

**HABITATS REGULATIONS ASSESSMENT FOR AN
APPLICATION UNDER THE PLANNING ACT 2008**

THE MANSTON AIRPORT DEVELOPMENT CONSENT ORDER



18 August 2022

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1. INTRODUCTION

Background

- 1.1. This document is a record of the Habitats Regulations Assessment ("HRA") that the Secretary of State for Transport has undertaken under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") in respect of the Development Consent Order ("DCO"), for the proposed upgrade and reopening of Manston Airport ("the Development"). This document ("HRA Report") includes an appropriate assessment for the purposes of regulation 63 of the Habitats Regulations.
- 1.2. RiverOak Strategic Partners Limited ("the Applicant") applied to the Secretary of State for a DCO under section 37 of the Planning Act 2008 ("PA 2008") for the Development. The Development to which the Application relates is described in more detail in Section 2 of this HRA Report.
- 1.3. The Development constitutes a Nationally Significant Infrastructure Project (NSIP) within the meaning of section 14(1)(i) of the PA 2008 because it relates to the alteration of an airport in England and it is expected to have the effect specified in section 23(5)(b) the PA 2008 (namely that it increases the number of air transport movements (ATMs) of cargo aircraft by more than 10,000 per year).
- 1.4. The application for the Development was accepted for examination by the Planning Inspectorate ("the Inspectorate") (under the delegated authority of the Secretary of State) on 14 August 2018.
- 1.5. The Secretary of State for the Ministry of Housing, Communities and Local Government ("MHCLG")¹ appointed a panel of examining inspectors under section 65 of the PA2008, hereafter referred to as the Examining Authority ("ExA").
- 1.6. The examination commenced on 9 January 2019 and was concluded on 9 July 2019. The ExA submitted the report of the examination, including its recommendation to the Secretary of State for Transport on 18 October 2019. During the decision-making period, on [17 January 2020](#), the Secretary of State asked for comments and further information on a number of matters (including in relation to the HRA)².
- 1.7. The Secretary of State granted development consent for the application on 9 July 2020. However, following an order of the High Court made on 15 February 2021, the decision of the Secretary of State to grant development consent for was quashed. The Secretary of State issued his 'Statement of Matters' on [11 June 2021](#) inviting Interested Parties ("IPs") to submit further representations for the purposes of his re-determination of the application. This HRA Report therefore supports the Secretary of State's re-determination of the application.
- 1.8. During the re-determination of the Application, the Secretary of State requested further clarification from the Applicant and invited comments from the Applicant and IPs on two further occasions on a number of matters, including the continued validity of environmental information provided as part

¹ Now the Department for Levelling Up, Housing and Communities (DLUHC)

² <http://infrastructure.planninginspectorate.gov.uk/document/TR020002-005170>

of the original application documentation. These consultations were issued on [21 October 2021](#) and [11 March 2022](#).

- 1.9. The Secretary of State's conclusions in relation to European sites have been informed by the ExA's Recommendation Report and the documents submitted during the examination and in response to the Secretary of State's subsequent consultations on 17 January 2020, 11 June 2021, 21 October 2021 and 11 March 2022, as described below.

Habitats Regulations Assessment

- 1.10. The Habitats Regulations provide for the designation of sites for the protection of certain species and habitats. These are collectively termed "European sites" and form part of a network of protected sites across the UK known as the "national site network". The UK Government is also a signatory to the Convention on Wetlands of International Importance 1972 ("the Ramsar Convention"). The Ramsar Convention provides for the listing of wetlands of international importance. UK Government policy is to give sites listed under this convention ("Ramsar sites") the same protection as European sites.

- 1.11. For the purposes of this HRA Report, in line with the Habitats Regulations and relevant Government policy³, the term "European sites" includes Special Areas of Conservation (SAC), candidate SACs, possible SACs, Special Protection Areas (SPA), potential SPAs, Sites of Community Importance, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.

- 1.12. Regulation 63 of the Habitats Regulations requires that:

"(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives..."

- 1.13. The Development is not connected with or necessary to the management of any European sites, as set out in Section 2.2 of the Applicant's [Report to Inform the Appropriate Assessment] HRA (Document ref 5.4). Accordingly, the Secretary of State for Transport, as the competent authority for the purposes of Transport NSIPs under the PA2008, has undertaken an assessment in line with the requirements of the Habitats Regulations. This HRA Report is the record of the appropriate assessment for the purposes of regulation 63 of the Habitats Regulations.

The Report on the Implications for European Sites and Consultation with the Appropriate Nature Conservation Body

- 1.14. The ExA, with support from the Inspectorate's Environmental Services Team, produced a Report on the Implications for European Sites ("the RIES"). The

³ Paragraph 181 of the National Planning Policy Framework (NPPF)

purpose of the RIES was to compile, document and signpost information submitted by the Applicant and IPs during the examination up to and including deadline 8 (14 June 2019) of the examination. It was issued on 17 June 2019 to ensure that IPs, including Natural England ("NE") as the appropriate nature conservation body in respect of the Application for the Development, had been formally consulted on Habitats Regulations matters during the examination. The consultation period on the RIES ran between 17 June 2019 and 2 July 2019 (deadline 10).

- 1.15. Regulation 63(3) of the Habitats Regulations requires competent authorities (in this case the Secretary of State), if they undertake an appropriate assessment, to consult the appropriate nature conservation body and have regard to any representations made by that body.
- 1.16. NE provided comments on the RIES at deadline 10 of the examination in a letter dated 1 July 2019. Comments on the RIES were also provided by the Applicant in a letter dated 2 July 2019. A draft Statement of Common Ground ("SoCG") between the Applicant and NE (dated 15 February 2019) was first submitted at deadline 3 of the examination, with updated versions submitted at deadlines 4 (8 March 2019) and 5 (29 March 2019). Subsequent references to the SoCG in this HRA Report are to the version submitted at deadline 5, labelled as version 2, and signed by the Applicant and NE on 26 March 2019 and 8 March 2019 respectively.
- 1.17. The SoCG confirmed that there were HRA matters where agreement between the two parties had not been reached (set out in Section 5), and these matters are considered further in this report.
- 1.18. On 17 January 2020, the Secretary of State requested further information and comments from the Applicant and other parties, including requesting the Applicant to provide further information relating to air quality impacts from the Development on European sites and features. This information was to be prepared in consultation with NE. This further information was received from the Applicant on 31 January 2020. NE's response to the Secretary of State's request for comments and further information was also received on 31 January 2020. These matters are considered further in Section 5 of this HRA Report.
- 1.19. During the redetermination, the Secretary of State invited the Applicant to comment on the currency of the environmental information submitted in support of the Application, its air quality assessments in light of NE's response dated 21 June 2021, any impacts from the preparation and use of the Development site as a temporary Inland Border Facility. The Applicant's responses dated 9 July 2021, 3 December 2021 and 28 March and NE's response of 21 June are considered further in Section 5 below.
- 1.20. The Secretary of State is satisfied that NE have been consulted and has been given suitable opportunities to make representations in accordance with regulation 63(3) of the Habitats Regulations.

Documents Referred to in this HRA Report

- 1.21. This HRA Report has taken account of and should be read in conjunction with the documents produced as part of the application and examination, together with the responses to the Secretary of State's requests for comment and further information dated 17 January 2020, 11 June 2021, 21 October 2021 and 11 March 2022 (as relevant), as listed in Annex 1 to this HRA Report.

- 1.22. The Applicant submitted a 'Report to Inform the Appropriate Assessment' ("the RIAA") as Appendix 7.1 to Chapter 7 (Biodiversity) of the Environmental Statement (ES) accompanying the DCO application.
- 1.23. Updated versions of the RIAA were submitted during the examination at:
- Deadline 1 ('Final Issue 2', dated July 2018)– addressing matters raised by the ExA at Appendix F to the Rule 6 letter; and
 - Deadline 7a ('Revised Version', dated 24 May 2019)– addressing a number of matters raised during the examination (discussed further as relevant in Sections 4 and 5 of this HRA Report).
- 1.24. Section 1.1.2 of the RIAA dated 24 May 2019 sets out the reasons for the revision of the RIAA, which is to respond to specific comments received in Written Representations and in the responses to the First and Second Written Questions (in particular to those comments provided by NE and Kent Wildlife Trust (KWT). These issues are discussed further in this HRA Report as relevant.
- 1.25. The most recent iteration of the Applicant's RIAA is dated 24 May 2019 as referred to above. All references to the RIAA by the Secretary of State in this HRA Report are to this version unless otherwise stated.
- 1.26. The RIAA contains the following appendices:
- Appendix A: Screening Matrices (Stage 1);
 - Appendix B: Designation Information;
 - Appendix C: Consultee Responses;
 - Appendix D: Conservation Objectives;
 - Appendix E: Appropriate Assessment Matrices (Stage 2);
 - Appendix F: Bird Surveys Report 2018-19;
 - Appendix G: Bird Disturbance Survey Report 2019;
 - Appendix H: Note Providing Information on the Functionally Linked Land in relation to bird scaring methods; and
 - Appendix I: Modelling and Assessment of Nitrogen and Acid Deposition.
- 1.27. As set out above, the Applicant responded to the Secretary of State's request for further information on 31 January 2020⁴. Enclosure 23 of their response provided a document entitled "RIAA Addendum – Update of AQ Assessment", ("RIAA Addendum") intended to update the RIAA in respect of air quality effects as per the request by the Secretary of State. The RIAA Addendum has therefore been considered by the Secretary of State as being supplementary to the RIAA.
- 1.28. During the course of the examination a number of changes / amendments were made to application documents, including those to the RIAA as set out above and in Section 2.4 of the ExA's Recommendation Report.
- 1.29. The Secretary of State is satisfied that the amended RIAA documents do not amount to a change to the Application sufficient to require it to be considered as a new application.

⁴ <http://infrastructure.planninginspectorate.gov.uk/document/TR020002-005296>

Structure of this HRA Report

1.30. The remainder of this HRA Report is presented as follows:

- Section 2 provides a general description of the Development;
- Section 3 describes the location of the Development and its relationship with European sites;
- Section 4 identifies the European sites and qualifying features subject to likely significant effects, alone or in combination with other plans or project;
- Section 5 considers adverse effects on the integrity of European sites, alone or in combination with other plans or projects; and
- Section 6 summarises the Secretary of State's appropriate assessment and HRA conclusions.

