

Final Submission by Dr. R. John Pritchard in Support of the Applicant as a
Post-Examination Contribution to the Secretary of State's Final Consultation on
the Re-Determination of the Manston Airport DCO

Dear Sir,

1. First and foremost, in the Redetermination of the Manston Airport DCO, I cannot understate the importance that the Decision should be made by the Secretary of State himself, not by another in his name. For another to do so is to invite Judicial Review. Parliament is sovereign in the United Kingdom, and the language of Parliament set out in the Planning Act 2008 is clear: the Secretary of State is the Decision-Maker, not someone else acting in his name. The notion that this Secretary of State in this singular instance (or any similar one) should not be permitted to determine this project because he had previously supported it when he campaigned in Thanet on behalf of his national Party and its commitments during an election campaign waged back in 2015 is spurious nonsense. To the best of my knowledge and belief, that has not happened before (and if it has that would be wrong in principle and in law). It reeks of the meddling of unelected special advisors and particularly of Dominic Cummings and his little core of Apparatchiks: that period, thankfully, is gone, un lamented, I hope, by anyone in Government. Ministerial officials and advisors are subordinates. The Minister and above all the Secretary of State must carry the can. Once in a generation, we get a Secretary of State who is a real expert in his field, and the present Secretary of State for Transport, unlike his immediate and other predecessors, is an expert in the field of Aviation and Aviation Policy and indeed transport generally. To deprive us of his unequalled expertise, to sideline him from any decision-making in this case on account of his knowledge and experience is just plain wrong. His direct and personal responsibility might have been thought to risk some kind of challenge whilst we were within the European Union, but it certainly does not in a Great Britain that has taken back control of its laws and traditions. We elect MPs in the belief that they will bring to their responsibilities their experience, their expertise, their party manifesto commitments made and accepted in good faith, and fulfil their promises personally made to us in campaigning. It is entirely right and proper that this is not to be regarded as 'predetermination'. They must do due diligence, read the representations made to them, consider the alternatives, but at the end of the day no politician can be faulted for carrying out his duties and making his decisions deflected by his own experience and expertise. The Prime Minister was entitled to appoint Grant Shapps to hold office and carry out the duties of the responsible Decision-Maker of the Department for Transport. For anyone else by the Secretary of State to undertake responsibility for those personal duties where set out explicitly in statute as in the Planning Act 2008 as amended is quite literally 'unlawful', 'unreasonable' and would undermine if not destroy the entire foundations and social contracts upon which western democracy and in particular the constitutional traditions and reputation of the United Kingdom rest.

2. There is a very clear difference between Need (driven by policy) and Benefit, as viewed through the lenses of law, politics and economics, but in the absence of any requirement to deal with Need in Planning Act 2008 s. 104 terms, I submit that the Benefits are as relevant, and in any case the Decision-Maker is required to undertake a balancing act of Benefits vs. Detriments (and indeed did so in the original Decision). It is clear that the detriments of air cargo and its efficient and rapid handling are small in relation to HGV particulates and noise across domestic routes and in international & transcontinental freight. The margin of appreciation is in the Government's duty to allow for competition and the best use of airports: the market will determine whether the investors are prescient or not. In a binding legal sense, however, Need continues to be expressed and fixed by the Government's successive policy documents and decisions (and indeed decision letters and conclusive declarations), nothing else.

3. Even where Compulsory Acquisition is at issue, so that the Compulsory Purchase Code applies, Need doesn't have to be shown in terms of NPS minimal requirements or at all, for the economy rises and falls unpredictably and makes its upward and downward excursions far faster than do different iterations of National Policy Statements which are invariably subject to protracted consultation. What does have to be demonstrated is a weighing between detriments to a landowner and benefits expected of a project. This is the standard balancing term for Compulsory Acquisition, as defined in the Compulsory Purchase Code, nothing more narrow or broader: the CP Code is an example of a policy document. But where there is little or no Compulsory Acquisition, this balancing issue in relation to Need does NOT apply or carry weight.

4. The balance of convenience favours the NSIP project, so long as it meets the minimum threshold of an NSIP of the type at issue, as defined in the Planning Act 2008 as amended. That's generally understood and acknowledged: it reflected the intentions of Parliament in establishing the Planning Act regime and as later amended by subsequent legislation. Fairness has nothing to do with it: the promotion and consenting of NSIPs is the default position for all projects for which DCO Consent is required as determined by the type of project and its size. Thus it is that notwithstanding the Airports NPS with its strong bias towards the London Heathrow Airport Northeast Third Runway, within the last few years there has been no shortage of other Airport redevelopment and expansion projects of varying types, some like Stansted's brought under the Town & Country Planning Act regime (because they haven't met the relevant DCO threshold despite being very big projects indeed in terms of effect) and others under the Planning Act 2008 regime (even when much smaller, depending upon the measurement criteria as determined by the relevant type of Airport development), The Manston Airport NSIP Project is simply the first airport DCO project to come forward. If it isn't re-consented, then that would throw other airport DCO projects now in parturition into a legal limbo. Indeed, given the precedent of the Stansted Appeal Judgment and its reasoned arguments, that would almost certainly result in an immediate and ultimately successful judicial review by RiverOak Strategic Partners.

