExA's overall assessment of Noise Policy Statement England 2010 ("NPSE") requirements is that only with the inclusion of its recommended Requirements is it able to conclude that on balance the Development meets the first aim to avoid significant impacts on health and quality of life for residential and school receptors. However, given the uncertainty regarding the efficacy of mitigation for up to 40 caravan owners/occupiers all significant effects are not avoided. Although the Applicant will consider their relocation, the ExA considers relocation has likely significant effects on health and quality of life and therefore fails to satisfy the first aim. The ExA concludes on balance that the Development can be said to meet the second aim. As the third aim is to be achieved "where possible", the ExA agrees that the Applicant has demonstrated that it has addressed the third aim and notes the annual financial contributions for monitoring and for school insulation and ventilation mitigation [ER 8.2.147 – 8.2.148].

30. Following the ExA's amendments to the draft DCO relating to noise and appropriate mitigation and given the evidence presented, the ExA considers the Development generally accords with the relevant national and local policies and guidance in respect of noise [ER 6.8.489 - 6.8.493 and ER 8.2.145 - 8.2.149]. The Secretary of State agrees and, in respect of relocation of caravan owners, he accepts that relocation can have significant effects on health and quality of life [ER 8.2.147] but notes that any such relation is contingent and that the consequences of any such relocation are currently unknown. He disagrees that the need for the Development is as stated by the ExA [ER 8.2.142] and has reached his own conclusions on the need for the Development in paragraphs 20 and 21 above.

31. The Secretary of State has considered the implications of noise impacts with respect to Human Rights and has concluded there are no additional restrictions which are required to be imposed to safeguard the Human Rights of persons adversely affected by the Development and that the proposed interference is justified in the public interest and proportionate [ER 8.2.141 - 8.2.143].

32. The Secretary of State agrees with the ExA's conclusion that the financial contribution for insulation and ventilation for schools in the Unilateral Undertaking ("UU") in favour of Kent County Council together with Requirement 21 covering Airport Operations would adequately mitigate the impacts of noise and vibration effects of the Development on schools. He is also satisfied that a financial contribution for Noise Monitoring Stations and independent noise monitoring assessment of their data in the UU in favour of Thanet District

Council will ensure that the provisions of the Noise Mitigation Plan and DCO are complied with [ER 8.2.148].

33. The restrictions to be imposed by the Secretary of State in Requirements 9, 21 and 23 of the DCO covering operational noise mitigation, airport operation and monitoring include:

- i. a ban on night flights – restricting scheduled flights between 23:00 and 06:00 (Requirement 21) and a restriction on noisier aircraft between 06:00 to 07:00 (Requirement 9) [ER 8.2.124];
- ii. noise Quota Counts (“QCs”) to control noise impacts (Requirement 9) – setting a QC for aircraft in the 06:00 to 07:00 period and restricting noisier aircraft with QC 4, 8 or 16 to mitigate noise in the late part of the night-time quota period [ER 8.2.125];
- iii. contour to limit annual noise emissions – the contour area and relevant noise contours are secured in the DCO (Requirement 9) and the contour area cap is considered a reasonable approach to mitigate and minimise the population exposed to aircraft noise above the day and night-time Lowest Observed Adverse Effect Level (“LOAEL” – the level above which adverse effects on health and quality of life can be detected) [ER 8.2.126];
- iv. residential properties –with habitable rooms within the 60dB LAeq (16 hour) day time contour will be eligible for noise insulation and ventilation detailed in the noise mitigation plan (Requirement 9) [ER 6.8.247];
- v. schools – the restrictions on passenger air transport departures is, with the funding commitments for insulation and ventilation in the UU in favour of Kent County Council, considered adequate to avoid significant adverse noise effects [ER 8.2.136];
- vi. caps on the annual air traffic movements for cargo, passenger and general aviation (Requirement 21) to the worst-case assessment in the Environmental Statement [ER 8.2.123];
- vii. the establishment of a robust monitoring, auditing and reporting scheme (Requirement 23), not just for noise, but covering monitoring in all aspects of potential effects [ER 8.2.137].

34. Although subject of separate regulatory procedure on which the Secretary of State therefore expresses no conclusion, it is also noted that in considering its relevance to noise controls, the ExA has accorded no weight to the separate Manston Airspace Change Process (“ACP”) application to the CAA, concerned with the detailed design of airspace and specific flight paths, in making its conclusion and recommendation. It is noted that should the flight paths assessed as part of the ACP application differ to the extent that likely significant effects not assessed as part of the Applicant’s Environmental Statement are identified, the ExA considers that this could potentially constitute a material change which would require an application to be submitted to the Secretary of State under the 2008 Act. Given that the Applicant and CAA also have a Statement of Common Ground in place, the ExA is satisfied that the potential for new or previously unassessed impacts to arise is limited [ER 6.8.298, 6.8.474 and 8.2.127].

35. In conclusion, the Secretary of State considers that the public benefits significantly outweigh the harm caused by the Development due to noise and vibration impacts, taking

into account the restrictions to be imposed by him, and also acknowledging that the airport has operated lawfully without restrictions in the past.

### Operational Issues

36. The Secretary of State notes the ExA's consideration of operational matters in Chapter 6.9 of its report. The Secretary of State agrees with the ExA in respect of their conclusions on operational matters [ER 8.2.151 – 8.2.176], except where stated below. In light of these matters/areas where he disagrees, the Secretary of State also does not consider that operational matters weigh moderately against the grant of development consent being given for the Development.

37. The Secretary of State disagrees with the ExA in relation to its conclusions concerning the Northern Grass Area ("NGA") [ER 8.2.159 – 8.2.161]. He concludes that the whole of the NGA is essential for the whole of this area to be included within the DCO area so that the airport is able to provide adequate land for airport-related development.

38. As indicated above in paragraph 34, the Secretary of State expresses no conclusion in relation to Airspace Change Process [ER 8.2.163] or also the Aerodrome Certificate [ER 8.2.162], as these are both the subject of separate regulatory procedures.

39. The Secretary of State notes the conclusions of the ExA concerning possible future Public Safety Zones ("PSZs"). These are the subject of separate procedures and are contingent on a number of factors including future growth, future fleet mix and crash data, calculations of risk, and policy in force at the time. He does accept that on the basis of submitted forecasts and current policy, PSZs would be likely to be imposed around the 4<sup>th</sup> or 5<sup>th</sup> year of operation. However, the socio-economic impacts of the PSZs are difficult to determine as they are dependent on future decision making by land owners, developers and the Local Planning Authority. Due to the uncertainty surrounding a number of factors, the Secretary of State places limited weight on the comment of the ExA that the negative effects of the PSZ weigh against the Development [ER 8.2.164 – 8.2.168].