2. DEVELOPMENT DESCRIPTION

- 2.1. The Development relates to the proposed reopening and development of Manston Airport into a dedicated air freight facility capable of handling at least 10,000 air cargo movements per year whilst also offering passenger, executive travel, and aircraft engineering services.
- 2.2. The Development is located on the existing site of Manston Airport, west of the village of Manston and north east of the village of Minster, in Kent. The towns of Margate and Ramsgate lie approximately 5km to the north and 4km to the east of the site respectively. Sandwich Bay is located approximately 4 to 5km to the south east.
- 2.3. The Development includes the use of some of the decommissioned airport infrastructure which remains following its previous operation as a military and civilian aerodrome from 1916 until May 2014. The Development will also require the introduction of new facilities. In summary, the Proposed Development includes:
 - Upgrade of runway and taxiways to meet European Aviation Safety Agency (EASA) requirements;
 - Construction of EASA compliant stands for air freight aircraft;
 - High mast lighting for aprons and stands;
 - Creation of 65,500m² of cargo facilities;
 - Construction of new:
 - Air traffic control tower;
 - Airport fuel farm;
 - Airport rescue and firefighting service station;
 - Facilities and space for development of airport-related businesses;
 - Highway improvement works;
 - Extension of passenger service facilities including increasing the size of the existing terminal;
 - An aircraft maintenance, repair and overhaul facility and end-of-life recycling facilities;
 - A flight training school; and
 - A fixed base operation for executive travel.
- 2.4. The Development is described in detail in ES Chapter 3: Description of the Proposed Development (Document 5.2⁵), as well as in the Applicant's Planning and Design and Access Statements (Document 7.2⁶ and 7.3⁷). It is also summarised in Chapter 2 of the ExA's Recommendation Report.

⁵ [TR020002-002407-5.2-1 - Environmental Statement - Main Text - Chapters 1-10.pdf \(planninginspectorate.gov.uk\)](#)

⁶ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-002454-7.2%20-%20Planning%20Statement.pdf>

⁷ [TR020002-002455-7.3 - Design and Access Statement - 1 of 4.pdf \(planninginspectorate.gov.uk\)](#)

- 2.5. The construction of the Development is set out in four phases in Section 3.3 of ES Chapter 3. Phase 1 has an expected duration of 12 months, including works required to return the airport to operational use.
- 2.6. Phases 2 - 4 will take place whilst the airfield is operational and will focus on delivering the increased infrastructure and facilities required to meet the demand of the air freight and passenger forecasts. The timings of phases 2 - 4 will be dependent on the growth in demand and take-up of capacity, but are anticipated to occur between 2-5, 5-12 and 12-18 years after grant of any consent respectively.
- 2.7. The construction phases are summarised briefly as follows:
- Phase 1 – Works to rehabilitate the runway, install new navigational aids and safety equipment, earthworks, taxiway construction and cargo facilities;
 - Phase 2 – The airport would be operational, but additional infrastructure to be constructed would include cargo aircraft stands, taxiways, aprons and associated cargo facilities, access, storage and parking areas, the first new aircraft maintenance / recycling hangar, new terminal building and refurbishment of passenger aircraft stands will occur in this phase (as well as demolition of the existing Maintenance Repair and Overhaul hangar and facilities);
 - Phase 3 – The main infrastructure to be constructed would include cargo aircraft stands, taxiways, aprons and associated cargo facilities, access, storage, parking areas and an aircraft maintenance hangar (and some demolition of existing cargo buildings); and
 - Phase 4 – The main infrastructure to be constructed would include the cargo aircraft stands, taxiways, aprons and associated cargo facilities, access, storage and parking areas.
- 2.8. The lifetime of the Development is forecast to be 20 years for business planning purposes, although it is stated as being “very likely to extend beyond this date” and therefore the airport itself is assumed to operate “in perpetuity”.
- 2.9. For the purposes of the RIAA, potential effects during any decommissioning phase are considered to be similar to those identified during the construction of the Development (Section 3.3.3 of the RIAA).
- 2.10. During operation of the Development, ongoing maintenance operations would be required to repair / replace equipment, infrastructure and facilities.

Use of the Site between January 2019 and June 2021

- 2.11. In his consultation of 11 March 2022^{Error! Bookmark not defined.}, the Secretary of State requested the Applicant to confirm how works associated with the application may have been affected by any physical works that have been undertaken at the development site in the period that has elapsed since the assessment presented in the RIAA. In particular, the Applicant was asked to comment on the implementation and operation of the development site for the stationing of goods vehicles and associated uses (24 January 2019 – 31 December 2020) and as a temporary Inland Border Facility (1 January – 30

June 2021) under two Special Development Orders (SDO)^{8,9}. The Secretary of State also requested a summary of the works that have been implemented. The Applicant responded on 28 March 2022 (Appendix A to their submissions for the third re-determination deadline)¹⁰ summarising these works.

2.12. These works are summarised as follows (as set out in Appendix A to the Applicant's submissions for the third re-determination deadline 6):

- Temporary hardstanding and drainage trench construction;
- Widening of access gates and resurfacing of access roadway to A299;
- Drainage surveys and repairs;
- Surfacing of runway parking areas;
- Construction of 5 no. drainage containment / penstock chambers;
- Installation of 2 no. water quality monitoring boreholes;
- Installation of 5 no. stone temporary welfare areas along runway edge (subsequently dismantled);
- Erection and installation of Her Majesty's Revenue and Customs inspection shed (subsequently dismantled); and
- Repairs to runway parking areas.

2.13. The operational facility was wholly under the control of DfT, and its environmental impacts were controlled by the terms of the SDO. An appropriate assessment of the second SDO for the Inland Border Facility concluded that it would not have an adverse effect on the integrity of any European site alone or in combination with other plans and projects.

2.14. These matters are considered where relevant later in this HRA Report.

⁸ The Town and Country Planning (Manston Airport) Special Development Order 2019 (SI 2019/86)

⁹ Approval under The Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020 (SI 2020/928)

¹⁰ <http://infrastructure.planninginspectorate.gov.uk/document/TR020002-006258>

3. LOCATION OF THE DEVELOPMENT AND RELATIONSHIP WITH EUROPEAN SITES

Location and Existing Land Use

- 3.1. The Development on the existing site of Manston Airport is located on the Isle of Thanet, within the North Kent Plain. The Thames Estuary lies approximately 4km to the north with the Kent Downs and Pegwell Bay to the south and south west.
- 3.2. The immediate area surrounding the Development is generally characterised by large open fields comprising predominantly arable farmland interspersed with small villages and clusters of residential properties.
- 3.3. Arable land surrounding the Development site also includes a number of priority habitats. In particular, scattered parcels of woodland occur within 2km of the site.
- 3.4. To the north-east and east of the Development there is a transition from rural to more urban landscape character, with the defined settlements of Margate and Ramsgate on the Isle of Thanet.

European Sites Potentially Affected by the Development

- 3.5. The Applicant's approach to determining European sites to be included in the assessment is set out in Section 3.3.2 of the RIAA. The Applicant identified European sites within a 15km radius from the Order Limits of the Development, as shown in Figure 3.1 of the RIAA.
- 3.6. The Applicant stated that this 15km took into consideration potential aircraft flight paths and the environmental effects which the European sites could experience, such as disturbance from construction and operations on-site, and pollution derived from aircraft entering and leaving the Development. At distances greater than 15km from the Development, the Applicant considered that any such effects would be negligible.
- 3.7. The following European sites¹¹ were located within the initial search radius of 15km, as set out in Table 1, below. 3.3.2 European Sites Included for Assessment

Table 1 European sites identified within 15km of the Development Boundary

European Site	Approximate Distance from the Development boundary (km)*
Thanet Coast and Sandwich Bay SPA	0
Thanet Coast and Sandwich Bay Ramsar	0
Sandwich Bay SAC	0

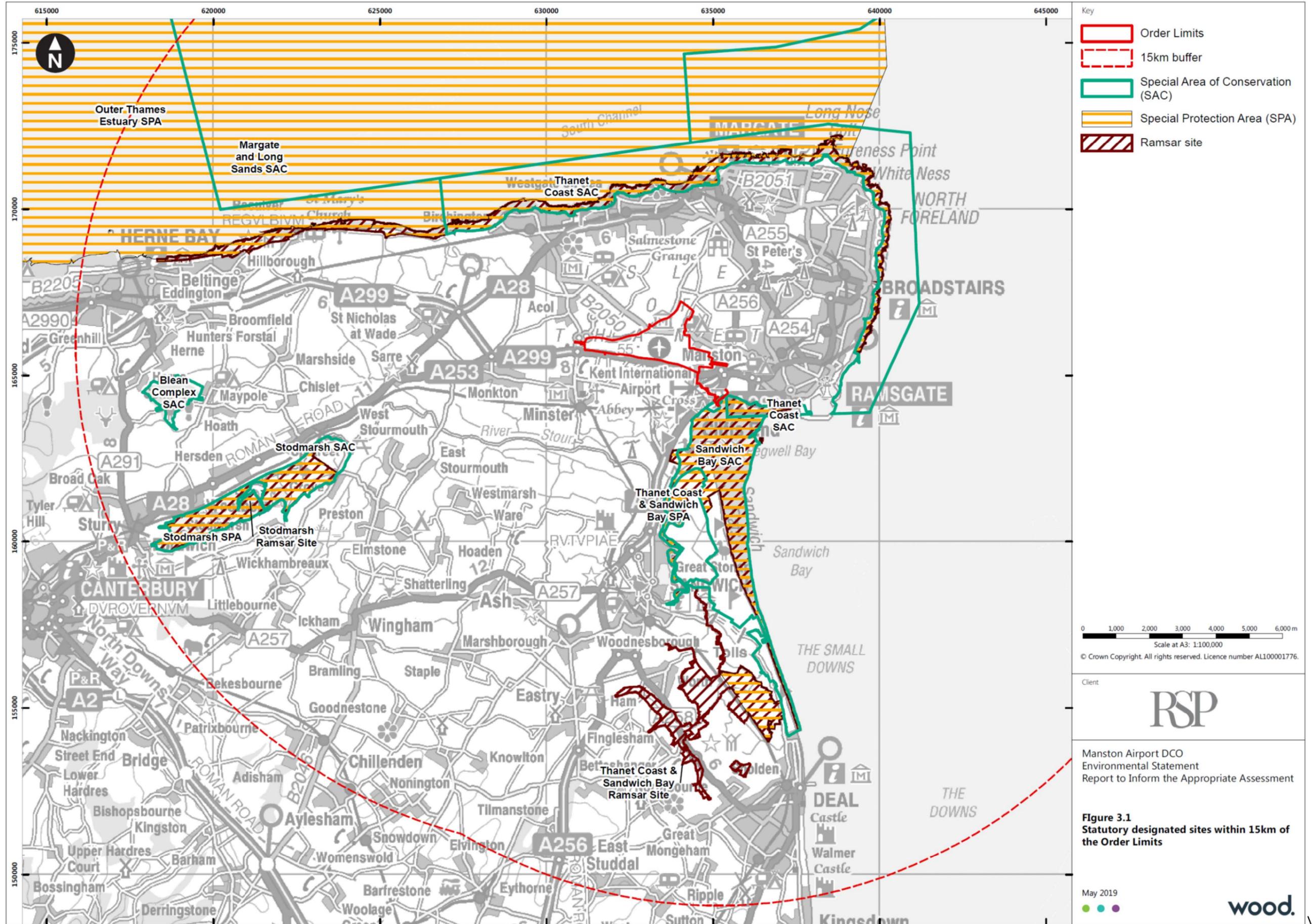
¹¹ The term European sites in this context includes Special Areas of Conservation (SAC), Sites of Community Importance (SCI), candidate SACs (cSAC), possible SACs (pSAC), Special Protection Areas (SPAs), potential SPAs (pSPA), Ramsar sites and proposed Ramsar sites