5. In laying the foundations for what was to become the Planning Act 2008 regime, the last Labour Government published a White Paper entitled *Planning for a Sustainable Future* which anticipated that any such regime would benefit from clarity or even certainty about complex high level issues. It suggested that 'National Policy Statements' would provide a measure of clarity within a series of documents, one issued in the name of the relevant Secretary of State to "set out the national need for infrastructure and explain how this fits in with other policies such as those relating to economic development, international competitiveness, climate change, energy conservation efficiency and protection of the historic and natural environment (Rebecca Clutton & Michael Humphries, "Context for the Identification of Need in NPSs," in *National Infrastructure Planning Handbook 2018*, Michael Humphries, ed., Bloomsbury Professional, London, 2018, at 24, which is the leading practitioner manual on the subject. Clutton & Humphries observe that "PA 2008 s. 5(1) and s. 5(5)(5) taken together ... permit a Secretary of State to identify through NPSs both the need for national infrastructure, and the weight to be attached to that need." (Humphries, *loc. cit.*). How need is taken into account in **determining** applications is that the relevant Secretary of State "must... have regard for [the] relevant NPS (see PA 2008, s. 104(2))" and "determine the application in accordance with it, *unless* one [or more] of the situations identified in PA 2008, s. 104(4)-(8) applies" (see PA 2008, s. 104(3)). It is clear that in the case of Manston Airport, the Application did not fall within the narrow scope of the Airports National Policy Statement (only Heathrow did) and so fell into the provisions made in PA 2008, s. 105 for "cases where no national policy statement has effect." That does not mean that the Manston Airport DCO should be refused: it is common ground that the Manston Airport DCO Application *must* be decided in accordance with the provisions of PA 2008, s. 105.

6. The Airports NPS was years in preparation and published only after full consideration of the

Davies Commission Report (which was after Manston Airport was taken out of use in the expectation of its then owner that it could be turned into a mammoth housing estate for an anticipated spectacular 'return on investment'). In the event, that owner's ambitions were thwarted and, in due course, Manston Airport remained an airport, albeit a disused one.

7. Applications determined in accordance with s. 105 give the relevant Secretary of State very broad discretion in determining what matters s/he “thinks are both important and relevant to the Secretary of State's decision”. (PA2008, s. 104(2)(c)). The determination of whether the proposed development meets Need is therefore very unconstrained in PA 2008, s. 105 cases in comparison with cases determined by reference to Applications that fall into cases where a National Policy Statement has effect (s. PA2008, s. 104),

8. **Need** as defined in PA2008 s. 104 is therefore largely irrelevant but in broader terms **is** for the Secretary of State through his independent Decision-Maker to determine to be relevant or not. In doing so, what he cannot ignore is that the Application has already been certified to have passed the threshold to be a Nationally Significant Airport Infrastructure Project as set out in PA2008 s. 23(1) (b), s. 23(2) (a) & (b), s. 23(3)(b), s. 23(4), s. 23(5)(b), s. 23(6)(b) & (c), s. 23(7), S.23(8) and s. 3(9), and that certification, by the Secretary of State for Housing, Communities and Local Government, cannot be challenged. Taken together, these provisions enable the Decision-Maker of the Secretary of State for Transport to re-determine and consent the Application, either with the same Order or on more generous terms, if the evidence adduced in his Consultation or otherwise persuade the Decision-Maker to do so.

9. In any case, even if all assessed National Need as defined in a National Policy Statement (under s. 104) is exceeded by other DCO projects, that does not prevent any s. 105 application from succeeding. If it is exceeded, then resilience is created and competition and competitiveness are produced. That, I submit, is and always has been consistent with national policy. Only those who fail to understand the Planning Act 2008 properly miss that. It is provided for within the Planning Act 2008 as amended. It is also, relevantly, the basis on which the Government privatised Britain's airports in 1986, and that basis remains justified and sound in law and practice. That aim has not been displaced by any other high-level document or caselaw: competition and the interests of investors rule, and nothing else does (save if the relevant Secretary of State lawfully exercises his discretion to determine otherwise) in terms of how Need should be established where Compulsory Acquisition doesn't apply. Ultimately, as the Government's Decision-Maker will appreciate, it is shareholders and their managements who must gain the benefit and the burden of the fitness of their decisions.