40. The Secretary of State notes the discussion during the examination regarding the High Resolution Direction Finder ("HRDF"- a navigational aid to aircraft operating in the area and critical to maintaining the UK emergency response capabilities for the management of air safety incidents). The Ministry of Defence ("MOD") has maintained its objection to the Development as it considers that it would have a significant and detrimental impact on the capability of safeguarded technical equipment located within the boundaries of the Development [ER 6.9.130]. The Secretary of State notes that in response to his consultation letter of 17 January 2020 the MOD maintains an objection to the relocation of the HRDF and no resolution on this matter appears to be imminent. The Secretary of State has given careful consideration to this issue. He notes the proposals from the MOD in their letter dated 31 January 2020 and agrees to MOD's proposed amendment to requirement 24(1) but disagrees with the amendments proposed for 24(3). Notwithstanding this requirement, the Secretary of State also accepts that there is no guarantee that the HRDF can be moved at this time, but would encourage the Applicant and the MOD to engage in constructive dialogue to seek a workable solution to resolve this issue. The Secretary of State's consideration of the compulsory acquisition of the HRDF land is set out below.

## Socio-Economic (Employment, Tourism, and Education, Training and Skills)

41. The Secretary of State notes the ExA's consideration of this matter [ER 6.10] and its conclusion that the socio-economic benefits of the Development have been overstated, and that the Development would have an adverse effect on tourism in Ramsgate. The ExA considers that the Applicant's education, training and skills commitments would benefit Thanet and East Kent. When taken together the ExA considers that the Development would still generate a socio-economic benefit to Thanet and East Kent, but such benefits are substantially lower than that forecast by the Applicant. Such benefits are also dependent on the need for the Development; without the need and the forecasts based on this need, socio-economic benefits (aside from the education, training and skills commitments) would reduce further [ER 8.2.188].

42. The Secretary of State's conclusions on the need for the Development are set out above in paragraphs 20 and 21 and, whilst noting the ExA's view that the jobs created would not be to the same extent as forecast by the Applicant [ER 8.2.183], he concludes that significant economic and socio-economic benefits would flow from the Development to Thanet and East Kent as well as more widely including employment creation, benefits to general aviation and regeneration benefits. In reaching that view, the Secretary of State notes the ExA's view that the Development may adversely affect the tourism industry in Ramsgate. Whilst he is sympathetic to any residents and business holders that may be affected, he also notes the ExA's overall view that it would increase the attraction of tourists to other parts of Thanet and the wider East Kent area [ER 8.2.184 – 8.2.186].

43. The Secretary of State also notes the ExA's view that that the education, training and skills financial contribution (a total undertaking of £1.25m) secured in the Applicant's UU made in favour of Thanet District Council has the potential to have a significant positive benefit on Thanet and the wider East Kent area and would ensure that the required education, employment and skills plan is properly enacted and implemented. However, he also concurs with the ExA that a missed opportunity arises from the fact that the initial payment is not required until prior to air transport movements occurring at the airport. Whilst not altering the Secretary of State's conclusions on this matter, he would encourage the Applicant to consider revisiting it to ensure that provisions for local employment and training during construction are not missed [ER 8.2.187].

44. Overall, the Secretary of State considers that substantial weight should be given to the socio-economic benefits that would result from the Development and that these would outweigh the harm that may be caused to the tourist industry in Ramsgate.

## Traffic and Transport

45. The Secretary of State has considered carefully the traffic and transport evidence put before the ExA and had regard to the comments and conclusions of the ExA [ER 6.11 and ER 8.2.192 – ER 8.2.218].

46. The Secretary of State notes the ExA's view that although the assessment of impact in the Transport Assessments and additional work undertaken by the Applicant has been robust, there is a need to place restrictions on passenger flight departures and arrivals around the AM and PM peak periods to ensure that there is no impact above what has been assessed by the Applicant in the Environmental Statement. The Secretary of State is

content that the ExA's additional requirement (Requirement 21) should be included in the DCO, noting that cargo flights would still be able to operate during the restricted passenger flight periods [ER 8.2.192].

47. The Secretary of State welcomes the measures proposed by the Development in relation to accessibility for persons with additional needs. He notes that the ExA was unable to reach a firm conclusion as to whether the Development appropriately seeks to promote sustainable modes of transport and recommended clarification is sought from the relevant parties before coming to a view on this matter [ER 8.2.212]. The ExA also considered that the recommended draft DCO should contain a specific Requirement on this matter. As the Applicant had not considered the ExA's suggested wording, the Secretary of State accordingly consulted on its recommended revised requirement 7, which sets out that the Applicant must agree a Bus Service Enhancement Scheme. This also includes the enhancement of existing services and the provision of shuttle bus services. The Applicant has agreed the revised requirement 7 and the Secretary of State is satisfied that there would be suitable provision of bus services and has concluded that on the evidence submitted the Development would appropriately promote sustainable modes of transport [ER 6.11.433 – 6.11.435, ER 8.2.193 – 8.2.197 and ER 8.2.207-8.2.212].

48. The Secretary of State agrees with the ExA that the Development will not have any material adverse impacts on the Strategic Road Network and no mitigation is required in this regard. He notes that Highways England withdrew its objection and Kent County Council did not raise any outstanding objections on this point. In addition, he agrees with the ExA that the Development complies with the National Policy Statement for National Networks ("NPSNN") [ER 8.2.198].

49. The Secretary of State notes the conclusions of the ExA in relation to the impact of the Development on the local road system and on the off-site junctions in particular, and also notes the findings of the ExA in relation to the mitigation schemes proposed in relation to those junctions (and those where no mitigation is proposed). The Secretary of State sees no reason to disagree with the ExA's findings and has taken these into account as part of the planning balance. The Secretary of State also notes the ExA's conclusions in respect of the proposed UU to KCC and agrees it as being an appropriate mechanism to secure junction improvement works. The Secretary of State notes the concerns of KCC and the findings of the ExA in relation to the amounts and timings of the financial contributions for junction improvements and to the UU not fulfilling the requirements of Regulation 122 of the Community Infrastructure Levy ("CIL") Regulations 2010 and that it should be disregarded in reaching a conclusion on this matter. However, the Secretary of State notes that the Applicant asserts that the cost estimates prepared for each junction improvement have been based upon a combination of engineering experience, recognised industry publications and recently returned tenders for schemes of a comparable scale and complexity. Furthermore, he also notes that the ExA acknowledges that the junction improvement schemes are not yet fully detailed and have been developed to a concept preliminary design standard and that a 44% optimism bias allowance has been made to the costs [ER 6.11.294 – 6.11.302]. On balance, the Secretary of State is satisfied that the UU would comply with the requirements of the CIL Regulations 2010 and therefore should be taken into account and disagrees with the ExA that it should be disregarded as part of concluding on this matter. The Secretary of State accepts that there is the potential for short term congestion and delays on the local road system caused by the Development to occur before appropriate mitigation is delivered; however, he considers that the residual cumulative impact on the road network would not be severe and gives limited weight to these effects [ER 8.2.199 –

8.2.204]. On a related matter, it is also noted that if not all of the mitigation for junction improvements is considered necessary the UU provides for the contributions to be put towards other highways improvements which KCC deem necessary to mitigate the effects of the Development project. KCC consider this would be compliant with Regulation 122 of the CIL Regulations 2010 and the ExA accepts this view [ER 6.11.308 - 6.11.309].