European Site	Approximate Distance from the Development boundary (km)*
Thanet Coast SAC	0.2 – 0.3
Outer Thames Estuary SPA	3.4
Margate and Long Sands SAC	4.8
Stodmarsh SAC	7.7
Stodmarsh SPA	8.4
Stodmarsh Ramsar	8.4
Blean Complex SAC	11.5

* *Approximate distances as set out in Appendix B of the RIAA*

- 3.8. The locations of these European sites relative to the Development are shown on Figure 1.
- 3.9. The Development site itself is not located within a European site, however the airport's existing drainage outfall is located within the Thanet Coast and Sandwich Bay SPA, Thanet Coast and Sandwich Bay Ramsar and Sandwich Bay SAC, and it is between 200-300m from the Thanet Coast SAC.
- 3.10. During the course of the examination, the Swale SPA and Ramsar sites were considered further by the Applicant in response to comments raised by IPs including NE. The potential traffic impacts (and associated air quality effects) from the Development on the A299 and the M2 motorway, were considered taking into account the Swale SPA and Ramsar sites which both lie within 200m of the A299 (paragraph 3.3.7.2 of the RIAA).
- 3.11. The Swale SPA and Ramsar sites lie approximately 21km to east of the Development (outside of the Applicant's initial 15km search area) and are not listed in Table 3.1 of the Applicant's HRA nor do they appear on Figure 1. These two sites are considered further in the following sections of this report.
- 3.12. As set out in paragraph 7.4.4 of the ExA's Recommendation Report, NE confirmed their agreement with the European sites identified as being potentially affected by the Development as set out in Appendix B of the RIAA and summarised in Table 2.1 of the ExA's RIES.
- 3.13. No evidence was presented by any IP to suggest that any other European site(s) or qualifying features could be affected by the Development (paragraph 7.4.5 of the ExA's Recommendation Report).
- 3.14. The Secretary of State is therefore satisfied that no other European site needs to be addressed in this HRA Report.
- 3.15. The Secretary of State is also satisfied that the Development is not directly connected with or necessary to the management of any European site as stated in paragraph 3.1.1.3 of the RIAA.

Figure 1 Location of the Development in relation to the European sites within 15km



4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

Potential Effects from the Development

- 4.1. Section 2.1 of the Applicant's RIAA outlines their approach to screening for LSE and Section 3.3.3 explains their approach to identifying potential impacts.
- 4.2. Reference is made to the assessment of LSE in line with the processes described in the Inspectorate's Advice Note 10 and the EC guidance documents '*Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (2000)*' and '*Assessment of plans and projects significantly affecting Natura 2000 sites (2001)*'.
- 4.3. The Applicant identified the following main impact pathways for potential effects on European sites from the Development as follows:
- Changes in water quality and scour at the drainage outfall during construction and operation;
 - Increased noise from operational aircraft movements;
 - Changes in air quality due to increased emissions from road traffic and aircraft during construction and operation;
 - Disturbance to birds from the scaring noise;
 - Bird barrier effects;
 - Construction impacts including increased dust and noise emissions; and
 - Increased disturbance to birds during construction.
- 4.4. In respect of the above, the Applicant also identified other plans and projects which have the potential to affect the identified European sites in combination with the Development. The other plans and projects considered as part of the RIAA in combination assessment mirror those summarised and identified in ES Chapter 18: Cumulative effects as discussed in paragraph 4.2.5 of the RIAA.

Screening for Likely Significant Effects

Table 3.1 of the Applicant's RIAA sets out the applied series of 'geographic parameters' used to determine, against each of the above impact pathways, the distances beyond which LSE could be excluded. These geographic parameters are not repeated in full here, but as set out in paragraph 3.3.7 of the RIAA they were the basis for screening out LSE on all qualifying features in respect of the following European sites:

- Stodmarsh SPA
 - Stodmarsh Ramsar
 - Stodmarsh SAC;
 - Outer Thames Estuary SPA;
 - Margate and Long Sands SAC; and
 - Blean Complex SAC.
- 4.5. Paragraph 2.2.1 of NE's Written Representation dated 15 February 2019 [REP3-089] confirmed their agreement with the Applicant's conclusions and "*that that the proposal is not likely to have a significant effect*" on these six

European sites. These conclusions were not disputed or otherwise discussed further by any other IPs during the examination.

4.6. Taking this into account, alongside the potential effects and their geographic extent (as outline in table 3.1 of the RIAA) and the proximity of the European sites in question, the Secretary of State is satisfied that LSE can be excluded, and these sites are therefore not considered further in this HRA Report.

4.7. The Secretary of State agrees with the LSE conclusions as set out in Tables 3.1 and 3.2 of the ExA's RIES (Table 3.2 includes additional sites and impacts discussed during examination with regard to LSEs beyond those for which LSE was concluded in the Applicant's RIAA). These sites are as follows:

- Sandwich Bay SAC;
- Thanet Coast and Sandwich Bay SPA;
- Thanet Coast and Sandwich Bay Ramsar;
- The Swale SPA; and
- The Swale Ramsar.

Thanet Coast SAC

4.8. Section 3.3.7 and table 3.2 RIAA explain that further consideration was given to the Thanet Coast SAC, but that no LSE was concluded from all pathways of effect and to all qualifying features on the basis that:

- The qualifying habitats are located well beyond the 100m zone of influence of the outfall (geographic parameter defined in Table 3.1)¹²; and
- The Annex I habitat qualifying features are submerged by tidal sea water on a daily basis, and these habitat types are not particularly sensitive to nitrogen deposition as identified by the UK Air Pollution Information System (APIS).

4.9. As such, the Applicant concluded no LSE for all features of the Thanet Coast SAC during construction and operation, a view supported by NE in their comments on the ExA's RIES dated 1 July 2019 [REP10-007]. The Secretary of State is satisfied that there would be no LSE to the Thanet Coast SAC on this basis.

Sandwich Bay SAC

4.10. Although the drainage outfall from the Development to Pegwell Bay is located within Sandwich Bay SAC, the Secretary of State is satisfied that no LSE would result from this pathway of effect due to the proximity of the relevant qualifying features (as set out in Annex 1, matrix 4 of the ExA's RIES). These conclusions are also supported by NE in their comments on the ExA's RIES.

The Swale SPA and Ramsar

4.11. The Applicant's RIAA had screened out impacts to The Swale SPA and Ramsar sites from further consideration based on emissions modelling. The ES Addendum published at deadline 6 (3 May 2019) (Document 5.2.6 [REP6-016]) demonstrated that the potential for emissions to reach The Swale SPA

¹² Reefs and submerged or partially submerged sea caves are located, at their closest, 330m from the Order Limits of the Development.

and Ramsar site would be limited and result in “insignificant” levels of deposition.

- 4.12. An ES Addendum was prepared to summarise any potential effects arising from the use of the Kent County Council’s (KCC) Thanet Strategic Transport Model (TSTM) in assessing the traffic impacts of the Development, in response to the ExA’s first written questions¹³.
- 4.13. As set out in paragraphs 2.2.46 – 2.2.55 of the ExA’s RIES and 7.5.7 – 7.5.12 of the ExA’s Recommendation Report, the potential for air quality impacts to result in LSE on The Swale SPA and Ramsar site were considered in detail during the examination.
- 4.14. For the purposes of this HRA report, the Secretary of State does not agree with the Applicant and agrees with the ExA that the RIAA lacks justification to allow The Swale SPA and Ramsar sites to be screened out from the HRA process entirely (paragraph 7.5.11 of the ExA’s Recommendation Report). These matters are considered further in the following sections of this chapter, including the request for additional information on these matters made by the Secretary of State during the decision making period (after receipt of the ExA’s Recommendation Report).
- 4.15. European sites and qualifying features screened into Applicant’s HRA Table 2 below summarises the Applicant’s RIAA screening exercise and includes additional sites and features to which consideration of LSE was given in the examination (as set out in Table 3.2 of the RIES).
- 4.16. As set out in paragraphs 2.1.4 – 2.1.5 of the ExA’s RIES, Table 3.2 and the screening matrices provided in the RIAA did not reflect a complete and accurate list of qualifying features of the designated sites and a full assessment of all relevant qualifying features. Instead the RIAA focussed on qualifying features of the sites which the Applicant had screened in as requiring further assessment.
- 4.17. In their comments on the RIES, NE stated their agreement with the list of sites and features that were screened in for further assessment by the ExA. No other IP’s raised concerns that additional qualifying features of the identified European sites should have been screened in by the Applicant.
- 4.18. The Secretary of State is therefore content that all of the sites and qualifying features which require an appropriate assessment to be undertaken, as presented in Table 2 to this HRA Report, have been identified. The Table B.1 in Appendix B of the RIAA provides additional information on the designations of the European sites within 15km of the Development. No information is provided in Table B.1 in respect of The Swale SPA and Ramsar sites although all of the qualifying features are considered in the RIAA in terms of their exposure to air quality effects.

¹³ KCC developed its own SATURN strategic highway model (TSTM) in assessing the impacts of the emerging local plan growth to 2031. The TSTM only became available in November 2018, post submission of the Application. In their LIR, KCC were of the view that the Applicant should update the TA supporting their application using the TSTM to ensure robust modelling and consistency with the local plan evidence base. See paragraph 6.11.39 of the ExA’s Recommendation Report.

Table 2 European sites and qualifying features screened into Applicant's HRA

Name of European site and location in relation to the Development	Qualifying features for which potential for LSE is concluded	Pathway(s) of effect
<p>Sandwich Bay SAC (0km from the Development (drainage outfall is within the SAC boundary))</p>	<p>Annex 1 habitats</p> <ul style="list-style-type: none"> • Embryonic shifting dunes • Shifting dunes along the shoreline • Fixed coastal dunes with herbaceous vegetation • Dunes with <i>Salix repens ssp. argentea</i> • Humid dune slacks 	<ul style="list-style-type: none"> • Operational air quality impacts – deposition of oxides of nitrogen from aircraft and road vehicles •
<p>Thanet Coast and Sandwich Bay SPA (0km from the Development (drainage outfall is within the SPA boundary))</p>	<p>Golden plover <i>Pluvialis apricaria</i> (non-breeding)</p>	<ul style="list-style-type: none"> • Construction and operation phase (outfall) - introduction of toxic pollutants or sediments and scour • Construction phase (noise) - Noise, vibration and physical activity • Operation Phase (noise/visual presence from aircraft) Disturbance / displacement • Operation phase (bird scaring) • Operation phase (barrier effect) •
	<p>Little tern <i>Sterna albifrons</i> (breeding)</p>	<ul style="list-style-type: none"> • Operation Phase (noise from planes) •

Name of European site and location in relation to the Development	Qualifying features for which potential for LSE is concluded	Pathway(s) of effect
	Turnstone <i>Arenaria interpres</i> (non-breeding) ¹⁴	<ul style="list-style-type: none"> • Construction and operation phase (outfall) - introduction of toxic pollutants or sediments and scour • Operation Phase (noise/visual presence from aircraft) - Disturbance / displacement •
<p>Thanet Coast and Sandwich Bay Ramsar</p> <p>(0km from the Development (drainage outfall is within the Ramsar site boundary))</p>	Ruddy turnstone <i>Arenaria interpres</i> (non-breeding) ¹⁴	<ul style="list-style-type: none"> • Construction and operation phase (outfall) – introduction of toxic pollutants or sediments and scour • Operation Phase (noise/visual presence from aircraft) - Disturbance / displacement •
	15 Red Data Book Invertebrates (Criterion 2)	<ul style="list-style-type: none"> • Operational Phase (air quality)
<p>The Swale SPA</p> <p>(approximately 21km to east of the Development)</p>	<ul style="list-style-type: none"> • Dark bellied brent geese, <i>Branta bernicla bernicla</i> (non-breeding) • Dunlin <i>Calidris alpina alpina</i> (non-breeding) • Breeding bird assemblage • Wintering waterbird assemblage 	<ul style="list-style-type: none"> • Operational Phase (air quality)

¹⁴ The Thanet Coast and Sandwich Bay SPA citation includes *Arenaria interpres* (Turnstone) whereas the citation under Ramsar criterion 6 for the Thanet Coast and Sandwich Bay Ramsar site is for "Ruddy turnstone, *Arenaria interpres*". The Secretary of State understands that these are in reference to the same species, and that Turnstone is commonly referred to as Ruddy turnstone in the UK and Europe. Subsequent references in this HRA Report are to Turnstone.

