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Dear Sirs,

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

1. Introduction

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the Application dated 17 July 2018 by RiverOak Strategic Partners Limited under section 37 of the Planning Act 2008 for the development and reopening of Manston Airport to operate as a dedicated air freight facility (“the Development”).

2. The Application was accepted for examination on 14 August 2018. A panel of four Inspectors, Kelvin MacDonald, Martin Broderick, Jonathan Hockley and Jonathan Manning (“the Examining Authority”), were appointed by the Planning Inspectorate to examine the Application.

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

4. A decision to grant development consent for the Development was published on 9 July 2020. On 15 February 2021, the High Court of Justice quashed the decision grant the Development consent. Following the High Court’s judgement, the Secretary of State is now required to redetermine the Application.

5. Although the 9 July 2020 decision letter refers to the decision of “the Secretary of State”, the Rt Hon Grant Shapps was not involved in the decision to grant development consent because of a conflict of interest following previous statements of support made prior to his appointment as the Secretary of State for Transport. For

the same reason, the Secretary of State played no role in the redetermination of the decision on this Application. The 9 July 2020 decision was taken by the Minister of State for Transport at the time, Andrew Stephenson. This decision has been re-taken by the Parliamentary Under Secretary of State for Transport, Karl M^cCartney. While both the 9 July 2020 and this decision have not been taken by the Secretary of State, by law, they must be issued in the name of the Secretary of State.

6. The Examining Authority's report ("ER") was published on the Planning Inspectorate's website alongside the decision of the Secretary of State dated 9 July 2020. The Examining Authority's findings and conclusions are set out in sections 4 to 10, and the Examining Authority's overall summary conclusions and recommendations are set out in section 11.

7. The Order, as applied for, seeks permission for both the use of the existing runway and other airport infrastructure and the introduction of new facilities comprising:

- the upgrade of runway 10/283 and re-alignment of the parallel taxiway;
- stands for multiple air freight aircrafts;
- installation of new high mast lighting for aprons and stands;
- construction of cargo facilities;
- construction of a new air traffic control tower;
- construction of a new airport fuel farm;
- construction of a new airport rescue and firefighting service station;
- development of the Northern Grass Area for airport-related businesses;
- highway improvement works;
- extension of passenger service facilities including an apron extension to accommodate an additional aircraft stand and increasing the current terminal size;
- an aircraft maintenance, repair and overhaul facility and end-of-life recycling facilities;
- a flight training school;
- a fixed base operation for executive travel; and
- business facilities for aviation-related organisations [ER 1.1.3].

8. The Secretary of State notes that 2052 relevant representations ("RR") were received in the RR period, and all those who submitted RRs were provided with an opportunity to become involved in the examination of the Application as Interested Parties [ER 1.4.26]. There were also 23 submissions which purported to be RRs but could not be treated as such because they were either late or not in the prescribed form or both. These were accepted as Additional Submissions to the examination. Apart from Canterbury City Council, which as a Local Authority is an Interested Party, the parties who made these representations were treated as Other Persons for the purposes of the Examination [ER 1.4.27]. In all, the Examining Authority accepted 585 representations as Additional Submissions, which were considered by the Examining Authority to be potentially important and relevant to the examination [ER 1.4.28]. The Applicant, Interested Parties and Other Persons were provided with opportunities to make Written Representations, comment on Written Representations from the Applicant and other Interested Parties, summarise their oral submissions made during the examination in writing, and comment on documents issued for consultation by the

Examining Authority. All Written Representations and other examination Documents were also taken into account by the Examining Authority [ER 1.4.29 – 1.4.30].

II. Summary of the Examining Authority's Recommendation

9. The main issues considered by the Examining Authority during the examination were:

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

10. The Examining Authority concluded that the Applicant had failed to demonstrate sufficient need for the Proposed Development, additional to (or different from) the need which is met by the provision of existing airports, and that is important and relevant against the case for development consent being given [ER 8.3.2].