50. It is noted that the Applicant's approach to contributing to the delivery of the Manston-Haine link road is considered by the ExA to be reasonable and pragmatic and that this is a matter of neutral weight [ER 8.2.205]. Given the importance of delivery of the link road locally, and the ExA's conclusion that the provisions set out in the UU in favour of KCC will help to deliver the link road [ER 6.11.392], the Secretary of State disagrees with the ExA that this should be a matter of neutral weight. However, he also accepts that the delivery of the link road is not certain and therefore considers it should be given only limited weight in favour of the Development in the planning balance [ER 6.11.369 - 6.11.392].

51. The Secretary of State is satisfied that there would be no unacceptable impacts from construction traffic, which would be controlled by measures in the Construction Traffic Management Plan and secured through a requirement in the DCO [ER 8.2.206].

52. Through the UU with TDC the Applicant has provided for a financial contribution to be paid for the cost of providing of a Controlled Parking Zone ("CPZ") if the monitoring of the Framework Travel Plan identifies a need for such measures [ER 6.11.449]. This contribution is based on a cost per metre. TDC accepts the cost per metre but not the total number of metres. The Secretary of State notes that the ExA were unable to examine the proposals by the Applicant for the CPZ and therefore as the ExA could not conclude that the CPZ and the associated financial contribution (of £231,400) is appropriate, the ExA found that this issue weighs against the Development. The Secretary of State also notes that TDC has questioned the extent to which a CPZ contribution is necessary. The Secretary of State considers that, as the contribution is to be based on need following travel plan monitoring and in the absence of an alternative suggested contribution amount, it is necessary and in other respects meets the CIL Regulation requirements. [ER 6.11.448 – 6.11.453 and ER 8.2.209].

53. The ExA acknowledges that the effects of Brexit are still uncertain, but based on the evidence presented to the examination, it is content as far as it can be that Operation Stack/Brock and the provisions of The Town and Country Planning (Manston Airport) Special Development Order 2019 will not have a detrimental impact on the Development [ER 8.2.213]. The Secretary of State agrees.

54. The Secretary of State notes that the ExA concludes and recommends that the proposed closure of a short stretch of Public Rights of Way ("PRoW") (TR9) and re-routing of another stretch (T8) are both necessary and proportionate [ER 8.2.214]. The ExA considers that the mitigation proposed in the form of the upgrading of stretches of TR8 and TR10 is potentially beneficial, although the scale and level of benefit of these improvements means that they are not a determining factor in the ExA's overall conclusion on PRoW [ER 6.11.523]. However, the ExA recommended that the Secretary of State seek clarification from the Applicant and KCC on contradictory financial contribution figures in the draft and final UU for upgrading PRoW [ER 6.11.472]. KCC has confirmed in its further consultation response that the final UU reflects KCC's PRoW response to the Fourth Written Questions during the examination (referenced TR 4.54) and is therefore in accordance with KCC's

PRoW requirements. In light of this, the Secretary of State considers that this issue is of neutral weight.

## **Findings and Conclusions in Relation to Habitats Regulations Assessment (“HRA”)**

55. The Secretary of State for Transport is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) which transpose the Habitats Directive (92/43/EEC) into UK law for transport applications submitted under the 2008 Act. The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site(s), as defined in the Habitats Regulations<sup>7</sup>.

56. Where likely significant effects on a European site(s) cannot be ruled out the Secretary of State must undertake an appropriate assessment (“AA”) under regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking the plan or project or any decision giving consent, permission or other authorisation to that plan or Project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of a European site(s), unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

57. The Secretary of State notes that the Development has been identified by the Applicant as having the potential to give rise to likely significant effects (“LSE”) on a number of designated European sites [ER 7.5.4]. Hence the Applicant prepared a Report to Inform the Appropriate Assessment (“RIAA”) within which they concluded that LSE could not be ruled out for a number of European sites.

58. The ExA lacked comfort that the air quality assessment underpinning the HRA was sufficient to support a conclusion of no adverse effect on integrity for the following sites:

- Swale Special Protection Area (“SPA”);
- Swale Ramsar site;
- Sandwich Bay Special Area of Conservation (“SAC”); and
- Thanet Coast and Sandwich Bay Ramsar site.

59. The Secretary of State also notes that the ExA was not presented with information to inform conclusions regarding alternative solutions or imperative reasons of overriding public interest either as part of the Application or during the examination [ER 7.9.13]. The Secretary of State subsequently consulted on this matter on 17 January 2020 and the Applicant’s response of 31 January 2020 included an updated air quality assessment.

60. Having given consideration to the assessment material submitted during and since the examination, the Secretary of State considers that likely significant effects in relation to construction and/or operations could not be ruled out. The Secretary of State therefore considered an AA should be undertaken to discharge his obligations under the Habitats Regulations. The AA is published alongside this letter.

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<sup>7</sup> <https://www.legislation.gov.uk/ukxi/2017/1012/regulation/8/made>

61. In the Secretary of State's view, the material provided during and since the examination contained sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites. The AA has considered the conclusions and recommendation of the ExA and in light of the updated air quality assessment provided by the Applicant. The AA has also taken account of the advice of the Statutory Nature Conservation Body, which in this case is Natural England, and the views of other interested parties as submitted during and since the examination.

62. The Secretary of State, having carried out the AA, is content that the construction and operation of the Development, as proposed, with all the avoidance and mitigation measures secured in the DCO, will have no adverse effect, either alone or in-combination with other plans or projects, on any European site.

### **Overall Conclusions on the Case for Development Consent**

63. For the reasons above, the Secretary of State disagrees with the ExA's recommendation to refuse development consent. As set out above in paragraphs 20 and 21, the Secretary of State considers there is a clear case of need for the Development and this should be given substantial weight. He considers the Development would support the government's policy objective to make the UK one of the best-connected countries in the world and for the aviation sector to make a significant contribution to economic growth of the UK and comply with the Government's aviation policy that airports should make the best use of their existing capacity and runways, subject to environmental issues being addressed. Substantial weight is given by the Secretary of State to the conclusion that the Development would be in accordance with such policies and that granting development consent for the Development would serve to implement such policy. The Secretary of State also considers that there are significant economic and socio-economic benefits which would flow from the Development, which should also be given substantial weight.

64. The Secretary of State accepts that there is the potential for short term congestion and delays on the local road system caused by the Development to occur before appropriate mitigation is delivered; however, he considers that the residual cumulative impacts would not be severe and gives limited weight to these effects. He concludes that the need and public benefits that would result from the Development clearly outweigh the heritage harm and the harm that may be caused to the tourist industry in Ramsgate. The Secretary of State also concludes that with the restrictions imposed by him in the DCO and also through the UUs only limited weight should be given to noise and vibration adverse effects.

65. For the reasons set out in paragraphs 24-26 above, the Secretary of State is content that climate change is a matter that should be afforded moderate weight against the Development in the planning balance. He does not agree with the ExA that operational matters weigh moderately against the grant of development consent being given for the Development.

66. The Secretary of State is content that the impacts of the Development in terms of air quality [ER 8.2.28 – 8.2.43]; biodiversity [ER 8.2.44 – 8.2.62]; ground conditions [ER 8.2.76 – 8.2.82]; landscape, design and visual impact [ER 8.2.104 – 8.2.120]; and water resources [ER 8.2.219 – 8.2.227] are of neutral weight in the decision as to whether to make the DCO.