Name of European site and location in relation to the Development	Qualifying features for which potential for LSE is concluded	Pathway(s) of effect
<p>The Swale Ramsar (approximately 21km to east of the Development)</p>	<ul style="list-style-type: none"> • Assemblage of wetland plants and invertebrates (Criterion 2) • Wintering waterfowl assemblage (Criterion 5) • Redshank, <i>Tringa tetanus</i>; • Dark bellied brent goose <i>Branta bernicla bernicla</i>; • Grey plover <i>Pluvialis squatarola</i> (non-breeding) 	<ul style="list-style-type: none"> • Operational Phase (air quality) •

Conservation Objectives

- 4.19. The conservation objectives for European sites define the desired state for a European site when it will contribute to favourable conservation status for the designated features. The Applicant included copies of the conservation objectives for the relevant sites in the RIAA in Table 4.1 and at RIAA Appendix D.
- 4.20. As set out above, the SoS agrees with the findings of the ExA that further consideration is needed in respect of the Swale SPA and Ramsar sites. Those sites were not included in Table 4.1 or Appendix D of the RIAA, although they are referred to in Section 7.6 of the ExA's Recommendation Report. The Secretary of State is aware that conservation objectives, and Ramsar information sheets for European sites are available in full via NE's Designated Sites website¹⁵. There are no conservation objectives published for Ramsar sites. For the purposes of this HRA Report, the Secretary of State is satisfied that the criterion of the Thanet Coast and Sandwich Bay and the Swale Ramsar sites are reflected by the qualifying features for the respective SPAs of the same names. These conservation objectives have therefore been considered as a suitable proxy for the Ramsar sites.
- 4.21. NE made no specific reference to the conservation objectives in its representations, other than in relation to the turnstone features of the Thanet Coast SPA and Ramsar site, discussed further below. The Secretary of State is content that the correct conservation objectives are available in respect of the European sites progressed to AEOI assessment stage.
- 4.22. The conservation objectives, as published by NE and the Joint Nature Conservation Committee (JNCC) are provided in Annex 2 of this HRA Report.

Likely Significant Effects In combination

- 4.23. In combination effects were assessed by the Applicant for designated sites screened into the assessment. The plans and projects that were identified as potentially giving rise to effects in combination with the Development as part of the RIAA are consistent with those presented as part of ES Chapter 18: Cumulative effects (Document 5.2-3) (see paragraph 4.2.5 of the RIAA). The list of plans and projects is not replicated here.
- 4.24. In combination effects with these plans and projects were identified by the Applicant in the RIAA and were discussed for various sites, features and pathways of effect as discussed in further detail in the following Section of this Chapter and in Chapter 5 of this HRA Report as appropriate.
- 4.25. Thanet District Council (TDC) initially questioned the scope of plans and projects identified for the in combination assessment and requested that certain draft local plan allocations and Lydd Airport should also be considered. The ExA also specifically requested commentary regarding the implications of Thanet Parkway project, which had seemingly been omitted from the RIAA.
- 4.26. During ISH6, TDC confirmed that it was satisfied with the scope of the Applicant's in combination assessment (paragraph 7.5.3 of the ExA's Recommendation Report). The issue of the Thanet Parkway project is

¹⁵ <https://designatedsites.naturalengland.org.uk/>

considered later in relation to the Thanet Coast and Sandwich Bay SPA and Ramsar sites.

- 4.27. Having considered the list of plans and projects and paragraph 2.3.3 of the RIES which states that no other IPs identified any other plans or projects for consideration within the in combination assessment, the Secretary of State is content that all plans and projects with the potential to have significant in combination effects with the Development in terms of the HRA have been identified.
- 4.28. [For the purposes of his re-determination application the secretary of state has requested an update in regards to background air pollution]. In the Applicant's response to the Secretary of State's consultation request for comments and further information (dated 17 January 2020) the Applicant provided an update of air quality assessment. The Applicant's response¹⁶ to the Secretary of State's consultation letter dated 21 October 2021 noted at paragraph 98 that NE recommended that the Applicant update the air quality assessment to refer to the most up to date background deposition and concentration datasets publicly available. The Applicants report on the effects on air quality impacts of updated APIS (Appendix 1 report dated 3 December 2021) details the effects on air quality impacts of updated Air Pollution Information Service data. At paragraph 99 the Applicant confirmed that there will be no ecological mitigation required above that set out in the ES. In response to the Secretary of State's consultation on 11 March 2022, the Applicant stated their view that the HRA assessment of Development remains robust and its conclusions are unaffected by the Inland Border Facility. The Secretary of State is therefore satisfied with the approach to the assessment of in combination effects (noting the additional commentary in this regard in the following Section and Chapter 5 of this HRA Report).

LSE Screening Conclusions

- 4.29. Table 3.1 of the RIES identifies the European sites, features and impacts for which the Applicant concluded a likely significant effect. NE agreed that the correct sites are considered in the assessment of likely significant effects (as presented in Annex 1 of the RIES).
- 4.30. The Secretary of State has considered the Applicant's conclusions and the ExA's Recommendation Report for all other European sites, qualifying features and pathways of effect that are not set out in Table 2 above and concludes that there would be no LSE from the Development alone or in combination with other plans and projects.
- 4.31. The Secretary of State is therefore satisfied that the correct features and pathways of effect requiring consideration as part of an appropriate assessment have been identified.
- 4.32. For the avoidance of doubt, the Secretary of State has concluded LSE to all qualifying features at the Swale SPA and Swale Ramsar sites from potential effects associated with changes to air quality during operation. The Secretary of State agrees with the findings of the ExA at paragraph 7.5.12 of their

¹⁶ https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR020002/TR020002-006138-2.1%20Submission%20for%20the%20redetermination%20of%20the%20Manston%20application%20-%20December%20-%20TR020002_RED2_SoSReq%20.pdf

Recommendation Report in this regard and that these sites should be considered as part of an appropriate assessment.

- 4.33. The European sites for which the Secretary of State makes an appropriate assessment are therefore as listed in paragraph **Error! Reference source not found.** and Table 2 of this HRA Report.
- 4.34. As set out in Section 2 of this HRA Report, the Secretary of State is aware of the physical works that have been undertaken at the development site in the period that has elapsed since the assessment presented in the RIAA was undertaken. These are discussed further in Section 5 of this HRA Report.

5. APPROPRIATE ASSESSMENT

- 5.1. As LSE cannot be excluded, the Secretary of State, as the competent authority is required to undertake an appropriate assessment to determine the implications for the conservation objectives of the affected European sites. In line with the requirements of regulation 63 of the Habitats Regulations, the competent authority:

'...may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site...In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given'.

- 5.2. As noted in Section 1 of this HRA Report, the competent authority is obliged to consult the appropriate nature conservation body and have regard to any representations made by that body. For this purpose, the ExA prepared a RIES as set out in paragraphs 1.14 - 1.18 of this HRA Report, and the Secretary of State is satisfied that NE have been consulted in line with regulation 63 of the Habitats Regulations.
- 5.3. If the competent authority cannot exclude adverse effects on the integrity of the affected European sites (AEoI) on the basis of objective scientific evidence, then it can only consent a plan or project if it complies with the requirements of regulation 64 of the Habitats Regulations. This means that there must be no alternative solutions to the delivery of the plan or project that would have lesser effects on the European sites, the plan or project must be delivered for imperative reasons of overriding public interest. In addition, regulation 68 requires compensatory measures to be secured which maintain the overall coherence of the National Site Network.

Mitigation Measures

- 5.4. As set out in paragraphs 2.2.1.2 – 2.2.1.3 of the RIAA, mitigation and avoidance measures aimed at reducing / avoiding the effects are only to be taken into account at the appropriate assessment stage (in line with the judgement of the European Court of Justice (ECJ) in *People Over Wind, Peter Sweetman v Coillte Teoranta (C-323/17)*¹⁷). This position is confirmed by Government guidance on the Habitats regulations assessments: protecting a European site¹⁸.
- 5.5. Paragraphs 7.7.2 – 7.7.14 of the ExA's Recommendation Report summarise the key mitigation measures relevant to reducing or avoiding effects on European sites, which are:
- Construction:
 - Mitigation of noise, vibration, dust, drainage and physical activity through the outline Construction Environmental Management Plan

¹⁷ <http://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>

¹⁸ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#screening>

(oCEMP)¹⁹ (Document 2.6) and Register of Environmental Actions and Commitments (REAC) (Document 2.5), both secured under DCO requirement 6 of Schedule 2 and the certified documents under DCO Schedule 10;

- Operation:
 - Operational measures in the REAC secured via DCO requirement 7 (Operation Environmental Management Plan (OEMP)); and
 - Noise Mitigation Plan (NMP) (Document 2.4), compliance with which is secured under DCO requirement 9.

5.6. Both DCO requirements 6 and 7 include reference to a subset of management plans and control documents that must be contained within the CEMPs and OEMPs for each “*part of the authorised development*”, including (of particular relevance to the RIAA and European sites):

- CEMP
 - dust management plan;
 - mitigation and habitat creation plan (MHCP);
 - environmental spillage plan;
 - noise and vibration management plan;
 - construction traffic management plan (CTMP);
 - drainage strategy;
 - pollution control plan;
- OEMP
 - noise management;
 - air quality management;
 - wildlife management;
 - water and drainage;
 - traffic management and green travel planning;
 - landscape planting and maintenance;
 - operational use of herbicides to control vegetation;
 - environmental spillage plan;
 - wildlife hazard management plan;
 - habitat management plan;
 - framework travel plan including freight management strategy;
 - lighting strategy

5.7. DCO requirement 8 (ecological mitigation) prohibits the commencement of any part of the Development until written details of the proposed on-site and off-site ecological mitigation (including timescales and management regimes) for that part have been approved by the local planning authority in consultation with NE.