11. The Examining Authority ascribed public benefits considerable weight in favour of the Development [ER 6.3.216 & 8.2.99] and concluded that overall, the socio-economic benefits from the Development weigh moderately in favour of the granting of development consent [ER 8.2.189].

12. The Examining Authority concluded that the impact from the Development on the following receptors are neutral in the consideration of the granting of development consent:

- air quality [ER 8.2.43];
- biodiversity [ER 8.2.62];
- ground conditions [ER 8.2.82];
- landscape and visual impact [ER 8.2.120]; and
- water resources [ER 8.2.227].

13. The Examining Authority considered the following impacts weigh against the Development:

- Climate change: the Development's contribution of 1.9% of the total UK aviation carbon target for 2050 and the impact this has on Government's ability to meet its carbon reduction targets, including carbon budgets [ER 6.5.71] weighs moderately against the Development [ER 8.2.75].
- Heritage Assets: less than substantial harm to three Scheduled Monuments, ten Listed Buildings and four Conservation Areas [ER 6.3.211] and less than substantial harm from the removal of WWII structures of unknown significance

[ER 6.3.195 & 6.3.212]. The Examining Authority concluded that the harm caused to the heritage assets are outweighed by the public benefits from the Development [ER 6.3.216]. However, the Examining Authority concluded that overall, impacts on heritage assets weighs moderately against the Development [ER 8.2.103].

- Noise: potential impacts on up to 40 residential caravans due to the lack of clarity on the effectiveness of mitigation measures for these receptors [ER 6.8.480 & 6.8.494]. The Examining Authority considered that impacts from noise weighs moderately against the Development [ER 8.2.150].
- Operational Issues: insufficient justification for the entirety of the Northern Grass Area [ER 6.9.120], the potential future need for a public safety zone (“PSZ”) [ER 6.9.127], the relocation of the High Resolution Direction Finder (“HRDF”) antenna within the Development site [ER 6.9.131] and doubt over the number of stands proposed [ER 6.9.132]. Overall, the Examining Authority concluded that operational issues weigh moderately against the granting of development consent [ER 8.2.176].
- Traffic and Transport: impacts on the local road network where the Examining Authority considers that appropriate mitigation measures or funding for improvements have not been secured. [ER 6.11.549 - 6.11.558 & ER 6.11.570]. The Examining Authority concluded that overall, traffic and transport issues carry substantial weight against the granting of the Development [ER 8.2.218].

14. The Examining Authority recorded that Public Health England established matters agreed with the Applicant in the form of a letter dated 28 March 2019. The Secretary of State notes that there were no matters listed as not being agreed between Public Health England and the Applicant [ER 1.4.38]. In particular the Examining Authority noted that Public Health England agreed that the quantitative exposure response health assessment for changes in air quality applied higher risk ratios than typically applied in the UK, and that this resulted in a conservative assessment, protective of health. The Examining Authority also noted that on this basis, Public Health England agreed with the Applicant that potential health outcomes from changes in air quality have been addressed [ER 6.2.111]. The Examining Authority agreed with Public Health England that the air quality assessment can be considered to be conservative and protective of public health [ER 6.2.114].

15. On compulsory purchase powers, the Examining Authority concluded that because the overall need for the Development had not been established, and because it did not find a level of need that would meet the criteria of there being a compelling case in the public interest for the compulsory acquisition of the land required for the Development, it was not satisfied that there was a compelling case in the public interest for the compulsory purchase powers sought by the Applicant [ER 9.7.16 – 9.7.17].

16. The Examining Authority’s overall conclusion was that the benefits of the Development would not outweigh its impacts and the Secretary of State should not grant development consent [ER 11.3.1].

17. In the event the Secretary of State disagreed with the Examining Authority’s recommendation to refuse consent, the Examining Authority attached to its report [ER Annex E] recommended actions on 26 outstanding issues to be taken ahead of a decision to grant development consent [ER 11.3.2]. During the decision-making

period, the Secretary of State [consulted Interested Parties on 17 January 2020](#) on these outstanding issues. The Secretary of State took into account the responses to his consultation in granting development consent for the Development on 9 July 2020.