67. When all the above factors are weighed against each other either individually or in combination, the Secretary of State is satisfied that the benefits outweigh any adverse impacts of the Development.

## **Compulsory Acquisition and Related Matters**

68. The Secretary of State notes that the Applicant is seeking compulsory acquisition powers in order to acquire land and rights considered necessary to construct and operate the Development, and that in examining the request for compulsory acquisition the ExA has had full regard to all the legislative and regulatory requirements relating to the request [ER 9.4.2]. The ExA's consideration of compulsory acquisition and related matters is set out in Chapter 9 with its conclusions at Chapter 9.19 of its report.

### *Compelling Case in the Public Interest*

69. The Secretary of State notes that the ExA concluded that, as the overall need for the proposed Development has not been sufficiently established, there was not a compelling case in the public interest for the land and rights over land to be acquired compulsorily [ER 9.7.16 – ER 9.7.17]. The Secretary of State disagrees, given his conclusion regarding the clear need for the Development above in paragraphs 20 and 21 and for the reasons below. The Secretary of State also notes that the Applicant has acquired the freehold for the majority of the proposed operational airport [ER 9.6.19].

### *Funding*

70. The Secretary of State notes the discussion at examination regarding how the authorisation of compulsory acquisition powers is to be funded [ER 9.8]. The Secretary of State notes the ExA's view that there is insufficient evidence that the Applicant itself holds adequate funds to indicate how a DCO that contains the authorisation of compulsory acquisition is proposed to be funded [ER 9.8.69], but that the Joint Venture Agreement and Deed of Variation provide a degree of reassurance that a mechanism exists to provide the Applicant and associated companies funding up to £15m [ER 9.8.76]. Taking into account the document '*Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*'<sup>8</sup> published by the Ministry for Housing, Communities and Local Government in September 2013 and the evidence provided, the ExA concluded that there is an indication of how any potential shortcomings are intended to be met [ER 9.8.102] and the Secretary of State sees no reason to disagree.

71. The Secretary of State notes also the ExA's consideration of the availability of funds from other funders in respect of capital costs [ER 9.8.78 – 9.8.102]. He notes that the Applicant had been engaged with potential funders for two years and accepts its view that no project will have secured full funding to cover project costs until there is certainty as to the decision on whether to grant the DCO [ER 9.8.96]. The Secretary of State also notes the ExA's view that the letters from potential funders and range of other information provided during the examination, do provide an indication of the degree to which other bodies have agreed to make financial contributions or to underwrite the Development, and on what basis such contributions or underwriting is to be made [ER 9.8.100]. Taking into account the 2013 Guidance and evidence provided, the Secretary of State sees no reason to disagree with

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236454/Planning\\_Act\\_2008\\_-\\_Guidance\\_related\\_to\\_procedures\\_for\\_the\\_compulsory\\_acquisition\\_of\\_land.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf)

the ExA's conclusion that these provide an indication of how any potential shortfalls in funding are intended to be met [ER 9.8.102]. He also agrees with the ExA's other conclusions relating to funding [ER 9.19.5].

#### *Alternatives*

72. The Secretary of State notes that the ExA concluded that the Applicant is able to demonstrate that all reasonable alternatives to compulsory acquisition have been explored [ER 9.10.31 and ER 19.19.6].

#### *The use of the land which it is proposed to acquire*

73. The Secretary of State sees no reason to disagree with the ExA's view that article 19 of the DCO will serve to secure that only land that is required may be acquired compulsorily [ER 9.10.39 and ER 9.19.7].

#### *Risks and Impediments*

74. The Secretary of State notes the ExA's conclusion that any potential risks or impediments to implementation of the Development have been properly managed [ER 9.10.54 and ER 9.19.8].

#### *Human Rights and the Public Sector Equalities Duty*

75. On the provisions of the Human Rights Act 1998, the Secretary of State disagrees with the ExA in that he is satisfied that the purposes for which the DCO authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. The Secretary of State agrees with the ExA that article 19 of the DCO provides sufficient assurance that those affected by the request for compulsory acquisition will receive compensation. He also agrees with the ExA that in relation to the specific cases of two employers within the proposed DCO lands, Polar Helicopters and Aman Engineering, and also in respect of Helix AV (its objection is considered further below in paragraphs 78 and 79) the interference is for a legitimate purpose, that the land is needed for the Development and proportionate and that the Applicant has proposed relocation proposals that the lease holders are content with [ER 9.11.15, ER 9.11.18, ER 9.11.25 and ER 9.19.9].

76. In respect of the Public Sector Equalities Duty established through section 149 of the Equality Act 2010, the Secretary of State notes that the ExA in coming to its conclusions throughout its report, has had close regard to its duties under this legislation in both the managing of the examination [ER 3.5.25] and in respect of those persons that share a relevant protected characteristic [ER 3.5.20] and who may be impacted by aspects of the Development, particularly in relation to issues of transport and noise [ER 3.5.26]. However, it is also noted that the ExA is not aware of any specific representations from affected persons drawing its attention to persons sharing a particular protected characteristic [ER 9.19.11].

#### Consideration of individual compulsory acquisition requests

77. The Secretary of State notes that a number of submissions were made by affected parties and the consideration of these submissions are set out at sections 9.11 and 9.13 of the ExA's report.

### *Helix AV*

78. The Secretary of State notes the ExA's conclusion that the request for compulsory acquisition in respect of Helix AV's category one lessee/occupier interest in plot 15 should not be granted as the Applicant should have taken more deliberative efforts to secure the acquisition of rights by agreement in line with the 2013 guidance [ER 9.11.32]. The Secretary of State notes that Helix AV's interest was obtained in March 2019, approximately two months into the examination. The ExA wrote to them on 1 July 2019 asking them to confirm whether they wished to be considered as an interested party (PD-021). In a short email submission dated 3 July 2019 (AS-586) Helix AV confirmed that they did wish to be considered as an interested party. They informed the ExA that they had a 5 years lease of a heliport premises and intended that it would be their "permanent home". However, the Secretary of State notes they did not say any more than this and specifically, did not object to the Development or to compulsory acquisition. They also did not make any complaint about a lack of engagement from the Applicant.

79. It is noted that the Applicant's final Compulsory Acquisition Status Report (published 18 July 2019) states that there was also a phone call between the parties in late June 2019 to confirm Helix's interest and a letter was then sent to Helix on 2 July 2019, although no information is given about what the letter said. Whilst there had not been extensive engagement between the Applicant and Helix at the end of the examination, what is clear is that the proposals for compulsory acquisition in respect of plot 15 were already in place at the time the interest was created and Helix AV would no doubt have been aware of the DCO application and the Applicant's plans. They had ample time to engage with the examination if they had concerns about the Applicant's proposals, but did not do so. As such, the Secretary of State considers that there are sound reasons to disagree with the ExA's reasoning and is content compulsory acquisition powers in respect of Helix AV's interests in plot 15 should be granted.