¹⁹ The oCEMP was updated during the examination with the Deadline 9 iteration being the most recent (reference TR020002/D9/2.6). Although the title of the document is “Construction Environmental Management Plan” (CEMP), this same document referred to in DCO requirement 6 is defined in DCO Schedule 10 as “Outline Construction Environmental Management Plan”. Requirement 6 states that ‘a construction environmental management plan for the part, substantially in accordance with the outline construction environmental management plan’

- 5.8. In addition to DCO requirements 6,7, 8 and 9 (considered above), requirements 11, 12, 13, 14, 15, 21(1)a-c and 23 also provide environmental and ecological mitigation. Under these requirements, construction and / or operation of the Development must be carried out in accordance with the control documents certified as part of the DCO under Schedule 10.
- Requirement 11 (contaminated land and groundwater) – secures mitigation of contamination if discovered on site during construction;
 - Requirement 12 (protected species) – pre-construction surveys must be carried out for protected species and schemes of protection and mitigation measures must be prepared and approved by the relevant planning authority in consultation with NE and KWT;
 - Requirement 13 (surface and foul water drainage) – surface water and drainage plans (including details of pollution control and monitoring) in line with commitments listed in the REAC;
 - Requirement 14 (traffic management) – securing approval of a CTMP (also referred to as part of requirement 6)
 - Requirement 15 (piling and other intrusive works) – securing a piling risk assessment and method statement to be prepared;
 - Requirement 21 (airport operation) – requires limits to air transport movements (including total movements of cargo and passenger and transport and timing restrictions); and
 - Requirement 23 (monitoring) – a monitoring, auditing and reporting plan for the REAC must be submitted to and approved by the local planning authority (following consultation with the Environment Agency and NE) prior to operation.
- 5.9. During the examination, concerns were raised in relation to the nature and extent of works required to repair and refurbish the existing drainage outfall at Pegwell Bay. NE highlighted concerns about the proposed method and timing of the works (which, in their view needed to be outside of the wintering bird season in order to avoid interest features of the Thanet Coast and Sandwich Bay SPA and Ramsar sites), as well as concerns in relation to surface water drainage because of a potential risk from contamination to the Sandwich Bay SAC.
- 5.10. Their concerns in this regard were addressed by the Applicant to the satisfaction of NE in the updated RIAA. NE are also included as a consultation body in the approval of DCO requirement 13 (see above).
- 5.11. NE also raised concerns that the operation of the airport could hinder the 'restore' conservation objective for turnstones in the Thanet Coast and Sandwich Bay SPA and that further mitigation may be required (and which could potentially be achieved through contributions to the Strategic Access Management and Monitoring Plan (SAMM)²⁰. TDC's submission at deadline 8 of the examination stated that the SAMM would not be an appropriate mechanism for mitigating this particular impact on the SPA, given that the intention of the policy relates to recreational pressures of residential

²⁰ Policy SP26 of the Draft Thanet Local Plan to 2031. Section 4.9 of the TDC Local Impact Report states that there are no specific policies relating to biodiversity under the Thanet Local Plan 2006 that have been 'Saved'.

development and there is no provision for contributions/mitigation to mitigate the impact of aircraft movements and associated noise.

- 5.12. The ExA recorded these points in paragraphs 2.2.28 – 2.2.30 and Table 4.1 of the RIES. In their comments on the RIES, the Applicant included additional information on aircraft noise effects and included 'precautionary mitigation' in the form of an agreement under section 106 of the Town and Country Planning Act 1990 to contribute £100,000 towards biodiversity in mitigating any unforeseen impacts on bird populations in Pegwell Bay.
- 5.13. NE's submissions at examination deadline 10 stated it was now satisfied that sufficient evidence had been provided to resolve uncertainty over noise disturbance impacts in Pegwell Bay and that they supported conclusions of no AEOI on the Thanet Coast and Sandwich Bay SPA from this pathway of effect.
- 5.14. NE added that these conclusions were not dependant on the financial contributions proposed by the Applicant but that those contributions added further weight to the conclusions of no AEOI.
- 5.15. The Secretary of State notes that the Applicant incorporated the proposed biodiversity contribution into the fourth Schedule²¹ of a draft section 106 agreement at deadline 11 of the examination, and that on the final day of the examination the Applicant submitted separate Unilateral Undertakings for the benefit of TDC in relation to this proposed biodiversity contribution. The document (reference TR020002/D12/UUTDC) was signed and dated by both the Applicant and TDC on 9 July 2019.
- 5.16. The Secretary of State agrees with the conclusions of the ExA at paragraph 7.7.12 of the ExA's Recommendation Report. Having considered the additional assessment information provided by the Applicant and NE's comments on the RIES, the Secretary of State does not attribute any weight to the financial contribution set out in the section 106 agreement and Unilateral Undertaking in undertaking the appropriate assessment in this HRA Report.
- 5.17. As set out in Section 2 of this HRA Report, the Secretary of State requested the Applicant to set out any physical works undertaken at the development site in the period that has elapsed since the assessment presented in the RIAA. The Secretary of State also requested a summary of the works that have been implemented. The Applicant responded on 28 March 2022 (Appendix A to their submissions for the third re-determination deadline) summarising these works.
- 5.18. The Secretary of State is aware that a number of these works, particularly in relation to drainage works and the outfall to Pegwell Bay may well overlap with some of the detail that would need to be provided in discharging requirements 6 and 7 relating to the CEMP and OEMP, respectively. However, the level of detail of these works provided by the Applicant does not allow for their detailed appraisal against the specification and detail that must be provided in connection with discharging requirements 6 and 7. In recognising these works were not in connection with the development consent order Application, the Secretary of State considers the implementation of these works does not remove the need for the same controls as listed above, and that they remain necessary for the protection of European sites given the

²¹ Schedule 4 sets out that the Applicant would financially contribute towards: supporting currently ongoing (as of July 2019) bird disturbance monitoring studies being undertaken by KWT; and supporting 'projects directly relevant to species affected by the disturbance caused by the operation of Manston Airport'.

extent and nature of the implemented works being distinct from those to which the development consent order application relates.

- 5.19. As set out in paragraphs 2.11 – **Error! Reference source not found.** of this HRA Report, the implementation and operation of the Inland Border Facility under the SDOs was subject to an appropriate assessment which concluded (subject to certain mitigation measures identified) that there would be no adverse effect on the integrity of any designated site, alone or in combination with other plans and projects. Although these matters are not before the Secretary of State in assessing potential adverse effects on integrity of the development consent order Application, the Secretary of State is satisfied that:
- The implementation of the Inland Border Facility was subject to its own consenting process for which the competent authority concluded no AEOI on any European site; and
 - The Inland Border Facility function ceased in July 2021 and there is no ongoing activity in this regard that has a bearing on this HRA Report.

Adverse Effects on the Integrity of the European sites

- 5.20. The following sections of this report present the Secretary of State’s findings in respect of each of the European sites for which an appropriate assessment is required as set out in Section 4 of this HRA Report.

Sandwich Bay SAC

- 5.21. An appropriate assessment is required on the basis of operational air quality impacts on the Sandwich Bay SAC (alone and in combination with other plans and projects).
- 5.22. Road traffic is predicted to increase on roads adjacent to the designated site as a result of construction and operation of the Development (e.g. the A256). Emissions from aircraft may also increase during the operation of the Development, all of which have the potential to increase ambient NO_x concentrations to which vegetation (qualifying features) are exposed, alone and in combination with other plans and projects. As set out in Section 4.5 of the RIAA, the assessment expresses the potential impacts in the form of mean annual NO_x and daily NO_x concentrations in air, nutrient nitrogen deposition and acid deposition.
- 5.23. NE and TDC had disputed the Applicant’s air quality assessment and the approach to the in combination assessment of air quality effects on the designated sites early on in the examination. The ExA also raised a number of written questions and issue specific hearing agenda items relating the air quality and ecological assessments. These matters are set out in paragraphs 2.2.39 – 2.2.54 and 3.1.11 – 3.1.18 of the ExA’s RIES.
- 5.24. As set out in paragraphs 4.12 - 4.13 of this HRA Report, an ES Addendum was prepared to summarise the potential effects arising from the use of the KCC’s TSTM in assessing the traffic impacts of the Development, in response to the ExA’s first written questions¹³. The ExA’s questions sought to clarify which, of the various air quality assessments carried out by the Applicant, was relevant with regards to the findings in the RIAA.
- 5.25. The Applicant confirmed that the RIAA (deadline 7a iteration) relies on various assessments contained in the submission documents. For NO_x concentrations in air the RIAA relied on the ES addendum submitted at deadline 6, whereas

for nitrogen and acid deposition the findings rely upon Appendix I to the RIAA. This led the ExA to pose further questions as described in paragraph 2.2.53 of the RIES.

- 5.26. In particular, the original transport assessment did not include for the presence of a Manston-Haine link road, whereas the TSTM and revised Transport Assessment (TA) did. NE were of the view that the air quality assessment would have to be updated *"...because the original air quality assessment contained numerous inaccuracies and did not contain an in combination assessment"*.
- 5.27. In response to the ExA's fourth written questions on this issue, the Applicant stated that *"The original air quality assessment, reached similar conclusions to those reported in the ES Addendum. It was not updated to take into account Natural England's comments as the revised TA and data associated with the Thanet Strategic Transport Model had, by then become the primary basis for assessment...the original TA (and any results associated with it) should be considered as a highly robust sensitivity test for issues such as this and not as a limitation to the assessment"*.
- 5.28. In light of this response at deadline 9 of the examination, the ExA did not consider that the revised TA (assuming an implemented Manston-Haine link road) could represent a robust sensitivity test for the Development since the delivery of the link road could not be guaranteed. Effectively, the revised air quality assessment was based on unsecured transport assumptions resulting in a less than robust air quality assessment.
- 5.29. As such, paragraphs 7.7.18 – 7.7.19 of the ExA's Recommendation Report that they considered that the evolution of the traffic modelling has resulted in an incomplete air quality assessment and they could not exclude an AEOI to the Sandwich Bay SAC beyond reasonable scientific doubt. However, the ExA considered that, in their view, the likelihood of any new or updated assessment reaching a different conclusion was *"limited due to the limited change in air quality emissions predicted in either of the scenarios assessed (with or without Manston-Haine link)"*.
- 5.30. On 17 January 2020, the Secretary of State made a Request for Comments and Further Information, on a number of matters raised in the ExA's Recommendation Report. Paragraph 21 of that letter requested that *"that the Applicant provide an updated air quality assessment that focusses on the consequential impacts to relevant European sites and features from anticipated changes in air quality. The updated assessment should be informed by the Applicant's original Transport Assessment which excludes the Manston-Haine link road and should address the inaccuracies and lack of in combination assessment as raised by Natural England in their representation [REP9-025] to the examination . The updated air quality assessment should be prepared in consultation with Natural England in an effort to agree the approach and conclusions regarding likely significant effects and the assessment of adverse effects on the integrity of European sites"*. The Applicant was invited to respond to these and other matters referred to in the letter, by 31 January 2020.
- 5.31. In response to these specific points, the Applicant provided the following (as enclosure R21 of TR020002/D/Cover):
- *"RIAA Addendum – Update of AQ Assessment"* (including Appendix A *"Modelling and Assessment of Air Quality Impacts using Original Road Traffic Data"*)

