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To: Secretary of State for Transport  
% Planning Inspectorate,  
National Infrastructure Planning

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Date: 8 July 2021  
Our Ref: SoS/R/010

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**For the attention of the Manston Airport Case Team**

1. This submission is in response to the SoSFT's call for submissions relating to the extent to which current national or local policies (including any changes since 9 July 2020 such as, but not limited to, the reinstatement of the ANPS) inform the level of need for the services that the Development would provide and the benefits that would be achieved from the Development.
2. On 5 June 2018 the Secretary of State laid before Parliament the final version of the Airports National Policy Statement (the "**ANPS**"), together with supporting documents. On 25 June 2018, the House of Commons held a debate followed by a vote approving the ANPS by 415 votes to 119, a majority of 296 with support from across the House<sup>1</sup>. It is, perhaps, of note that North Thanet MP Sir Roger Gale abstained and South Thanet MP Craig Mackinlay voted Aye in favour of the ANPS<sup>2</sup>.
3. Following approval of the statement by the House, the Secretary of State for Transport designated the ANPS under section 5(1) of the Planning Act 2008 ("**PA 2008**") as national policy.
4. The process for designation of a National policy Statement ("**NPS**") is set out in the PA 2008.
5. The 2007 White Paper<sup>3</sup> set out proposals to reform the regime for development consent for nationally significant infrastructure, and other measures to change the town and country planning system and the resulting PA 2008 established a new unified "development consent" procedure for "nationally significant infrastructure projects"<sup>4</sup>.

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<sup>1</sup>Columns 721-724 Available Online at: <https://hansard.parliament.uk/Commons/2018-06-25/debates/C9B5DFC3-043B-4528-BEF1-34D9512E637D/NationalPolicyStatementAirports> (accessed on 8 July 2021)

<sup>2</sup> National Policy Statement: Airports Division 192: held on Monday 25 June 2018. Available online at: <https://hansard.parliament.uk/Commons/2018-06-25/division/8A2B2442-17BD-44C7-A19E-9FDB5A9FE7B9/NationalPolicyStatementAirports?outputType=Names> (accessed on 8 July 2021)

<sup>3</sup>Background, Planning Act 2008. Available online at: <https://www.legislation.gov.uk/ukpga/2008/29/notes/division/3> (accessed on 8 July 2021)

<sup>4</sup>Para 19 of R (on the application of the Friends of the Earth Ltd and the others) (Respondents) v (Heathrow Airport Ltd) (Appellant) [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214. Available online at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf> (accessed on 8 July 2021)

6. The 2007 White Paper<sup>5</sup> proposed that national policy statements would set the policy framework for decisions on the development of national infrastructure,

*“They would integrate the Government’s objectives for infrastructure capacity and development with its wider economic, environmental and social policy objectives, including climate change goals and targets, in order to deliver sustainable development.”*

The role of Ministers would be to set policy, in particular the national need for infrastructure development (para 3.4)<sup>6</sup>.

7. In line with the 2007 White Paper recommendation, Part 2 of the PA 2008 provides for NPSs which give a policy framework within which any application for development consent, in the form of a DCO, is to be determined<sup>7</sup>.
8. The ANPS was the result of a huge amount of research, appraisal of sustainability<sup>8</sup>, analysis, public consultation and publicity<sup>9</sup> and Parliamentary scrutiny<sup>10</sup>. Underlying reports included Sir Howard Davies’ Airports Commission Interim Report<sup>11</sup> and the Airports Commission Interim Report: The Air Freight Industry in the UK<sup>12</sup>. Both of these reports considered and ultimately rejected Manston Airport for further consideration and the final report from the Airports Commission does not specifically refer to Manston Airport<sup>13</sup>.
9. The ANPS was the lawful national policy statement in relation to airports at the time of the Examination of the Applicant’s Application and the resulting Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport of 18 October 2019.
10. The ANPS sets out:
  - the need for additional airport capacity in the south-east of England

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<sup>5</sup>White Paper published in May 2007, Planning for a Sustainable Future (Cm 7120) (“the 2007 White Paper”) referenced at Para 20 of R (on the application of the Friends of the Earth Ltd and the others) (Respondents) v (Heathrow Airport Ltd) (Appellant) [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214. Available online at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf> (accessed on 8 July 2021)

<sup>6</sup>Para 22 of R (on the application of the Friends of the Earth Ltd and the others) (Respondents) v (Heathrow Airport Ltd) (Appellant) [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214. Available online at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf> (accessed on 8 July 2021)