### *Kent County Council*

80. The Secretary of State notes that KCC has Category 1 interest as owner or reputed owner in plots 119, 129, 151, 153, 157, 010, 012, 013, 014, 015b, 016, 016a, 016c, 018, 019, 019a, 019c, 021, 022, 024, 042, 043a, 044, 045, 045a, 045b, 047a, 050a, 050d, 050e, 053, 053b, 054a, 056a, 070a, 072a, 073, 078, 094, 095, 097, 107, 111, 112, 113, 114a, 120, 124, 127, 128, 130, 131, 155, 156, 158, 159, 167, 177a, 184, 185a, 185b, 185c, 185d, 188a [ER 9.13.40]. KCC also has Category 2 and 3 interest in plots 008, 183, 143, 144, 154, 185e, 187, 188 [ER 9.13.41].

81. The ExA's conclusion that the request for compulsory acquisition related to KCC interests in plots 008, 119, 129, 151, 153, 157, 183, 010, 012, 013, 014, 015b, 016, 016a, 016c, 018, 019, 019a, 019c, 021, 022, 024, 042, 043a, 044, 045, 045a, 045b, 047a, 050a, 050d, 050e, 053, 053b, 054a, 056a, 070a, 072a, 073, 078, 094, 095, 097, 107, 111, 112, 113, 114a, 120, 124, 127, 128, 130, 131, 143, 144, 154, 155, 156, 158, 159, 167, 177a, 184, 185a, 185b, 185c, 185d, 185e, 187, 188, and 188a should not be granted [ER 9.13.52] on the basis that the ExA has not been able to establish if the proposed interference with the rights of those with an interest in the land is proportionate [ER 9.13.49].

82. The Secretary of State notes that in recommending refusal of all the plots in which KCC has an interest, the ExA's consideration focuses only on the arguments between the Applicant and KCC in the examination over the pipeline plots [ER 9.13.40 – 9.13.52]. Given that the conditions for compulsory acquisition set out above are considered by the Secretary

of State to have been met, he is satisfied that there are sound reasons to disagree with the ExA and grant compulsory acquisition powers over the non-pipeline plots for which KCC have an interest.

83. In respect of pipeline plots in which KCC has an interest, the Secretary of State notes that KCC objects to the compulsory acquisition of these plots on the basis that they might be required for ongoing highway maintenance. In coming to its view, the ExA has had regard to KCC's statement that a failure to reach agreement in respect of KCC freehold or highways land should not result in a grant of compulsory acquisition powers under the DCO, as there appears to be an alternative means of bringing about the delivery and maintenance of the pipeline in question. KCC's view is that the Applicant's aims could be achieved by obtaining a licence under section 50 licence under the New Roads and Street Works Act 1991 ("a section 50 licence"). However, the Applicant has expressed doubts about the viability of seeking a section 50 licence in a situation where a body that is not in itself a Statutory Undertaker does not own the pipeline in question.

84. The Secretary of State considers that KCC's analysis of section 50 of the New Roads and Street Works Act 1991 does not address the Applicant's point that the pipeline is an existing pipeline that is in unknown ownership. He considers this is therefore a different situation to one where the Applicant is seeking to retain and maintain a pipeline that it already owns, or to place and maintain a new pipeline in the street. Because it is in unknown ownership, the Secretary of State considers the Applicant could not just appropriate the pipeline under the terms of a section 50 licence, because that would not resolve the issue of the pipeline's ownership.

85. The Secretary of State also notes that KCC was unable to confirm to the ExA whether all of the plots in question are within the highway and therefore within a 'street' for the purposes of section 50 of the New Roads and Street Works Act 1991 [ER 9.13.42]. It was also unable to confirm whether the land is required for ongoing highway maintenance. The Secretary of State considers that information could have been provided to the ExA by KCC to demonstrate the validity of its argument that the Applicant could rely on a section 50 licence.

86. In the circumstances, the Secretary of State considers that there are sound reasons to disagree with the ExA's reasoning and grant CA powers on the basis that it would not be legally sufficient for the Applicant to rely solely on section 50 of the New Roads and Street Works Act 1991. Furthermore, he is of the view that the acquisition of the subsoil only would not affect any surface interests held by KCC as the local highway authority.

#### *Thanet District Council*

87. The Secretary of State notes the ExA's conclusion that the request for compulsory acquisition in relation to TDC's interest in plots 113, 119, 120, 184, 185, 185a, 185b, 185c, 185d, 185e, 185f, 186, 187, 188, and 188a should not be granted on the basis that, in line with the 2013 MHCLG guidance, the Applicant could have continued negotiations throughout the examination period [ER 9.13.62 - ER 9.13.63]. However, it is noted that TDC has not objected to the compulsory acquisition of its land or interests and this does not appear to have been an issue that was before the examination. TDC confirmed in its Local Impact Report that it has had regard to the Land Plans and Book of Reference [ER 9.13.56] and also played an active role in the examination and has closely reviewed and scrutinised the draft DCO in particular, as evidenced by its numerous detailed representations throughout the examination period. The Applicant's final Compulsory Acquisition Status

Report also states that discussions and negotiations between the Applicant and TDC took place between February 2018 and April 2019.

88. The Secretary of State notes that the ExA places full reliance on paragraph 25 of the 2013 Guidance in recommending refusal of compulsory acquisition powers. However, it has only quoted part of paragraph 25 in support of its recommendation. The part omitted by the ExA states: "*Where proposals would entail the compulsory acquisition of many separate plots of land...it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.*" There is nothing in paragraph 25 that says that the Applicant must demonstrate that negotiations to acquire by agreement have continued through the full examination period and indeed the Secretary of State considers this is unlikely to be the case where compulsory acquisition is not disputed.

89. Taking all of the above into account, particularly the evidence of the Applicant's attempts to acquire by agreement in the Compulsory Acquisition Status Report, the Secretary of State considers that there are sound reasons to disagree with the ExA's reasoning and compulsory acquisition powers should be granted on the basis that there is no objection to compulsory acquisition from TDC, the 2013 Guidance has been satisfied and there appears to be no reason why compulsory acquisition should be refused.

#### *Edward Martin Spanton*

90. The Secretary of State notes the ExA's conclusion that the request for compulsory acquisition in relation to plots 016, 017, 019, 019a, 020, 020a, 022, 023, 079, 080, 081, 082, 096, 016c, 021, 024, and 025 should not be granted on the basis that, in line with the 2013 guidance, the Applicant could have sought to acquire these interests by agreement [ER 9.15.29 - ER 9.15.30].

91. The Secretary of State considers that the Applicant's final Compulsory Acquisition Status Report clearly demonstrates that the Applicant made repeated attempts to engage with Mr Spanton between February 2018 and June 2019 and that the Applicant intends to continue to contact Mr Spanton to seek to advance voluntary negotiations. The Secretary of State does not agree with the ExA's recommendation of refusal of compulsory acquisition powers solely on the basis that a party has only chosen to engage in the final stages of the examination, and particularly when they have not raised any objection to compulsory acquisition. For the same reasons as given for TDC above in paragraph 87 - 89 (in so far as they apply to Mr Spanton), the Secretary of State therefore considers there are sound reasons to disagree with the ExA's reasoning and compulsory acquisition powers should be granted on the basis that there is no objection to compulsory acquisition from Mr Spanton, the 2013 Guidance has been satisfied and there appears to be no reason why compulsory acquisition should be refused.