- 5.32. In these documents, the Applicant demonstrates that:
- Receptor ER012 represents where impacts to the Sandwich Bay SAC are greatest (shown on Figure 2.1 of enclosure R21);
 - In respect of mean annual NO_x emissions, and in accordance with EA guidance²², further assessment by an ecologist was given to ER012 for all 3 scenarios considered²³. The Applicant concludes that the increases would not undermine the conservation objectives for the SAC for the reasons given at paragraphs 2.1.23 – 2.1.33 of the "RIAA Addendum – Update of AQ Assessment"²⁴
 - In respect of nitrogen deposition the 'criteria for insignificance' in line with EA guidance is only exceeded at ER012 Year 20²³. The Applicant concludes that the increases would not undermine the conservation objectives for the SAC; and
 - In respect of hourly NO_x and acid deposition metrics, impacts are screened from requiring further consideration as being 'insignificant' in accordance with the EA guidance.
- 5.33. In NE's response to the Secretary of State's letter (dated 31 January 2020), it confirmed its satisfaction that the Applicant's updated air quality assessment had followed its advice on the approach to the in combination assessment and that "if the Applicant wishes to rely on the original transport assessment (without the Manston-Haine Link Road), then Natural England agrees with the conclusions set out in the updated air quality assessment (Wood, January 2020), regarding the absence of an impact on the integrity of the Sandwich Bay Special Area of Conservation (SAC) or the Thanet Coast and Sandwich Bay Ramsar site, alone or in combination with other plans or projects".
- 5.34. In response to the Secretary of State's Statement of Matters in respect of the redetermination of the Application, NE noted that the Applicant should have regard to any updated background deposition and concentration datasets from the Air Pollution Information Service (APIS) in any update of the air quality assessment²⁴.
- 5.35. The Applicant responded to these points in a technical note as part of their redetermination submission on 3 December 2021. The Applicant concludes that increases in annual mean NO_x, daily mean NO_x and nitrogen deposition at ER012 are small and do not lead to any exceedances of the AQALs for annual mean NO_x or daily mean NO_x, or any new exceedances of the AQAL for nitrogen deposition. In addition, a small decrease in acid deposition is predicted compared to the original assessment at ER012. Tables 3.1 – 3.4 of the Applicant's submission compare the original and updated calculations at the identified, relevant sensitive receptor points.
- 5.36. Having regard to the further submissions from the Applicant and NE set out above, as well as the ExA's remarks as set out in 5.30 above, the Secretary of State is satisfied that the Development would not result in an AEOI on the

²² Environment Agency (2016). 'Air emissions risk assessment for your environmental permit'. <https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit>

²³ Year 2 (first year of aircraft operation); Year 6 (airport first exceeds 10,000 movements per year); and Year 20 (the worst-case year in terms of likely emissions from aircraft and vehicular movements).

²⁴ <http://infrastructure.planninginspectorate.gov.uk/document/TR020002-005511>

Sandwich Bay SAC from air quality effects, alone or in combination with other plans and projects.

The Swale SPA and Ramsar site

- 5.37. As set out in paragraphs 3.10- 3.12 of this HRA Report, The Swale SPA and Ramsar sites were considered further by the Applicant in response to comments raised by IPs including NE. The potential traffic impacts (and associated air quality effects) of the Development on the A299 were discounted by the Applicant as not requiring further consideration in terms of these European sites (Section 3.3.7 of the RIAA).
- 5.38. On the same basis as set out above in respect of the Sandwich Bay SAC (i.e. in the absence of further air quality assessment supporting the evolution of the traffic modelling), paragraphs 7.7.64 – 7.7.71 of the ExA's Recommendation Report concluded that they could not exclude an AEoI to the Swale SPA or Ramsar sites beyond a reasonable scientific doubt.
- 5.39. As set out in paragraph 7.5.6 of the ExA's Recommendation Report, NE stated it was satisfied that the Applicant's deadline 6 submission relating to NOx and deadline 7 submission detailing effects in relation to nitrogen and acid deposition (Appendix I to the RIAA) provided evidence sufficient to rule out likely significant air quality effects on The Swale SPA and Ramsar sites without the need for further air quality assessment.
- 5.40. The "RIAA Addendum – Update of AQ Assessment" provided by the Applicant in response to the Secretary of State's request for comments and further information did not specifically address The Swale SPA and Ramsar sites. However, the Secretary of State is satisfied the AEoI can be excluded on the basis of the following:
- The limited magnitude of change between the modelled outputs presented in the Addendum in relation to the Sandwich Bay SAC as set out above;
 - The proximity of the A299 adjacent to the Swale SPA and Ramsar in relation to the Manston-Haine link road and the Development (c. 20km). The link road was the primary reason in the need for updating the air quality assessment in line with the TSTM;
 - The fact that NE support the conclusions of no LSE based on the Applicant's evidence (without the need for an appropriate assessment).
- 5.41. In light of the Addendum, the Secretary of State agrees with ExA's position that "*the likelihood of a new assessment reaching a different conclusion is limited due to the limited change in air quality emissions predicted in either of the scenarios assessed (with or without Manston-Haine link)*". Whilst the Addendum did not specifically address these two sites, the Secretary of State agrees with NE and is satisfied that the differences in air quality assessments undertaken against the original and updated transport assessment data are not so great in respect of the A299 given its proximity to the Development and affected road network around the Manston-Haine link road.
- 5.42. For the same reasons given in paragraphs 5.34 – 5.35 above, the Secretary of State is satisfied that the updated background deposition and concentration datasets from APIS do not alter the conclusions of the air quality assessment. Within their technical note submitted as part of their redetermination submission on 3 December 2021, the Applicant stated that "*the majority of air quality impacts can be screened out as insignificant in accordance with*

Environment Agency guidance (with the amendment that ICC [in combination contribution] should be used in place of PC). Only a small number of impacts at a small number of receptors could not be screened out as insignificant". Receptor numbers ER004 and ER005 (representative of The Swale SPA and Ramsar) do then not appear in tables 3.1 – 3.4 of the technical note as requiring further assessment and are therefore deemed to remain insignificant as per the conclusions presented in the ES Addendum and the RIAA.

- 5.43. The Secretary of State is therefore satisfied that the Applicant's RIAA and additional submissions as cited above are sufficient to exclude an AEOI alone or in combination on The Swale SPA and Ramsar sites.

Thanet Coast and Sandwich Bay SPA.

- 5.44. The Secretary of State presents the appropriate assessment in the following subsections, dealing with the relevant qualifying features from the following pathways of effect (and as set out in Table 2 of this HRA):
- Effects of the drainage outfall on Pegwell Bay (within Thanet Coast and Sandwich Bay SPA) (golden plover and turnstone)
 - Operational flightpaths for arriving and departing planes crossing the SPA in the northern section of Pegwell Bay and on the north of the Thanet Coast (Figure 4.4 of the RIAA), including:
 - increased visual and auditory disturbance caused by aircraft flights (golden plover, turnstone and little Tern);
 - disturbance during construction (golden plover);
 - disturbance from noise associated with bird-scaring activities (golden plover);
 - potential barrier effects to the movement of qualifying features (golden plover).
- 5.45. Air quality effects on SPA qualifying features were screened out in Table 3.2 of the RIAA as not requiring further consideration, as supported by NE. The Secretary of State agrees with this conclusion but notes that air quality effects are relevant to the Red Data Book species of invertebrates in respect of the Thanet Coast and Sandwich Bay Ramsar, considered later in this section.

Drainage Outfall (golden plover and turnstone)

- 5.46. The RIAA presents information to inform the appropriate assessment as follows:
- Golden plover: construction and operational displacement (habitat loss due to damage to roosting site) caused by the outfall, including routine maintenance (paragraphs 4.2.4.45 – 4.2.4.62 of the RIAA);
 - Turnstone: construction and operational displacement (habitat loss and disturbance) caused by the outfall (paragraphs 4.4.3.19 – 4.4.3.22 of the RIAA).
- 5.47. NE stated that it accepted the Applicant's conclusions of no AEOI relating to the drainage outfall in the RIAA in its submission at deadline 8.
- 5.48. The Secretary of State agrees with the conclusions of no AEOI at paragraph 7.7.41 of ExA's Recommendation Report. This conclusion is reached having considered the impact of the drainage outfall as assessed in the RIAA, the Applicant's responses to the ExA's fourth written questions, and the mitigation

measures secured by requirements, 8, 11, 12 and 13 of the DCO (see paragraphs 5.4 – 5.8 of this HRA Report).

- 5.49. There was some discussion during examination relating to the potential for in combination effects during construction and operation of the outfall (e.g. paragraph 3.1.23 of the ExA's RIES and the Applicant's response to the ExA's fourth written question Ec.4.7). The Secretary of State is satisfied that:
- None of the proposed or consented developments and plans identified and listed in Table 18.4 of ES Chapter 18 involve discharge to Pegwell Bay, nor are they located in close proximity to areas of habitat functionally linked to the SPA. In response to the Secretary of State's consultations, nothing has been presented to affect these conclusions; and
 - Maintenance works to the outfall would require consent from NE (as set out in the oCEMP) and any such consent would require an agreed method statement including the relevant mitigation measures (e.g. undertaking the works outside the period when golden plover would be present in Pegwell Bay).
- 5.50. With these requirements in place, the Secretary of State considers that there would be no AEoI on golden plover and turnstone due to construction and operation of the drainage outfall, alone or in combination with other plans and projects.
- 5.51. The Secretary of State is also content that for the same reasons as stated above an AEoI can also be excluded for the turnstone feature (Ramsar Criterion 6) of the Thanet Coast and Sandwich Bay Ramsar site.
- 5.52. In respect of any drainage works undertaken as part of the use of the Application site for stationing of goods vehicles and associated uses or as an Inland Border Facility (as set out in paragraph 2.12), the Secretary of State considers the implementation of these works does not remove the need for the requirements as set out above to secure the mitigation measures necessary for the protection of the Thanet Coast and Sandwich Bay SPA and Ramsar site.
- Visual/auditory disturbance due to aircraft (golden plover, turnstone and little tern)*
- 5.53. The RIAA assessed disturbance and displacement effects on golden plover, turnstone and little tern due to noise and the visual disturbance from aircraft in Pegwell Bay and on the north Thanet coast.
- 5.54. NE, the Royal Society for the Protection of Birds (RSPB) and KWT raised concerns with the Applicant's conclusions of no AEoI, including the sufficiency of survey information to support these conclusions, and the basis for the Applicant's 'worst case' approach to the assessment. These points are set out in paragraphs 2.2.5 – 2.2.14 of the ExA's RIES.
- 5.55. There was much discussion between IPs on these points (as set out in paragraphs 2.2.15 – 2.2.30 of the RIES) including new additional data and assessments to supplement and update the RIAA during examination as follows:
- Noise contour mapping at Deadline 4, parts of which are included in the RIAA at Appendix G (see below);
 - Reference to 13km bird strike consideration in Table C1 of the RIAA.