10. There is one further policy document that the Secretary of State's Decision-Maker **must** take into account, and that is *Beyond the Horizon: The Future of UK Aviation:-- Making Best Use of Existing Airports* (June 2018), another White Paper which carries significant weight. That will protect the Secretary of State from a challenge to a decision to grant Consent to an NSIP Project that doesn't fit within the terms of a pre-existing NPS. The *Airports Commission Final Report* of July 2015 had also focussed on Airport Capacity in the Southeast, but it, too, recognised the need for other airports to make more intensive use of their existing infrastructure (in Manston's case it is the airport runway's length, location and their incredibly strong and wide runway). The title of the later *Making Best Use* document again fits in with the Airport Commission's recognition that notwithstanding its selection of the Northwest Runway at Heathrow to deal with demand it has identified, the Commission recognised the need for other airports to make more intensive use of their facilities. These documents are unqualified in the sense that they do **not** set any ceiling for total ATMS or more specifically CATMS across the whole of the UK: that demand, clearly, would change over time, driven by competition and opportunities that the Government strongly favoured then then and now.

11. Indeed, in October 2017, for the first time since 2013 the Department for Transport itself showed that London demand was already 9% higher than previously forecast by the Airports Commission in 2016. In its *Beyond the Horizon: The Future of UK Aviation:-- A Call for Evidence on a New Strategy*, published in July 2017, the Government had agreed with Airport Commission's recommendations "and was minded to be supportive of **all** airports who wish to make best use of their existing runways as the Airports Commission noted, we need to continue to grow our domestic and international connectivity. This document also sets out our belief that there is a need for all airports in the UK to make best use of their existing runways, while giving due consideration to environmental issues being addressed." The October 2017 report that flowed from that made it clear that this included runways in the Southeast. As in the *Call for Evidence*, only Heathrow was excluded by reason of it remaining under the rule of the Airports NPS as a PA2008 s. 104 project. Indeed, the *Making Best Use* document embraces competition and enhancements by airports whether they fall within the DCO regime or the Town & Country Planning Act regime. Thus is preserved absolutely the position that a competitive environment is good for UK business and airport users, wherever they may be located. With Thanet being one of the most deprived economic areas in the United Kingdom, and with a Government committed to "levelling up" opportunities in deprived areas, this is a moment that any Secretary of State or his appointed Decision-Maker must savour. Refusal of the Manston Airport DCO Application would betray the Government's Manifesto commitments dating back to 2015 and 2019, and would also betray current policies.

12. Let me turn to some particular Benefits and Detriments that may flow depending upon the Redetermination of this project now, for those now become relevant in determining Need in the sense it is ordinarily used by ordinary people (that is, 'do the benefits outweigh the detriments,' rather than in PA 2008, s. 104 terms or through the eyeballs of lawyers, political scientists or economists). In all other terms the Arup 'demand study' commissioned by the Department for Transport is irrelevant and immaterial. It completely misconstrues the cluster of *Making Best Use* policy documents. It remains unclear whether Arup misunderstood their brief or whether the brief itself was misconceived. Objectors like Arup and Peter Forbes (Alan Stratford & Associates Ltd.) seem to believe that the owners of Manston Airport and their investors should be denied opportunities to make best use of their runway. That is entirely uncompetitive and contrary to present and long-standing national policy. "Preserving Manston Airport", "making best use" of it, developing it as "the nation's first Net Zero Airport", are all consistent with present and evolving national policy within a Government and political system that favours a free market economy.

13. Shortages in HGV driver post-Brexit, as we all know, have been challenging, and that may remain so for some considerable time. Regional airports and especially air cargo hubs may be part of the solution to that. In skilled job creation the differences are even more striking, not least in income and when factoring-in well-being and family cohesion: long-distance HGV drivers spend long periods away from their families and homes, but airport workers don't. My understanding is that RiverOak expect half of Manston Airport's salaried workers will be earning in excess of £50,000 per year: that isn't the case for HGV drivers or those who service their commercial vehicles. Likewise, HGV transport businesses generate nothing like as much as airports in commercial rates payable to local authorities which fund public services across their entire communities.