#### Crown land

92. The Secretary of State notes that the DCO limits include a number of plots which are Crown land. By virtue of section 135 of the 2008 Act compulsory acquisition powers cannot be granted without the consent of the appropriate Crown authority ("section 135 consent").

93. The appropriate Crown Authority is the government department having the management of the land. In this instance, the ExA indicated that section 135 consent for

Crown land plots had not been given by the following Crown Authorities at the close of the examination: the Government Legal Department; the Met Office and the Secretary of State for the Ministry of Housing, Communities and Local Government (“MHCLG”); the Secretary of State for Transport; and the Secretary of State for Defence. Accordingly, in the absence of section 135 consent, the ExA has recommended that the request for compulsory acquisition in respect of the former should be refused and that any provisions relating to these Crown Authorities should not be included in the DCO should it be made [ER 9.19.14]

94. The Secretary of State accordingly sought to gain the section 135 consent from all the above Crown Authorities (except the Secretary of State for Transport), as part of his consultation of 20 January 2020. However, with the exception of the Ministry of Defence (“MOD”), no responses from other Crown Authorities were received.

*The Government Legal Department (“GLD”)*

95. In his letter of 17 January 2020, the Secretary of State sought consent from the GLD regarding plots 019c and 050b in respect of bona vacantia land. No reply was received. The Secretary of State considers the request for compulsory acquisition powers in respect of GLD is refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests by negotiation after the grant of the DCO.

*The Met Office and the Secretary of State for the Ministry of Housing, Communities and Local Government (“MHCLG”)*

96. The Secretary of State notes that the Met Office and the Secretary of State for MHCLG have rights in respect of plot 027 and their consent had not been secured by the end of the examination [ER 9.16.37, ER 9.16.43]. It is noted that the Secretary of State for Defence also has an interest in this plot. On the basis that section 135 consent has not been received, the Secretary of State considers that the request for compulsory acquisition powers in respect of the Met Office and the Secretary of State for MHCLG is refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests from the Met Office and the Secretary of State for MHCLG by negotiation after the grant of the DCO.

*The Secretary of State for Transport*

97. The Secretary of State for Transport has Category 1 interests as an owner or reputed owner of plots 015, 015a, 026a, 027, 037, 039, 041a, 043, 043a, 046, 050a, 054, 054a, 055, 058, 068 and 069. It is noted that there are also MOD interests in a number of these plots. It is noted that the ExA makes an erroneous reference in its recommendation in respect of the refusal of Plots 019c and 050b and that any provisions relating to the Secretary of State for Transport should not be included in any final DCO [ER 9.16.55].

98. On the basis that section 135 consent has not been received from the Department for Transport’s Estates Team, the Secretary of State considers that the request for compulsory acquisition powers in respect of the Crown land plot interests above should be refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests by negotiation after the grant of the DCO.

*The Secretary of State for Defence*

99. The Secretary of State notes that the Secretary of State for Defence has Category 1 right as owner or reputed owner in plots 018, 018a, 018b, 025, 026, 038, 041, 042, 042a, 044, 045, 045a, 045b and Category 2 and 3 interests in respect of plots 014, 015, 015a, 016a, 017, 019b, 020, 020a, 023, 024, 026a, 027, 028, 036, 037, 039, 040, 040a, 041a, 043, 043a, 046, 047, 047a, 048, 048a, 048b, 049, 049a, 049b, 050, 050a, 050b, 050c, 050d, 050e, 051b, 053a, 053b, 054, 055, 058, 068, 069, 070, 070a, 102, 103, 114 and 114a [ER 9.16.6].

100. In the absence of section 135 consent, the ExA has recommended that the request for compulsory acquisition in respect of the Secretary of State for Defence's interests in plots 018, 018a, 018b, 025, 026, 038, 042, 042a, 044, 045, 045a, 045b, 014, 015, 015a, 016a, 017, 019b, 020, 020a, 023, 024, 026a, 027, 028, 036, 037, 039, 040, 040a, 041a, 043, 043a, 046, 047, 047a, 048, 048a, 048b, 049, 049a, 049b, 050, 050a, 050b, 050c, 050d, 050e, 051b, 053a, 053b, 054, 055, 058, 068, 069, 070, 070a, 102, 103, 114 and 114a be refused and that any provisions relating to Secretary of State for Defence should not be included in any final DCO [ER 9.16.16].

101. In its response dated 31 January 2020 to the Secretary of State's consultation, the MOD confirmed that section 135 consent has been granted in respect to plots 014, 018, 018a, 018b, 024, 025, 042, 042a, 044, 045, 045a, 050a, 054, 102, 103, 114, and 114a. The request for compulsory acquisition powers in respect of these Crown land plot interests is therefore granted. However, the MOD has also confirmed that consent has been refused with regards to plots 016a, 017, 019b, 020, 020a, 023, 026, 038, 040, 040a, 041, and 045b. In the absence of section 135 consent, the request for compulsory acquisition powers over these plots is refused. The DCO has been amended accordingly and the Secretary of State considers the Applicant will need to secure the necessary Crown interests from the Secretary of State for Defence by negotiation after the grant of the DCO.

102. In respect of plot 041, which relates to the location of the High Resolution Direction Finder ("HRDF"), the ExA has recommended that the request for compulsory acquisition in respect of the Secretary of State for Defence should be refused and that any provisions relating to the Secretary of State for Defence should not be included in the DCO [ER 9.16.29]. The Secretary of State has given careful consideration to this issue. He notes that the Secretary of State for Defence owns this plot and section 135 consent has been refused by the MOD. However, he does not accept that the HRDF would necessarily be a significant risk to the Development as stated by the ExA and considers that the Applicant and the MoD as landowner and operator of the HRDF and its site should continue discussions to seek a workable solution to resolve outstanding matters. The Secretary of State also considers Requirement 24 in the DCO should also ensure that the operation of the existing HRDF cannot be interfered with by the construction of the authorised development until such time as an alternative solution is agreed by the MOD and the existing safeguarding direction is withdrawn.

103. The Secretary of State notes that there are a number of other plots where the MOD has refused consent. However, the Applicant has indicated in its representation of 19 March 2020 that it now owns the freehold in respect of plots 015, 027, 028, 036, 037, 039, 043, 046, 047, 049, 050, 055, 058, 068, 069 and 070, and no longer needs compulsory acquisition powers. In the absence of section 135 consent for the plots, the Secretary of State considers the compulsory acquisition powers in respect of the plots should be refused and that any

provisions relating to Secretary of State for Defence for the plots should not be included in the DCO.

104 The MOD has also refused consent for the compulsory acquisition of plots 048 and 048b, but the Applicant withdrew these from the scope of compulsory acquisition powers during the examination and these plots are therefore not included within the DCO.