- Appendix F to the RIAA considering functional habitat surveys (comprising winter daytime and nocturnal walkover and flight line surveys January to March 2019) and Pegwell Bay surveys (comprising waterbird distribution and Turnstone surveys);
- Appendix G to the RIAA (Bird disturbance report 2019) including Pegwell Bay bird disturbance and noise monitoring from January – May 2019; figures showing aircraft noise contour data; and a desk study and waterbird disturbance survey and noise monitoring in May 2019 (for Thanet north coast); and
- Appendix H to the RIAA Note providing further analysis of the suitability of farmland within 1km of the Order Limits in relation to bird scaring methods.

5.56. In respect of golden plover, NE considered the additional noise contour data and additional noise and bird survey information included in the updated RIAA was sufficient to conclude no AEOI. Their submission at Deadline 8 and comments on the RIES confirmed their position: Natural England stated that that although golden plover:

"[although golden plover]...are found in parts of Pegwell Bay that are predicted to experience significant noise levels. However, the highest numbers are found in the south of the Bay, and they have more available habitat than turnstones, in the form of grassland and arable habitat inside and outside the SPA. Therefore, Natural England is more certain that an adverse effect on the integrity of this species will be avoided during operation of the airport."

5.57. The Secretary of State has considered the additional information presented in the RIAA and the comments of NE and consider that there would be no AEOI on golden plover due to aircraft-related disturbance.

5.58. In terms of turnstone, the ExA's RIES identified turnstone disturbance effects as an area of residual disagreement between NE and the Applicant, hence further questions were posed in the ExA's fourth written questions, particularly around the need for further mitigation for the benefit of turnstone.

5.59. NE and the Applicant continued to liaise on these issues before and after the ExA's RIES was published. On the basis of the Applicant's response to the ExA's fourth written question Ec.4.2, NE stated their satisfaction at deadline 10 that uncertainty over noise disturbance impacts on turnstones had been resolved and that it can accept the Applicant's conclusion of no AEOI. This is on the basis that the Applicant's response to Ec.4.2:

- The proposed flight paths will be "*sufficiently similar to those used when the airport was previously operational*";
- The aircraft fleet proposed for the Development will comprise no planes louder than previously operated "*with the majority quieter than previously used*";
- The loudest planes that had previously operated from Manston Airport will be banned under the terms of the Noise Mitigation Plan (DCO requirement 9) and Chapter 3 of Part II, Volume 1 of Annex 16 to the Convention on International Civil Aviation (which prohibits certain aircraft from operating within European airspace).

- 5.60. In particular, the Applicant provided "*Appendix Ec.4.2 – Technical Note: North Pegwell Bay: Noise and Turnstone*" as a submission at deadline 9 of the examination, setting out these points.
- 5.61. The Secretary of State has also considered the numerous submissions made by Five10Twelve Ltd and "No Night Flights" (NNF), both of whom independently commissioned work to be undertaken by the Environmental Research and Consultancy Department (ERCD) of the Civil Aviation Authority to challenge the validity of the Applicant's noise contours. In particular, Five10Twelve stated that NE's comments on the RIES and NE's answer to the ExA's fourth written question Ec.4.2 could not be relied upon. However, as noted in paragraphs 2.2.13 – 2.2.14 of the ExA's RIES, both Five10Twelve's and NNF submissions were focused on human receptor exposure to noise effects, and the ERCD report commissioned by NNF did not consider aircraft noise in terms of bird disturbance.
- 5.62. The Applicant's response at deadline 9 argued that the approach adopted by NNF and Five10Twelve were "*crude*" and not truly comparable with the approaches adopted in the ES (on which data the RIAA was also based). The Applicant also provided a document at deadline 9: "*Appendix Ns.4.3 - Technical note: Manston Airport Noise Assessment: Examination Authority clarification item 27 and Fourth Written Question Ns.4.3*" which included commentary on the differences between the approaches of Five10Twelve, NNF and the Applicant.
- 5.63. The ExA considered the implications of the additional noise contour information provided by IPs and the Applicant's response in the noise section (Section 6.8) of their Recommendation Report. Having considered these submissions in so far as they are relevant to this HRA Report, the Secretary of State agrees with the conclusions of the ExA and finds no reason to disagree with the Applicant's conclusions including their rebuttal of the alternative noise contour data produced by NNF and Five10Twelve. As set out above, NE agreed with this conclusion in its deadline 10 response.
- 5.64. The Secretary of State has specifically considered the points made by Five10Twelve, as set out at paragraphs 6.8.334 of the ExA's Recommendation Report, whose representations, including a post-examination submission received by the Secretary of State on 17 October 2019 suggested that the impact of substituting the Applicant's noise contours with those produced for Five10Twelve by ERCD is "significant" in terms of the size of population and number of households affected, particularly at noise levels lower than 63dB. In short, Five10Twelve and NNF called into question whether the noise contours produced as part of the Applicant's noise modelling provided a reasonable worst-case assessment. NE also commented on this point in response to the Secretary of State's consultation of 17 January 2020:
- "Natural England's principle concern at this stage is that the Report on the Implications for European Sites (RIES) is based on the same assessments and assumptions that the rest of the DCO application documents are based on, and that these represent the most realistic 'worst case' development scenario (i.e. following the precautionary approach required by the Habitats Regulations). We note that the letter submitted by Five10Twelve, dated 27 October 2019, calls this into question.*
- 5.65. The Secretary of State acknowledges that, although the alternative studies produced result in different noise levels than those reported in the ES, the

Applicant, Five10Twelve and NNF have all used different input parameters and accordingly different noise results are to be expected.

- 5.66. The Secretary of State is satisfied that the Applicant's ES and RIAA robustly assesses the Development that has been applied for in this regard. The Secretary of State also notes that that exact airspace options, operating principles and aircraft flight paths will be formalised through a subsequent airspace change proposal, which is a separate consenting process administered by the Civil Aviation Authority, and that the assessment of aircraft noise presented in the ES is, as a consequence, necessarily based on indicative prototype routes subject to further authorisation by the CAA as part of the airspace change process.
- 5.67. The CAA's response to the ExA's first written questions, and their signed SoCG with the Applicant at deadline 4 provides the Secretary of State with confidence the Applicant has adequately assessed and modelled noise levels in the ES (and RIAA).
- 5.68. The Secretary of State also notes that the operation of the Development will be limited to the noise effects reported in the ES through a noise contour area cap secured by requirement 9 of the DCO and described in the NMP. On this basis, the Secretary of State concludes that there would be no AEoI on turnstone, alone and in combination with other plans and projects.
- 5.69. The Secretary of State is also content that for the same reasons as stated above an AEoI can also be excluded for the turnstone feature (Ramsar Criterion 6) of the Thanet Coast and Sandwich Bay Ramsar site.
- 5.70. In respect of the little tern qualifying feature of the Thanet Coast and Sandwich Bay SPA, the Applicant concluded that significant effects on breeding little tern were not likely due to the absence of this species from the SPA. NE agreed that little tern are "*features of the SPA but no longer breed within the site*". On the basis of absence of breeding little tern from the SPA, the Secretary of State concludes that there would be no AEoI in respect of breeding little tern.
- 5.71. The Applicant also considered the potential for the Development to prevent recolonization of the SPA by little tern. As set out at paragraphs 7.7.49 – 7.4.50 of the RIAA, there was some dispute around whether or not the potential removal of little tern as a qualifying feature at some point in the future is relevant to the Secretary of State's duty as the competent authority in the case of the Development.
- 5.72. The Secretary of State considers the matter of whether little tern should or should not potentially be removed from the designation is irrelevant to the consideration of AEoI in this HRA Report.
- 5.73. NE identified that the closest available nesting area for little tern to the Development is at Shell Ness on the southern edge of Pegwell Bay (outside the area where aircraft are predicted to fly over at altitudes of less than 500m). However, their view was that operational disturbance to little tern could arise due to over flying aircraft.
- 5.74. The RIAA provided discussion of the noise contour maps and cross reference to a literature review of disturbance by aircraft, which concluded that: "...beyond distances of 500m in altitude and 1km ground-level, lateral distance little tern is unlikely to be disturbed by the visual presence of flying aircraft other than helicopters".

- 5.75. In their representation at deadline 10 of the examination, NE stated that they were "satisfied that operational noise effects on little terns can be ruled out based on the noise contour maps provided at Deadline 4".
- 5.76. Assessing the factors likely to influence the return of the breeding little tern to the SPA, the Secretary of State is satisfied that there would be no AEOI from aircraft disturbance as a result of the Development. This conclusion is based on the distance from the nearest potential breeding ground to the flight path and due to the low predicted maximum noise level at the site (supported by the conclusions of the literature review presented by the Applicant alongside the RIAA).

Disturbance due to construction (golden plover)

- 5.77. The construction of the Development and increased noise and vibration has the potential to displace golden plover from foraging/resting places in suitable farmland adjacent to the Order Limits. Paragraphs 4.2.4.2 - 4.2.4.10 and Appendix H of the Applicant's RIAA provides information regarding the suitability of habitat in surrounding farmland to support foraging/resting golden plover and the potential effects of construction noise in disturbing them.
- 5.78. The Applicant states that functional habitat surveys and other desk study data indicate that farmland within 750m of the Order Limits is not used on a regular basis by "important numbers" of golden plover (extensive alternative inland feeding habitat is available within the vicinity). There is also a limited history of collisions at the previous operational airport (one reported collision in the period 2007-2013). As such the Applicant concludes there would be no AEOI from construction noise.
- 5.79. In response to IPs representations (including NE) and ExA questions regarding the potential for works at Thanet Parkway Station to give rise to in combination effects with respect to impacts on functionally linked habitat for golden plover, the Applicant provided information in respect of the parkway station, including details of winter bird survey reports prepared in respect of that development. Similarly, it was concluded that arable habitat present onsite at the Thanet Parkway Station site was unsuitable for golden plover and therefore not functionally linked.
- 5.80. During the examination, NE agreed that although the 750m buffer around the airport supports golden plovers when agricultural practices are favourable, based on the temporary nature of the work and with mitigation measures in place (e.g. CEMP and Continuous Flight Auger (CFA) piling), construction would not have an AEOI alone or in combination with other plans and projects.
- 5.81. On this basis, and with the incorporation of mitigation measures secured as by DCO requirements 6 (CEMP) and 15 (piling risk assessment) in particular, the Secretary of State concludes that there would be no AEOI due to construction disturbance for golden plover, alone or in combination with other plans and projects.

Noise from bird scaring (golden plover)

- 5.82. KWT and Natural England highlighted the need to clarify what methods would be used to scare away birds from the airfield in order to understand likely effects on golden plover early in the examination. As set out above, Appendix H to the RIAA was included to provide further analysis of the amount of

functionally linked habitat surrounding the Proposed Development and its suitability for golden plover alongside details of bird scaring measures.