<sup>7</sup> Para 24 of R (on the application of the Friends of the Earth Ltd and the others) (Respondents) v (Heathrow Airport Ltd) (Appellant) [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214. Available online at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf> (accessed on 8 July 2021)

<sup>8</sup> Section 5(3) of the PA 2008. Available Online at: <https://www.legislation.gov.uk/ukpga/2008/29/contents> (accessed on 8 July 2021)

<sup>9</sup> Section 7 of the PA 2008. Available Online at: <https://www.legislation.gov.uk/ukpga/2008/29/contents> (accessed on 8 July 2021)

<sup>10</sup>Sections 5(4) and (9) of the PA 2008. Available Online at: <https://www.legislation.gov.uk/ukpga/2008/29/contents> (accessed on 8 July 2021)

<sup>11</sup>Airports Commission: Interim Report December 2013. Available Online at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271231/airports-commission-interim-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/271231/airports-commission-interim-report.pdf) (accessed 8 July 2021)

<sup>12</sup>Within Airports Commission: Final Report July 2015 Available Online at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/440316/airports-commission-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/440316/airports-commission-final-report.pdf) (accessed 8 July 2021)

<sup>13</sup>Airports Commission: Final Report July 2015 Available Online at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/440316/airports-commission-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/440316/airports-commission-final-report.pdf) (accessed 8 July 2021)

- why government believes that need is best met by a north-west runway at Heathrow Airport
  - the specific requirements that an applicant for a new north-west runway would need to meet to gain development consent
11. The ANPS was not designated in relation to the application to reopen and develop Manston Airport and therefore the Examination of the Applicant's Application was conducted under s105 of the PA 2008 which applies to decisions in cases where no National Policy Statement has effect.
  12. However, the Proposed Development is situated in the South East of England and the ANPS states at paragraph 1.12 that:

*“The Airports NPS provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow Airport [LHR NWR], and will be an important and relevant consideration in respect of applications for new runway capacity and other airport infrastructure in London and the South East of England<sup>14</sup>”.*

Therefore, the ANPS is an important and relevant consideration under s105(2) of the PA 2008.

13. Paragraph 4 of the Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport of 18 October 2019 confirms the importance given by the Examining Authority to the ANPS and states that *“the content and provisions of the ANPS are referred to and quoted in each of the issue sections of Chapter 6 of this report, where relevant”<sup>15</sup>*.
14. The Court of Appeal ruled on 27 February 2020, (after the close of the Examination) that the ANPS in its present form was unlawful and could not have legal effect unless and until the government carried out a review under the Planning Act 2008.
15. Accordingly the Secretary of State afforded the ANPS no weight in his original decision of 9 July 2020 to grant the DCO to the Applicant, (since quashed).
16. The ANPS was subsequently reinstated following the Supreme Court Judgment of 16 December 2020<sup>16</sup>, (**“Heathrow Judgment”**).

<sup>14</sup>Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England, June 2018. Available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf) (Para 1.12) (accessed 8 July 2021)

<sup>15</sup>Para 4.4 Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport of 18 October 2019. Available online at:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-005347-TR020002%20Final%20Recommendation%20Report%20to%20DfT.pdf> (accessed 8 July 2021)

<sup>16</sup>R (on the application of the Friends of the Earth Ltd and the others) (Respondents) v (Heathrow Airport Ltd) (Appellant) [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214. Available online at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf> (accessed on 8 July 2021)

17. Accordingly, as the Proposed Development is situated in the South East of England<sup>17</sup>, the ANPS is, once again, an important and relevant consideration under s105(2) of the PA 2008.
18. The Supreme Court cited in its Heathrow Judgment at Para 23<sup>18</sup>:

*“...Paragraph 3.11 [of the 2007 White Paper] envisaged that any public inquiry dealing with individual applications for development consent would not have to consider issues such as whether there is a case for infrastructure development, or the types of development most likely to meet the need for additional capacity, since such matters would already have been addressed in the NPS. It was said that NPSs should have more weight than other statements of policy, whether at a national or local level: should be the primary consideration in the determination of an application for a DCO (para 3.12), although other relevant considerations should also be taken into account (para 3.13)”.*

19. Lord Anderson QC for Heathrow Airport Limited informed the Supreme Court that Heathrow Airport Limited intends to proceed with the [LHR] NWR Scheme despite the pandemic<sup>19</sup>.
20. Heathrow confirmed to investors as recently as last month that:

*“Heathrow Expansion – [We] were pleased with the positive outcome from the judicial review proceedings last year, reinstating the Airports National Policy Statement (ANPS) as lawful policy. At the moment, [our] primary focus is on working to safely restart international travel and trade to help kickstart the UK’s economic recovery after COVID-19. When demand returns to pre-COVID levels, meeting that demand at the UK’s hub airport will be essential to a country that has global and levelling up ambitions. Following the Supreme Court’s decision in December 2020 and after consulting with [our] airline community and the CAA, [we] decided to reopen [our] Interim Property Hardship Scheme in early May 2021. [We] will continue to consult with investors, Government, airline customers and regulators on [our] next steps<sup>20</sup>.”*

21. The [Heathrow] Interim Property Hardship Scheme is available to eligible property owners who have a compelling need to sell their property but have been unable to do so, except at a substantially reduced price, as a direct result of the proposals for the Heathrow Expansion Project.