14. Furthermore, the Manston Airport DCO Project's supplemental benefit of incorporating regional air passenger services, aircraft recycling, general aviation, and local, lower-cost independent freight forwarding for our burgeoning local industrial manufacturing and supply businesses that have been building up in Thanet and especially next to Manston in anticipation of the airport's re-opening and redevelopment of its infrastructure should not be under-estimated: there are hundreds of new industrial units that have been planned, prepared, started or moved to within a mile or two of the disused airport in the past five years during which this DCO timetable has over-

run its course. Much of that may be unsustainable if the Decision-Maker does not re-consent the DCO. That would be catastrophic to hopes of regenerating a sound, sustainable local economy and the tax base upon which the local authority depends for the services it provides in Thanet. The same is also true in neighbouring district Councils, namely in Sandwich and Deal (Dover District Council) and in Herne Bay, Whitstable, Hersden and Canterbury (all in Canterbury District Council, where retail high street shops have gone to the wall in large numbers as they have across Thanet in the same period).

15. As a cargo hub, Manston will be an airport from which much of incoming air cargo will be routed to elsewhere through other airports, by air, or to the Thames Estuary through hydro-electric barges (at much lower environmental cost than complete dependence upon road haulage).

16. Further, according to Alan Marsh, MBE, FICS (Past President of the Institute of Chartered Shipowners; Director-General of Airspace Services Ltd. for 32 years; a Council Member of the Baltic Air Charter Association for more than 21 years, a Kent County Councillor in an East Kent constituency for more than sixteen years, a man who has had an aviation career spanning 40 years with over 19,000 hours of flying time and seventeen licenses), whose expertise is literally head and shoulders above the rest), for many years most heavy vehicles that have travelled between the European mainland and the UK through the Channel Tunnel and the Dover ferry crossings have returned empty after dropping their cargoes at one side or the other. In the years that I have known Alan Marsh, he has stoutly and steadfastly maintained that if backloads of cargo can be picked up at Manston Airport on their way home, that will greatly enhance the profitability of their operators and enable goods to be delivered far more quickly and at lower costs. That is undoubtedly in the national interest of the United Kingdom and supports the policy of successive British Governments policy to develop connectivity and trade between this country and its neighbours. Only Manston is well-situated to meet this need. Dover is half an hour away from Manston Airport and the nearest of ferry crossings. And no other airport with a suitable runway or cargo-handling capacity is as close as Manston Airport to the Channel Tunnel. It is NEEDED.

17. All of this has been ignored by the Arup Report, and by Peter Forbes (Alan Stratford & Associates), and by Louise Congdon (York Aviation), and by other consultants previously retained by Thanet District Council at the direction of members of TDC's Senior Management Team who have seen Manston Airport not in terms of its economic potential as an Airport but as a suitable location for many thousands of new houses that vastly exceed the number of people whom our economy and communities can support or who are on the Council's housing lists (that never happened before the present Chief Executive of Thanet District Council moved from her post in charge of Housing Services, her portfolio between 2007-2013, to overall charge of the whole Council). Further, an obvious point is missed by these critics: there is no rival strategy suggested by critics of the Airport DCO (now or at any time in the past) is capable of meeting the threshold of being any sort of "Nationally Significant Infrastructure Project": the suggested alternatives are not comparable in scale or importance.

18. One might have thought that those who have opposed the Manston Airport DCO Project would at least have acknowledged the level of expertise and the force of Alan Marsh's arguments, and the many years of Alan Marsh's direct experience of flying into and out of Manston, thousands of times. They didn't: more fools them. Parenthetically, all new housing needed in Thanet far into the future has been allocated to other locations in the Approved Local Plan over the past several years. We don't truly need more land for housing, now. We do **need** Manston Airport, fully developed.

19. The Draft Arup Report that the Secretary of State for Transport has commissioned and received in relation to the case for the Need for RiverOak Strategic Partners' project to seek

Development Consent for the Applicant's plan to reinstate and greatly develop the infrastructure of Manston Airport both horrified and infuriated me. In a nutshell, ARUP and CBRE together produced a piece of rubbish, poorly argued, statistically illiterate and seriously underwhelming in terms of analysis. That Draft Report brought no additional research or substance to the table. It should carry no weight.

20. The conclusion of the Secretary of State's appointed Independent Consultants, to cut to the chase, is that the Examining Authority's Report Recommendation were dead right and that nothing that has taken place since that would warrant a different conclusion than that reached by the Examining Authority. On both these points, the Conclusions of the Independent Consultants at the end of their forty-one page report are quite simply and demonstrably WRONG.

21. The specific individuals who wrote and signed off that Report, alas, are not lawyers, and though the two organisations that have put 'the Arup Report' together are generally held in very high regard, the particular authors of this Report appear to have a poor understanding of DCO law and practice. They appear to have neither taken nor been deflected by any legal advice before determining that the Case for Need was not met by the Applicant. That is astonishing, considering that the reason the Government decided to concede on one (and only one) of the grounds of the Judicial Review brought by Jenny Dawes was that the Government's lawyers wished to amend and strengthen a very, very short passage on Need, and the assessment of Need clearly must be turn on questions of law.