105. In considering the above, the Secretary of State notes that the ExA has not raised any concerns relating to the overall deliverability of the Development in the absence of Crown consent for the acquisition of the respective land plots. He is satisfied that the Applicant also has the option of voluntary acquisition.

### Statutory Undertakers

#### *BT Group plc*

106. The Secretary of State notes that BT Group plc has an interest in a number of land plots. In the absence of confirmation from BT Group plc that the rights can be purchased without serious detriment to its statutory undertaker, the ExA has recommended that the request for compulsory acquisition of rights over land held by BT Group plc in respect of plots 015, 015a, 015b, 016, 016a, 017, 019, 019a, 019b, 020, 020a, 021, 022, 023, 024, 025, 026, 028, 036,037, 038, 039, 041, 045, 048, 048b, 049, 049a, 050, 050a, 050c, 050e, 051b, 053a, 053b, 055, 056, 056a, 059, 068 and 069 should be not be granted.

107. The Secretary of State notes that BT Group plc made no representations during the examination and although the ExA directed questions to the statutory undertaker it did not respond to these [ER 9.18.7]. The Secretary of State also sought confirmation from BT Group plc of agreement to the compulsory acquisition of their interests in these plots and that such agreement would not result in a serious detriment to its statutory undertaking as part of his 17 January 2020 consultation. No response was received.

108. In considering this matter, the Secretary of State notes the ExA has taken the position that if the statutory undertaker has said that there is serious detriment that is accepted or, in the absence of a statement from the statutory undertaker that it agrees that the rights can be purchased without serious detriment to carrying on the undertaking, compulsory acquisition should not be granted. The Secretary of State disagrees with this approach. In accordance with section 127 of the Planning Act 2008, it is for the Secretary of State to consider the submissions of each party and to examine the specific reasons put forward so he is able to satisfy himself that the land/rights can be taken without serious detriment. If the Secretary of State does not consider the detriment to be serious, he is able to include a provision authorising the statutory undertaker's land or rights over its land be compulsory acquired.

109. In the absence of any representation or statement with reasons being put forward by BT Group plc, the Secretary of State considers he is unable to conclude that the compulsory acquisition of rights over land held by the statutory undertaker would be seriously detrimental to its undertaking. In reaching that view, the Secretary of State also considers it is not for him or the ExA to secure permission from the statutory undertaker to include compulsory acquisition powers in the DCO. It is only to consider whether if in doing so serious detriment will result. For these reasons, the Secretary of State is therefore satisfied that the rights sought by the Applicant can be purchased without any serious detriment to the carrying on of the undertaking and the request for compulsory acquisition of rights over land held by BT

Group plc should be granted. Nevertheless, provisions for the protection of operators of electronic communication code networks are also included in the DCO.

*Southern Gas Networks (“SGN”)*

110. SGN has Category 1 or 2 interests in plots 014,167, 015, 016, 016c, 017, 019, 019a, 019b, 020a, 022, 023, 026, 028, 036, 037, 038, 039, 043, 043a, 044, 045, 045b, 048, 048b, 050, 050d, 050e, 053b, 061, 062, 063, 078, 081, 082, 094, 095, 096, 097, 107, 111, 112, 113, 115, 116, 117, 118, 119, 124, 127, 128, 129, 151, 153, 156, and 167 [ER 9.18.38]. The Secretary of State notes that SGN formally withdrew its compulsory acquisition objections on 12 July 2020 after the close of the examination. The Secretary of State therefore considers that the request for compulsory acquisition of rights over land held by SGN should be granted.

*South Eastern Power Networks (“SEPN”)*

111. The Secretary of State notes that SEPN is shown in the final Compulsory Acquisition Status Report [AS-585] as having a Category 1 and / or 2 interest in plots 018a, 018b, 018c, 040, 042, 050d, 050e, 051b, 051c, 053b, 055 and 068. However, the ExA notes that the final Book of Reference [AS-581] shows SEPN as having a Category 1 interest in respect of apparatus additionally in plots 015, 015a, 018, 026, 028, 036, 038, 042a, 043a, 050, 050a, 053, 054, 059, 078, 080, 095, 097, 107, 108, 109, 110, 111, 124, 128, 129, 152, 160, 162, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 181, 182, 183 and 185 and a Category 2 interest in 040b [ER 9.18.30 - ER 9.18.31]. The ExA concluded that in the absence of agreement from SEPN agreeing that the rights can be purchased without any serious detriment to the carrying on of the undertaking, the request for compulsory acquisition of rights over land held by SEPN should be refused [ER 9.18.36].

112. The Secretary of State subsequently sought clarification on the above in his consultation letter dated 17 January 2020, but no response was received from SEPN. In accordance with section 127 of the Planning Act 2008, it is for the Secretary of State to consider the submissions of each party and to examine the specific reasons put forward so he is able to satisfy himself that the land/rights can be taken without serious detriment. If the Secretary of State does not consider the detriment to be serious, he is able to include a provision authorising the statutory undertaker’s land or rights over its land be compulsory acquired.

113. In the absence of any representation or statement with reasons being put forward by SEPN, the Secretary of State considers he is unable to conclude that the compulsory acquisition of rights over land held by the statutory undertaker would be seriously detrimental to its undertaking. In reaching that view, the Secretary of State also considers it is not for him or the ExA to secure permission from the statutory undertaker to include compulsory acquisition powers in the DCO. It is only to consider whether if in doing so serious detriment will result. For these reasons, the Secretary of State is therefore satisfied that the rights sought by the Applicant can be purchased without any serious detriment to the carrying on of the undertaking and the request for compulsory acquisition of rights over land held by SEPN should be granted. The Secretary of State is aware that the Applicant has indicated that agreement had been reached between the parties on 31 January 2020; however, that agreement is a matter between the parties and does not affect the Secretary of State’s conclusions on the question of serious detriment.

### *Network Rail Infrastructure*

114. Network Rail has Category 1 and 2 interests in plots 123, 113, 115, 116, 117, 118 and 119 [ER 9.18.18], which all relate to a section of the pipeline running from Manston Airport and under Network Rail's existing infrastructure to an outfall at Pegwell Bay.

115. The Secretary of State understands that the Applicant has not been able to identify the legal or beneficial owner of the existing pipeline and seeks powers of compulsory acquisition through the DCO in order to regularise the ownership of the pipeline, which is necessary for the operation of the Development. Both parties agreed that the authorised works of the Development will not affect the undertaking carried on by Network Rail but that the parties were in discussion regarding the proposed powers which, if made, would authorise access and maintenance rights to land beneath the operational railway. Network Rail consider that, in the absence of proper Protective Provisions, the compulsory acquisition powers sought would create a serious detriment to their undertaking [ER 9.18.21 – 9.18.23].

116. The ExA has concluded that if it had come to an alternate overall view that there was a sufficient need for the development, it would have recommended that it is satisfied that the use of the corridor of a pipeline leading to an outfall is for a legitimate purpose, and that it is necessary and proportionate [ER 9.13.24]. The ExA, taking into account of the statutory test in relation to the grant of a request for compulsory acquisition, has also concluded in its report that there is a compelling case in the public interest for compulsory acquisition in relation to a pipeline corridor [ER 9.18.27] and that *"if it had come to an alternate overall view that there was a sufficient need for the development, it would have recommended that, in respect of Network Rail Infrastructure, the rights can be purchased without any serious detriment to the carrying on of the undertaking subject to Network Rail Infrastructure informing the SoS that it is content with the Protective Provisions as included in the dDCO"* [ER 9.18.28].