- 5.83. Under the terms of the DCO requirement 7), the OEMP must include a Wildlife Hazard Management Plan (WHMP), and the management measures proposed within it (including bird scaring measures) would need to comply with guidelines provided in CAA CAP772²⁵. The OEMP must be approved in writing by the relevant planning authority, following consultation with (among others) the CAA and NE "to the extent that it relates to matters relevant to their function". As set out in paragraphs 4.2.4.11 - 4.2.4.18 of the RIAA, and given the relatively "restricted options" available under CAP 772, the bird scaring methods to be used are "unlikely to differ markedly from the following measures":
- Bird of prey distress calls;
 - Regular patrols;
 - Lures; and where necessary;
 - Pyrotechnic bird scaring cartridges (explosive shotgun shells).
- 5.84. NE stated it was satisfied that an AEOI for golden plovers from bird scaring on the airfield can be ruled out in their deadline 8 submissions.
- 5.85. The Secretary of State has considered the additional information regarding Thanet Parkway Station; bird scaring techniques and the use of functionally linked land (as set out in the context of construction disturbance effects, above), which highlights that much of the land that would be subject to bird scaring activity has limited use by golden plover (due to land use or existing disturbance issues). On this basis, the Secretary of State concludes there would be no AEOI due to increased disturbance from bird scaring for golden plover.

Barrier effects (golden plover)

- 5.86. In its comments on the RIES NE stated that operational phase barrier effects on golden plover can be ruled out based on the survey information provided at Appendix F of the RIAA (Bird Surveys Report 2018-19) and the information on functionally linked land at Appendix H (as set out above in relation to construction noise and bird scaring).
- 5.87. The Secretary of State considered the updated desk study data of flight paths, flight line survey data, predominance of foraging areas for golden plover to the south of the site and the limited history of collisions at the previous operational airport (one collision in the period 2007-2013). On a similar basis to the construction noise and bird scaring conclusions in the preceding sections, the Secretary of State concludes that there would be no AEOI due to barrier effects on golden plover.

Thanet Coast and Sandwich Bay Ramsar site

- 5.88. An appropriate assessment is required on the basis of the potential for adverse effects on the Ramsar criterion 6 turnstone (non-breeding) qualifying feature

²⁵ CAP 772: Wildlife Hazard Management at Aerodromes (second edition, 2017)
https://publicapps.caa.co.uk/docs/33/CAP772_Issue2.pdf

due to construction and operation of the drainage outfall and due to disturbance/displacement effects due to noise/visual presence from aircraft.

- 5.89. These matters have been considered alongside the same pathways of effect and turnstone qualifying feature of the Thanet Coast and Sandwich Bay SPA:
- Construction and operation of the drainage outfall: paragraphs 5.46 – 5.51 of this HRA Report;
 - Disturbance/displacement effects due to noise/visual presence from aircraft: paragraphs 5.53 – 5.69 of this HRA.
- 5.90. The Secretary of State concludes that there would be no AEOI on turnstone from either pathway of effect, alone or in combination with other plans and projects.
- 5.91. An appropriate assessment is also required on the basis of potential for adverse effects on Ramsar Criterion 2 Red Data Book invertebrate species. resulting from road traffic and aircraft emissions. These may increase ambient NO_x concentrations to which vegetation that invertebrates depend on is exposed; as well as the potential for soil nutrient enrichment and acidification to affect plant communities.
- 5.92. The Applicant concluded that adverse effects on the integrity of the Ramsar could be excluded either alone or in combination with other plans and projects.
- 5.93. As set out in relation to the Sandwich Bay SAC considered previously in this section of the HRA Report (paragraphs 5.23 – 5.28), NE and TDC had disputed the Applicant's air quality assessment and the approach to the in combination assessment of air quality effects on the designated sites early on in the examination. The evidential basis and issues considered in relation to air quality assessment issues at the Sandwich Bay SAC are equally applicable in the context of the Thanet Coast and Sandwich Bay Ramsar site.
- 5.94. At paragraph 7.7.33 of their Recommendation Report, the ExA effectively concluded that the evolution of the traffic modelling had resulted in an "incomplete" air quality assessment at the point the examination closed, leading to the Secretary of State making a Request for Comments and Further Information on 17 January 2020 as set out in paragraph 5.30 of this HRA Report above.
- 5.95. In response to these specific points in the Secretary of State's letter, the Applicant provided the following (as enclosure 23 of TR020002/D/Cover):
- "*RIAA Addendum – Update of AQ Assessment*" (including Appendix A "*Modelling and Assessment of Air Quality Impacts using Original Road Traffic Data*").
- 5.96. In these documents, the Applicant demonstrates that:
- Receptor ER012 represents where impacts to the Thanet Coast and Sandwich Bay Ramsar site are greatest (shown on Figure 2.1 of enclosure 23);
 - In respect of mean annual NO_x emissions, and in accordance with EA guidance, further assessment by an ecologist was given to ER012 for all 3 scenarios considered. The Applicant concludes that the increases would not undermine the conservation objectives;
 - In respect of nitrogen deposition (N) the 'criteria for insignificance' in line with EA guidance is exceeded at ER012 in Years 6 and 20. The Applicant

concludes that the process contributions alone and in combination are both very small in relation the predicted environmental concentrations such that they would not undermine the conservation objectives; and

- In respect of hourly NO_x and acid deposition metrics, impacts are screened from requiring further consideration as being 'insignificant' in accordance with the EA guidance.

- 5.97. In NE's response dated 31 January 2020 to the Secretary of State's letter dated 17 February 2020, it confirmed its satisfaction that the Applicant's updated air quality assessment had followed its advice on the approach to the in combination assessment and that *"if the Applicant wishes to rely on the original transport assessment (without the Manston-Haine Link Road), then Natural England agrees with the conclusions set out in the updated air quality assessment (Wood, January 2020), regarding the absence of an impact on the integrity of the Sandwich Bay Special Area of Conservation (SAC) or the Thanet Coast and Sandwich Bay Ramsar site, alone or in combination with other plans or projects"*.
- 5.98. Having regard to the further submissions from the Applicant and NE set out above, as well as the ExA's remarks as set out in paragraph 7.7.33 of their Recommendation Report, the Secretary of State is satisfied that the Development would not result in an AEOI on the invertebrate qualifying feature population of the Thanet Coast Sandwich Bay Ramsar site from air quality effects, alone or in combination with other plans and projects.

6. HRA CONCLUSIONS

- 6.1. As the competent authority for Transport NSIPs as defined under the PA2008, the Secretary of State for Transport has undertaken an appropriate assessment under regulation 63 of the Habitats Regulations in relation to the following European sites:
 - Sandwich Bay SAC
 - The Swale SPA;
 - The Swale Ramsar site;
 - Thanet Coast and Sandwich Bay SPA; and
 - Thanet Coast and Sandwich Bay Ramsar site.
- 6.2. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of these European sites and where relevant, the measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for those European sites. Those conservation objectives for the European sites as listed above are set out in Annex 2 of this HRA Report.
- 6.3. Based on the submissions to the examination as summarised in the ExA's RIES and Recommendation Report, the Secretary of State is satisfied that the views of NE as the appropriate nature conservation body have been considered and that they confirm a broad acceptance of the scope and conclusions reached by the Applicant in their HRA.
- 6.4. For the reasons set out in Section 5 of this HRA Report, the Secretary of State is content to conclude that the Development would not result in AEOI of any of the qualifying features for which the European sites as listed in paragraph 6.1 above are designated (alone or in combination with other plans and projects).
- 6.5. Although some works have been undertaken at the development site to mitigate effects associated with its use in stationing of goods vehicles and associated uses and as an inland border facility, the Secretary of State has set out those measures and provisions within the DCO which are necessary for the conclusions of no AEOI, irrespective of these works. The extent and nature of the implemented works are distinct from those to which the development consent order application relates and no reliance has been placed on them in the conclusions reached in this HRA Report.

Annex 1 Documents used to inform this HRA Report

Application Documents

- Report to Inform the Appropriate Assessment (TR020002/D7a/RIAA)
- Construction Environmental Management Plan (R020002/D9/2.6)
- Register of Environmental Actions and Commitments (TR020002/D11/2.5)
- Noise Mitigation Plan (TR020002/12/2.4)
- Environmental Statement (Volumes 1,2 and 3 (Main Text), Volume 4 (Figures) and Volumes 5 – 26 (Technical Appendices) (Documents 5.2-1 – 5.2-26)

Examination Documents produced by Applicant

(nb the Application Documents above were also updated during the course of the examination, the most current iterations of which are cited above))

- Addendum to the Environmental Statement (Chapter 6 Air Quality) (TR020002/D6/5.2.6)
- Revised Transport Assessment: Environmental Statement Addendum (TR020002/D5/ESA) and Transport Assessment Addendum and Appendices (TR020002/D5/TA)
- Statement of Common Ground between the Applicant and Natural England (Signed version at Deadline 5)
- Responses to the ExA's five rounds of Written Questions
- Applicant's Comment on the Report on the Implications on European Sites

Examination Documents produced by Interested Parties

- Relevant Representation of Natural England
- Written Representation of Natural England
- Submissions of Natural England at Deadlines 5-10 (including comments on the ExA's Report on the Implications for European Sites and responses to the ExA's Written Questions)
- Thanet District Council's Local Impact Report, Written Representations and response to the ExA's Written Questions)
- Submissions of Five10Twelve at deadlines 8, 9 and 11 (and additional submissions accepted at the discretion of the ExA)
- Submissions of No Night Flights at deadlines 8 and 11 (and additional submissions accepted at the discretion of the ExA)
- Relevant and Written Representations of the RSPB

ExA Procedural Decisions

- Report on the Implications for European Sites
- ExA's five rounds of Written Questions

Post-Examination / Post-Recommendation Submissions

- Post-recommendation submissions from Five10Twelve made directly to the Secretary of State between 17 October and 23 December 2019
- Responses to the Secretary of State's Request for Comments and Further Information (dated 17 January 2020) from:
 - The Applicant (31 January 2020)
 - Natural England (31 January 2020)
- Five10Twelve (31 January 2020)

Redetermination Submissions

- Responses to the Secretary of State's consultation on the Statement of Matters (11 June 2021), second round of consultation (21 October 2021) and third round of consultation (11 March 2022) in particular from:
 - The Applicant (9 July 2021, 2 December 2021 and 28 March 2022)
 - Natural England (21 June 2021)

Annex 2 Conservation Objectives

Available from:

<http://publications.naturalengland.org.uk/category/6490068894089216>

Nb. In the case of all European sites identified below, the conservation objectives are to be read in conjunction with the accompanying Supplementary Advice documents, which provides more detailed advice and information to enable the application and achievement of the Objectives set out.

Sandwich Bay SAC (UK0013077)

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats
- The structure and function (including typical species) of qualifying natural habitats, and
- The supporting processes on which qualifying natural habitats rely

Thanet Coast and Sandwich Bay Special Protection Area (UK9012071)

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

Thanet Coast and Sandwich Bay Ramsar site (Site Number: 664)

Information Sheet on Ramsar Wetlands (RIS) for the Thanet Coast and Sandwich Bay Ramsar site available from: <https://rsis.ramsar.org/ris/664>

The Swale SPA (UK9012011)

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

The Swale Ramsar site (Site Number: 299)

Information Sheet on Ramsar Wetlands (RIS) for The Swale Ramsar site available from: <https://rsis.ramsar.org/ris/299>