22. One might have thought that those whom Arup and CBRE assigned to this task as consultants would have been briefed and eager to do that. Instead, they have applied criteria that are simply irrelevant in law, and in particular they have followed the Examining Authority who again went down the wrong rabbit hole. It isn't that they haven't a clue: both the ARUP and the Examining Authority ignored the fact that after RiverOak Strategic Partners purchased nearly all of the airport land, the relevance of "Need" for the airport was best determined by the Developers and their Investors, not as previously when the acquisition of the airport land had to meet higher tests suitable in cases where the compulsory acquisition of a high percentage of the airport estate would have been required to complete the development. If the investors were satisfied that the development was going to be profitable and meritorious, then that must be good enough to satisfy the appropriate legal tests where Need was concerned. ARUP and the Examining Authority both erred -- and fatally -- in failing to engage fully or appropriately on that issue and in failing to produce compelling reasons for not engaging on it.

23. It is, further, absurd to suggest that nothing has changed in relation to the merits of the project (not 'Need' in the legal sense, which is settled though not squarely addressed in the Arup Report), but in terms of Demand and Opportunities, since the Report and Recommendations of the Examining Authority that looked back over an Examination conducted between January and July of 2019. For a start, we exited the EU and had a pandemic, we have seen a collection of new trade treaties and the prospect of others that may depart significantly from EU law and practice. We have seen sanctionist measures strengthen in some markets and can expect the folly and futility of those to become ever more evident over time. We have seen supply chain interruptions and world wide shortages of commodities and components that customers can only hope to address in short measure by reliance upon air transport -- and those shortages are far more likely than not to continue for years, not months. We've seen the politics of air travel and cargo movements challenged -- and we've seen the air transport industry ramp up its responses to those challenges. The need for international transport of goods is clearly going to outstrip passenger travel in many jurisdictions for years to come -- and in those jurisdictions, the UK bellyhold freight arguments will not hold water (indeed, across the planet, they rarely did anyway). Most importantly of all, due to Climate Change issues, the switch from wide-bodied to narrow-bodied aircraft for air passengers is clearly going to

change the size of the market for cheap bellyhold cargo shipments: wide-bodied aircraft are being turned into dedicated freighters or are being sent off for recycling centres (and yes, there is still a huge shortage in places that can break-down and recycle decommissioned aircraft: sending such aircraft off to desert graveyards is not eco-sensitive, and the arguments in favour of recycling unwanted aircraft have never been more powerful than today. But Arup and CBRE haven't dwelt upon any of that.

24. Further, as it is impossible to over-emphasise, the Decision-Maker who originally granted the Development Consent Order in the name of the Secretary of State ought to have engaged in a further legal analysis of the merits of the decision, taken in the name of the Secretary of State, with a view to improving upon it, for it was the wording of that part of the Decision (and its sufficiency) that was conceded to be 'difficult to follow' (to put it at its highest) in relation to Need, not the conclusion itself. It was this that the Secretary of State clearly needed before superseding the original Decision Letter with another (which due to an oversight in the Planning Act 2008 itself as it stands cannot be done without quashing the whole statutory instrument (the actual development consent ORDER).

25. Sadly, the Statement of Matters may mislead the public into thinking that more weight should be attached to the Arup Report than it merits (which even in its own terms is terribly flawed). There is, in this Draft Report, NO legal analysis at all, and that's scarcely surprising as ARUP were not engaged as lawyers but as property analysts (that's not to conclude that they weren't free to sub-commission legal advisors). One hopes that over these past months, HMG has ensured that the legal issues that caused a sentence or two of the original Decision Letter to be conceded as flawed have been addressed through the usual channels: I can conceive of no reason why that should be deemed necessary to leave to the Applicant or to the Pro-Manston community's keyboard warriors.

26. It was always intended that the report would be released in draft form and amended following further consultation, but this was a very substandard start. As this was, at best, only a means to frame the second half of the Consultation, in the end the DRAFT Report likely will carry little if any weight. What weight the FINAL Arup Report will be given will depend to a large extent on the extent of any changes made to it in response to coherent and well-conceived, well-evidenced responses. The general public will not see the FINAL Arup Report until after the Decision is Redetermined. Knee-jerk reactions, therefore, will count for little in the short term except enabling a simple tallying of the number of positive and negative reactions (community sentiment, in other words).