117. The Secretary of State notes that the draft DCO includes provisions which would, if granted, authorise the Applicant to acquire permanent subsoil in land underneath operational railway and permanent acquisition of Network Rail's rights in land in close proximity to the railway. Network Rail's position is that the necessary subsoil rights should be acquired through an agreed easement rather than compulsory acquisition to ensure that Network Rail can comply with its statutory duty to maintain the operation of the railway. Network Rail has requested that the Applicant enter into an asset protection agreement including a deed of easement to provide rights to access the subsoil under the railway and negotiations stalled because the Applicant required an indemnity for the benefit of the Applicant, which Network Rail wouldn't agree to. He notes that the parties were not able to come to an agreement and neither agreed nor draft Protective Provisions were submitted to the ExA before the close of the examination [ER 9.18.22].

118. Following consideration of the ExA's recommended actions at Appendix E to its report, the Secretary of State sought views from the Applicant and Network Rail on the ExA's draft Protective Provisions in his letter dated 17 January 2020. In its response, the Secretary of State notes the principle of the ExA's draft Protective Provisions is welcomed by Network Rail but the draft DCO is still not considered to offer the protection it requires. Network Rail indicated that *"the draft Protective Provisions at Annex C of the letter do not go far enough to adequately protect Network Rail's infrastructure and would not enable Network Rail to ensure compliance with its statutory duty to maintain the safe, efficient and economic operation of the railway. Accordingly, Network Rail required the full set of well precedented*

*Protective Provisions enclosed with this letter to be incorporated in the Order [DCO], if made.”<sup>9</sup>*

119. In considering this matter, the Secretary of State is not convinced that acquiring the outfall pipeline will result in serious detriment to Network Rail carrying on its undertaking. In relation to the asset protection agreement, the Secretary of State notes that the ExA’s draft DCO did not contain this provision and considers its inclusion would be unusual in a DCO (as Network Rail has indicated there has only been one other DCO granted which contains a similar requirement). Given the various other protections in the DCO, the Secretary of State is also not convinced that this additional protection is necessary. He concludes therefore that the rights can be acquired without any serious detriment to the carrying out of Network Rail’s undertaking and is content with the Protective Provisions recommended by the ExA to be included in the DCO.

### **Draft Development Consent Order and Related Matters**

120. The Secretary of State has considered the ExA’s examination of the DCO in section 10 of the ExA’s Report. Having concluded above that development consent should be granted, he is satisfied that the form of the Order recommended by the ExA at Appendix D of the ExA’s Report is appropriate, subject to the modifications referred to below. The Secretary of State is satisfied that none of these changes, constitute a material change.

121. The modifications which the Secretary of State has decided to make to the DCO are as follows:

- in article 2(1), the definition of “commence” has been slightly modified including the removal of “commences” which is not used in the Order;
- in article 2(1), the definition of “compulsory acquisition notice” has been removed as it is not a term used in the Order;
- in article 2(1), the term “Manston Airport s.106 agreement” is only used in article 35 (abrogation of agreement), so this term has been spelt out in full in that article;
- in article 2(1), the term “the tribunal” is only used in article 43 (arbitration) and so the term is spelt out in full in that article;
- in article 6(4) (limits of deviation), the text has been reworked to that agreed with Historic England and as set out in the Applicant’s response to consultation dated 31 January 2020;
- in article 11(2) (construction and maintenance of new, altered or diverted streets), the reference to “local street authority” is not a defined term whereas “street authority” is a defined term and so “local” has been omitted;
- in article 13(3) (permanent stopping up of public rights of way), the text suggested by the ExA has been slightly reworked;
- in article 19 (compulsory acquisition of land), the reference to “restrictive covenants” has been removed in accordance with the conclusions made by the ExA in relation to article 22 (compulsory acquisition of rights and restrictive covenants) that the power to impose restrictive covenants should not be included in the Order.  
Corresponding changes have been made in relation to article 23 (subsoil or new

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<sup>9</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-005249-Network%20Rail's%20response-%20Manston.pdf>

- rights only to be acquired in certain land); article 24 (private rights over land); article 31 (statutory undertakers) and to the inserted Schedule 2A in Schedule 6;
- in article 29(9) (temporary use of land for carrying out the authorised development), the provision has been amended to remove the acquisition of new rights in relation to land under article 22. The Secretary of State is concerned about the creation of new unidentified rights and is unclear whether affected land owners have been appropriately consulted as there is no cross over of land referred to in Schedule 5 and Schedule 8;
  - in article 43 (arbitration), the reference to the “Secretary of State” has been replaced by “President of the Institution of Civil Engineers”, which is the usual position;
  - in requirement 9 (noise mitigation) of Schedule 2, the obligation to implement the noise mitigation plan had not been set out. That obligation has now been placed on the Applicant; and
  - in requirement 24(1) (High Resolution Direction Finder), the MOD amendment has been inserted.

### **Late Representations (outside formal consultation)**

122. In addition to the responses received in response to the Secretary of State’s further consultation, numerous other representations have been received from Interested Parties since the examination closed which have been carefully considered and taken into account in his decision. The representations either support or oppose the Development and cover a range of issues, including need for the Development, air emissions and climate change, heritage impacts, socio-economic benefits, funding, noise and health impacts. Where considered appropriate, these were also included in the Secretary of State’s further consultation of 17 January 2020. Whilst other subsequent late representations refer to further developments since the close of the examination, it is the Secretary of State’s view that they do not give rise to an alternative conclusion or raise evidence that is material to his decision on the Development. As such, he is satisfied that there is not any new evidence or matter of fact that needs to be referred again to Interested Parties under Rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

### **Other Matters**

#### Natural Environment and Rural Communities Act 2006

123. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

124. The Secretary of State is of the view that the ExA’s report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

## **Secretary of State's overall conclusions and decision**

125. For all the reasons given in this letter, the Secretary of State is satisfied that there is a clear justification for authorising the Development. He has therefore decided to today make the Manston Airport Development Consent Order, subject to the changes referred to above. The Secretary of State is satisfied that none of these changes constitute a material change. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed. This decision has been taken having regard to the UUs completed by the Applicant for the benefit of TDC and KCC dated 17 June 2020<sup>10</sup>.

## **Challenge to decision**

126. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

## **Publicity for decision**

127. The Secretary of State's decision on the Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Natasha Kopala  
Head of Transport and Works Act Orders Unit

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<sup>10</sup> The UUs for the benefit of TDC and KCC were resubmitted by the Applicant to correct an administrative error in that the UUs dated 31 January 2020 had been signed but not dated and also to correct an error agreed with TDC in respect of the "CPZ Contribution by removal of paragraph 2.2 in the Fifth Schedule of the UU in favour of TDC. They are the same documents in all other respects.

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, a DCO granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such a DCO, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/manston-airport/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the DCO referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**