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<sup>17</sup> “The Airports NPS provides the primary basis for decision making on development consent applications for a Northwest Runway at Heathrow Airport, and will be an important and relevant consideration in respect of applications for new runway capacity and other airport infrastructure in London and the South East of England.” Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England, June 2018. Available online at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf) (Para 1.12) (accessed 8 July 2021)

<sup>18</sup> Para 23 of R (on the application of the Friends of the Earth Ltd and the others) (Respondents) v (Heathrow Airport Ltd) (Appellant) [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214. Available online at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf> (accessed on 8 July 2021)

<sup>19</sup> Para 18 of R (on the application of the Friends of the Earth Ltd and the others) (Respondents) v (Heathrow Airport Ltd) (Appellant) [2020] UKSC 52 On appeal from: [2020] EWCA Civ 214. Available online at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf> (accessed on 8 July 2021)

<sup>20</sup>Page 7, Heathrow Investor Report June 2021. Available online at: [Heathrow \(SP\) Limited and Heathrow Finance PLC Investor Report June 2021](https://www.heathrow.com/media/1000000/Heathrow-SP-Limited-and-Heathrow-Finance-PLC-Investor-Report-June-2021) (accessed 8 July 2021)

22. The [Heathrow] Interim Property Hardship Scheme was reinstated on 1 May 2021<sup>21</sup>. Its reinstatement can only be seen as a positive commitment to Heathrow's planned expansion.
23. In direct relation to the need for the Proposed Development are the findings in the ANPS as to the need for new airport capacity and that the preferred scheme [Heathrow Airport] is *"the most appropriate means of meeting that need"*<sup>22</sup>.
24. Paragraph 1.42 of the ANPS states that *"in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure [...] the Government accepts that it may well be possible for existing airports to **demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow**"*<sup>23</sup>, (bold added for emphasis).
25. Paragraph 3.24 of the ANPS further states that *"...expansion at Heathrow Airport delivers the biggest boost in long haul flights, and the greatest benefit therefore to air freight."* and that this would be *"...further facilitated by the existing and proposed airport development of freight facilities as part of the Northwest Runway scheme"*<sup>24</sup>.
26. Heathrow confirmed to investors as recently as last month that:

*"Heathrow is the UK's largest port by value for Non-EU markets, but 95% of cargo is carried in the hold of passenger planes. Unused slots have allowed more dedicated freighter operations and higher rates for cargo have allowed airlines to keep operating some routes with low passenger load factors. However, despite our collective efforts, cargo volumes were down 19% as at 31 May 2021 compared to the same period in 2019. This shows the importance of restarting long haul passenger travel to reinstate the UK's supply chain and export routes"*<sup>25</sup>.

27. **Conclusion**

The reinstatement of the ANPS following the original determination of the Manston DCO, (now quashed), has placed an even greater emphasis and requirement on the Applicant to *"...demonstrate sufficient need for their proposals, **additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow**"*<sup>26</sup>.

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<sup>21</sup> Heathrow Airport Property Compensation Schemes. Available online at: <https://www.heathrow.com/company/local-community/property-compensation-schemes> (accessed 8 July 2021)

<sup>22</sup> Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England, June 2018. Available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf) (Para 1.41) (accessed 8 July 2021)

<sup>23</sup> *Ibid* (Para 1.42) (accessed 8 July 2021)

<sup>24</sup> *Ibid* (Para 3.24) (accessed 8 July 2021)

<sup>25</sup> Page 6, Heathrow Investor Report June 2021. Available online at: [Heathrow \(SP\) Limited and Heathrow Finance PLC Investor Report June 2021](https://www.heathrow.com/assets/pdfs/Heathrow-SP-Limited-and-Heathrow-Finance-PLC-Investor-Report-June-2021) (accessed 8 July 2021)

<sup>26</sup> Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England, June 2018. Available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/858533/airports-nps-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england-web-version.pdf) (Para 1.41) (accessed 8 July 2021)