27. Most of what was written in the Draft Report should have been considered in the context of the correct test of Need following the Applicant's compulsory acquisition of 99% of the DCO red-lined land, as I observed in <https://infrastructure.planninginspectorate.gov.uk/...> and as the Applicant made clear during the course of the Examination: see pp. 6-10 of <https://infrastructure.planninginspectorate.gov.uk/....> The Examining Authority's failure to do that (and Arup's failure to note it) will undoubtedly be main issues in any Judicial Review brought by RiverOak if in redetermining the DCO the Decision-Maker at the DfT were to follow the logic of the Ove Arup Draft Report.

28. More that jumps out to me from even my first reading of the ARUP Report is that it rejects the Applicant's emphasis upon the value of the goods that the Airport could handle if developed as the Applicant proposed, and posits instead that the tonnage was the most relevant consideration. It ought to have been self-evident to ARUP (and one hopes that the decision-maker at the Department for Transport will see), that if tonnage were the most important factor, then no other airport should undertake freight operations because very large bulk cargo transport ships can carry vastly more

tonnage and at vastly less expense than can be transported by aircraft. When people and commercial enterprises don't ship goods by sea it is because they want those goods to arrive quickly and that air freight is either necessary or more profitable for them. It really is that simple. How could ARUP screw that up and strip their threads when doing so?

29. So what now? Well, I think that Arup will read comments like these but pay little or no heed to them. They will just double down on what they have now concluded in this draft. But that won't be the end of this: not by a long shot. The Decision-Maker at the Department for Transport who will act independently on behalf of the Secretary of State WILL have to take more legal advice (and indeed may already have been doing that behind the scenes), and in the end, the decision that will be taken WILL turn on the advice of LEGAL opinions and advice, not rubbish like the Draft Arup Report.

30. Going back to evolving policy constraints, which were relevant when setting out the UK's Net Zero Targets, input from the UK's Climate Change Committee, harvesting scientific experts from across UK academia and industrial & economic establishments, has led the Government to acknowledge that in industry, agriculture and aviation, it is hard to achieve Net Zero within the very near future, but at the same time the Government has plainly accepted – as we must – that those commercial sectors are vital to the UK economy. They must be preserved, protected and made as efficient as possible, and so rather than downsizing those sectors, the Government has chosen to adjust its targets of other sectors so as to achieve NET zero. Thus an anti-aviation agenda is NOT necessary or desirable. The aviation sector needs to be retained, protected, made more efficient and productive, even be enhanced in size to serve the needs of “Global Britain”. Constraining that sector would be counter-productive for the UK's global security and progress in the 21st Century and beyond. Finally, in this context, **overall** population control, globally, which is NOT yet a part of the national or international agenda but highly necessary and the elephant in the room, would do far more than anything else to help us and humanity generally achieve Net Zero emissions across the 21st Century and beyond.

31. With that in mind, Manston Airport may not help limit the overall upward trend in population growth, but the Airport coupled with its relatively isolated location and its proximity to the locations where the great tide of illegal migration reaches our shores, is without dispute the nearest airport for safely and efficiently effecting large-scale rapid repatriation or relocation of those refused entry here.

32. I note with full agreement that in Annex 1 at p. 4 of its submission to the first round of the Secretary of State's Consultation, RiverOak Strategic Partners have cited in support of its case paragraph 17 of the Stansted Airport Appeal judgment, where the Decision-Maker appointed by the Secretary of State of the then Department of Housing, Communities and Local Government rightly observed, “There is no requirement flowing from national aviation policy 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.” The same is true in relation to the Manston Airport Project (which had to pass the bar of being adjudged a Nationally Significant Infrastructure Project by the Planning Inspectorate in order to proceed to Examination by the Examining Authority appointed by the Secretary of State for the DHCLG, and, ultimately, Consenting by the Decision-Maker on behalf of the Secretary of State for Transport with the support of the Government Legal Service.

33. This point, sadly, was entirely missed by Louise Congdon of York Aviation in her submissions on behalf of Jenny Dawes, the Appellant in the Judicial Review of the Secretary of State's original Decision, and by Peter Forbes (Alan Stratford & Associates Ltd.) who was taken on as an independent consultant by Ramsgate Town Council after having already expressed strong

personal views (from which he could not be expected to deviate, nor did) against the revival of or redevelopment of Manston Airport in the manner proposed by the Applicant, RiverOak Strategic Partners. Indeed, without any basis other than prejudice (due to having once been sacked by Manston Airport) and pure speculation, Peter Forbes has repeatedly claimed that RiverOak's whole agenda has at all relevant times been to secure the airport site for housing development, not aviation: this is totally untrue, malignant and defamatory. However, it was also clear well before Ramsgate Town Council decided to appoint Mr. Forbes as their "Independent Consultant" that he held these views, an odd fish whose one-man aviation consultancy company has been almost pathologically hostile to Manston Airport. I certainly doubt that his commission from Ramsgate Town Council was commissioned in good faith by those who appointed him on the recommendation of a small cabal of elected members (chiefly Ms. Nixey and Mr. Green), prominent members of the No Night Flights and Manston Pickle extremist groups, who most certainly do not represent the opinions of the overwhelming majority of residents and businesses in Ramsgate, who do support Manston Airport.

34. During exchanges between the two of us on social media, it has become clear to me that Mr. Forbes has very little understanding of DCO law and practice. That can be read on New Thanet Chat, a Facebook page. His practice to date appears to have dealt with smaller airport developments that do not involve the Planning Act 2008 regime. I believe him to be totally out of his depth. He and Louise Congdon have heavily criticised Dr. Sally Dixon of Azimuth Aviation for Dr. Dixon's methods of forecasting of demand and neither understand that her extensive and nuanced demand and need assessments are far more sophisticated than theirs. They say her methods are unorthodox, but her approach has been followed by the Airports Operators Committee at London Heathrow and by the Appellant (Airport) during the successful Stansted Airport Appeal. Both of them shelter behind their limited companies. Dr. Dixon is a sole practitioner trading as Azimuth Associates: she has chosen not to shelter behind a Limited Company because she is prepared to stake everything on the accuracy of her work.

35. In terms of Climate Change issues, the need for Manston Airport's Development Consent is not in the least undermined by Government policy and commitments to Net Zero. Firstly, RiverOak is committed to completely replacing the airport's present infrastructure, apart from the runway pavement itself, from the ground up as the country's first major Net Zero Airport. Because the runway is currently non-operational, the Applicant will not have to balance on-going operational requirements with the Government's commitment to Net Zero targets. There is plenty of room to support ground source heat pumps for heating every building on the airport estate, and my understanding is that the airport will be powered by local direct connections to 100% renewable energy sources for heat pump compressors and all other energy needs, namely through nearby off-shore wind and solar farms, not fossil fuels. The 'Need' is there because its delivery is consistent with national policy, and it can best and fastest be delivered affordably at an airport completely re-developed from the ground up.

36. In November 2020, the Prime Minister's *Ten Point Plan* set out ambitious targets of (1) expanding offshore wind farm power generation to 40 GW by 2030 and anticipated the construction of £160 million on modernisation of ports and manufacturing infrastructure; (2) driving the growth of low carbon hydrogen production to 5 GW by 2030 and earmarked £240 million to a Net Zero Hydrogen Fund; (3) support for new and advanced nuclear power over the long term, fully conscious that it could not be ramped up quickly over the short or medium term; (4) committed to the acceleration of the shift to zero emission vehicles [ZEV], inter alia by the support of charging infrastructure; (5) developing green public transport; (6) moved to promote Jet Zero and Greener Ships, promising to create a Jet Zero Council, £15 million to support the production of SAFuels, and £20 million for a Clean Maritime Demonstration Programme; (7) mandating the construction of Greener Buildings; (8) investing in Carbon Capture, usage and storage; (9) protecting our Natural

Environment, and (10) Greener Finance and Innovation.

37. In all but points (3) and (8) which are irrelevant, the consenting of the Manston Airport DCO is consistent with the Prime Minister's Ten Point Plan of November 2020: (1) One of the main foci for offshore wind power generation is Vattenfall's operations around Thanet that have done a great deal to regenerate the economy of Ramsgate Port and Harbour; (2) RiverOak are willing to explore the production, storage and use of low carbon hydrogen at the airport as the infrastructure of RSP's recently acquired Jentex Fuels facility within the red-line DCO area is redeveloped; (4) RiverOak are committed to acquiring only zero-emissions vehicles within its fleet, and in its investment in car parking facilities for customers and staff, it will make full provision for vehicle charging infrastructure; (5) during the Examination of the DCO, RiverOak committed itself to providing for new cycle paths into and around the airport estate, and it is now expecting to use hydrogen-powered hydro-electric barges to connect Manston Airport to the Thames Estuary ports and cargo-handling facilities via the tunnel into Port Ramsgate, providing for new highly-skilled jobs and connectivity; (6) the dream of net zero aviation is closer to being achieved than seemed possible even a year or two ago: Rolls Royce next generation Ultra-Fan jet engines aim to cut emissions by 25% (a real game-changer), and Zero-Avia's zero-emission hydrogen-powered aero-engines promise to be another, parallel change-changer; (7) RiverOak's replacement of nearly every building on the Manston Airport estate will be constructed in line with Net Zero emissions targets: RiverOak are determined to be the first Net-Zero Airport in the UK; it will not be saddled with any legacy low-efficiency buildings to contend with, unlike any operational airport in the UK today; (9) it is frequently overlooked that most of an airport consists of green open spaces, with a profusion of animals and plant species, all while neighbouring areas are being turned into very high-density housing estates, populated largely by incoming transferees from London boroughs and national expectations that London's population will actually decline between now and 2050; (10) all of RiverOak's plans in relation to Manston Airport are driven by inward investment but with plenty of scope for City of London involvement (e.g., by Director Nick Rothwell's contributions and connections), thus strengthening the UK economy and its resilience during this period of transition to a Net Zero Economy.

38. In the Government's *Net Zero Strategy: Build Back Greener* (2021), the Government fully embraced and fleshed out Boris Johnson's *Ten Point Plan*, but I'd like to draw particular attention to several points. It's Fig. 1, the Indicative Delivery Pathway to 2037, sector by sector, at p. 18, anticipates little radical shift being needed or achieved in international aviation or shipping. Initially, the steepest fall will come in domestic transport emissions (especially through the sharp decline in fossil-fueled road and rail vehicles); heat and buildings; fuel supply, and steep increases in non-polluting power production. The Government is committed to completely decarbonise the power supply system by 2035. The Government has been virtually silent, however, when it comes to what it expects to achieve in terms of reductions in commercial aircraft emissions: it intends to compensate through the scale of other changes it will bring on-stream. However, in the last paragraph in the relevant chapter (at p. 21) HMG commits to an "aim to become a world leader in zero-emission flights and kick-starting the commercialisation of the UK sustainable aviation fuel so people can fly, and connect without guilt. Our ambition is to enable delivery of 100% SAF by 2030 and [we] will be supporting UK industry with £180 million funding for the development of SAF plants."

39. RiverOak's emphasis on local job creation and its financial support is highly consistent with work to create new, efficient low-carbon options, including recycling of older aircraft, development of SAF including production of hydrogen fuel, use of electric alternatives to carbon-rich fuels, development of local university and college centres of excellence for supporting airport/aviation low carbon futures. All of these are supportive of nationally identified Needs supported wholeheartedly by the Government. As clearly developed POLICIES of the Government, developed

in the aftermath of the DCO Examination and during the period running up to the initial grant of Development Consent statutory instrument and across the months since its Judicial Review, those Needs are beyond contradiction. The pace of these changes since the Manston DCO Examination has been startling, but the re-consenting of the Manston Airport Nationally Significant Infrastructure Project is now well-overdue.

40. My own belief is that with strong moves towards electric or hydrogen-powered aircraft in prospect, and RiverOak's commitment to a zero-carbon airport, the Government's Making Best Use policy, and the need to encourage airports to compete with one another in services that they offer and their compliance with Net-Zero targets as quickly as possible, a higher cap on Cargo Air Traffic Movements [CATMs] should be included in the revised Order, enabling the airport to fulfil its potential as rapidly as possible after the prolonged wait for it on the part of the Airport's investors and in acknowledgement of the exceptionally strong level of support there is for this airport across the local communities of East Kent. Manston Airport's owners' are responding to events by participating in the Project Napkin initiative for new propulsion systems and the unexpectedly rapid change to narrow bodied aircraft more suitable for electric engines. The new propulsion systems are not expected to have the same long range that characterised the previous generation of aircraft engines. They will require more frequent stops, and more aircraft to deliver the same number of passengers or freight per flight. Britain will require more runway capacity, not less, to cover all rotations. That, in turn, will require more hangarage and servicing facilities than were previously estimated. RiverOak have lost several years of opportunity by unconscionable delays and by a misconceived decision to pull the original Development Consent Order (all due not to any deficiencies in the Order but to questions pertaining to an unamendable Decision Letter that the Decision Taker signed off.

41. My final observation and recommendation is this: rather than putting into the Development Consent Order the same limits in Passenger and Cargo ATMs that appeared in the original Decision and can now be seen more likely than not to require RiverOak to go to the expense and time of submitting non-material change applications early on due to seismic shifts to different classes of aircraft and propulsion systems in the quite near future, it would seem highly desirable to raise the bar now at least for lower-noise, less-polluting aircraft when they come on-stream. Doing so would also provide RiverOak and their Investors with a measure of reassurance, certainty and compensation for their wasted time and opportunities over the past two years. They have remained steady, backing Global Britain at Manston Airport, and it is only right for the Government to be mindful of that good faith, and serious investors' informed choices of potential benefits to our national and regional economies that will flow from it, too.

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