III. Procedure Following the Quashing of the Secretary of State's Decision

18. Pursuant to rule 20(2) of the Infrastructure Planning (Examination Procedure) Rules 2010 ("the 2010 Rules"), following the judgment of the High Court to quash the Secretary of State's 9 July 2020 decision to grant development consent the Secretary of State is required to redetermine the Application.

19. Following a procurement exercise under the Department for Transport's Specialist Technical Advice for Rail and other Transport Modes Framework, Ove Arup and Partners Limited was appointed to act in the capacity of an Independent Assessor ("Independent Assessor") to assist in the redetermination of the Application. The Independent Assessor was tasked to:

- analyse the Application, the Examining Authority's report and relevant examination documents including existing forecasts, aviation and other policy documents referenced during the examination, and any relevant post-examination representations;
- provide input on and agree the scope of the Statement of Matters (defined below);
- consider any evidence submitted in response to the redetermination process relating to the issue of need and to summarise their findings in a report; and
- following publication of their report and consultation with Interested Parties on it, analyse any second-round representations received on the report and finalise it.

20. Pursuant to rule 20(2) of the 2010 Rules, the Secretary of State published on 11 June 2021 a statement setting out the matters in relation to which the Secretary of State considered further representations were needed for the purposes of the redetermination of the Application ("[Statement of Matters](#)").

21. The Secretary of State conceded the Judicial Review challenge to the 9 July 2020 decision by way of a consent order on the basis that the decision letter did not give sufficient reasons explaining why the Secretary of State disagreed with the Examining Authority's recommendation to refuse consent, and in particular on why he disagreed with the Examining Authority's conclusions on need. The decision issued was quashed by the High Court on 15 February 2021. Given this, the lapse of time following the examination of the Application and so that the Secretary of State can take into consideration impacts on the proposal as a result of the COVID-19 pandemic, the emerging of the UK as a sovereign trading nation and any other relevant factors, the Statement of Matters included the following questions:

- whether the quantitative need for the Development has been affected by any changes since 9 July 2019, and if so, a description of any such changes and the impacts on the level of need from those changes (such as, but not limited to, changes in demand for air freight, changes of capacity at other airports, locational requirements for air freight and the effects of Brexit and/or Covid);

- the extent to which the Secretary of State should, in his re-determination of the Application, have regard to the sixth carbon budget (covering the years between 2033 – 2037) which will include emissions from international aviation; and
- any other matters arising since 9 July 2019 which Interested Parties consider are material for the Secretary of State to take into account in his re-determination of the Application.

22. The Statement of Matters also requested:

- the Applicant to confirm either the continued currency of the environmental information produced for the Application (including information submitted to inform the Habitats Regulation Assessment), or where necessary, to submit updated information.
- the Government Legal Department to confirm consent or otherwise to the compulsory acquisition under section 135 of the Planning Act 2008 in relation to plots 019c and 05b held as Queen’s Nominee in respect of bona vacantia land.
- confirmation or otherwise from both the Met Office and the Secretary of State for Housing, Communities and Local Government of consent to the compulsory acquisition under section 135 of the Planning Act 2008 in relation to plot 27.

23. The consultation on the Statement of Matters closed on 9 July 2021 and over 480 responses were received.

24. The Secretary of State consulted Interested Parties on the Independent Assessor’s draft report¹ on 21 October 2021 to provide Interested Parties an opportunity to comment on it, and to invite representations on the responses to the Statement of Matters (“[the second round of consultation](#)”). The Secretary of State also requested:

- comments from the Applicant on Network Rail’s representation dated 1 July 2021, in particular regarding Network Rail’s request for inclusion of protective provisions, and an update on negotiations with Network Rail.
- the Applicant to provide an update on the progress made on the progress made regarding the High Resolution Direction Finder.
- the air quality assessments be updated so that they refer to the most current background deposition and concentration datasets from the Air Pollution Information Service as necessary, or explain why no updates are required.
- the Applicant to confirm that the references to mitigation in Annex 5, Appendix B of the Applicant’s submission of 9 July 2021 refer to mitigation measures that are already included within the draft DCO provisions rather than additional mitigation measures.
- the Applicant to confirm whether it is satisfied that its assessment of the impacts on the historic environment and heritage assets submitted in support of the Application remains current in light of Kent County Council’s (“KCC”)

¹ [Manston DRAFT Assessors Report - Publicationv1.1.docx \(planninginspectorate.gov.uk\)](#)

representation highlighting major excavations near the Development, or where deemed necessary to submit any updated information.

- the Book of Reference be updated to include schedule to highlight and explain any changes since the last version of the Book of Reference dated 9 July 2019.

25. The second round consultation closed on 3 December 2021 and approximately 310 representations were submitted in response to this consultation.

26. The Secretary of State conducted a [third round of consultation](#) to seek clarification from the Applicant on the following residual issues:

- to confirm how the Applicant's submissions on air quality submitted in the redetermination process took account of the works implemented on the development site between 24 January 2019 and 30 June 2021 so that it could operate as a temporary Inland Border Facility.
- any environmental impacts from the operation of the site as a temporary Inland Border Facility that may affect: the conclusions presented in the Environmental Statement and the Water Framework Directive Report; the information to inform and the Habitats Regulations Assessment.
- a summary of the works that have been implemented on the Development site as a result of its use as an Inland Border Facility; and
- for an updated Schedule of Changes that explains why the Applicant considers that plots 019c and 050b are no longer considered to be Crown Land.

27. The deadline for responses was 28 March 2022. The Secretary of State also received representations from 12 representations from Interested Parties including the Applicant.

28. In total, the Secretary of State received over 800 representations in response to the redetermination process. All representations have been made publicly available on the Planning Inspectorate webpage for the Manston Airport DCO Application.

29. In addition to the representations submitted in response to his consultations, the Secretary of State also received correspondence from Interested Parties outside of formal consultation. As set out in his redetermination consultation letter dated 21 October 2021 and in the redetermination consultation letters, correspondence received outside of formal consultation have been treated as redetermination correspondence and are published as such alongside this letter.

IV. Summary of the Secretary of State's Consideration and Decision on the Application

30. **The Secretary of State has carefully considered the Examining Authority's report, the Independent Assessor's Report, all representations received from Interested Parties pursuant to the 2010 Rules and otherwise, all other relevant information, and the Application and its supporting documents in deciding, under section 114 of the Planning Act 2008 to grant development consent for the Application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116(1)(a) of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 which apply to the Application by operation of regulation 37(2) of the Infrastructure

Planning (Environmental Impact Assessment) Regulations 2017². A copy of the Order to be made as part of the Secretary of State's decision and a Habitats Regulation Assessment is published alongside this letter on the Planning Inspectorate's website

31. The Secretary of State's consideration of the Examining Authority's report and other relevant matters including representations received pursuant to rule 20(2)(b) of the 2010 Rules and otherwise is set out in the following sections of this letter. Where not stated, the Secretary of State can be taken to agree with the Examining Authority's findings, conclusions and recommendations as set out in the Examining Authority's Report and the reasons given for the Secretary of State's decision are those given by the Examining Authority in support of the conclusions and recommendations. All "ER" references are to the specified paragraph in the Examining Authority's Report. Paragraph numbers in the Examining Authority's Report are quoted in the form "ER x.xx.xx" as appropriate. This letter should therefore be read alongside the Order and the Examining Authority's Report that are published on the Planning Inspectorate website for the Application.

32. The Development site lies within the local government area of Thanet District Council within the administrative County of Kent. The Secretary of State has had regard to the Local Impact Reports ("LIRs") submitted by Kent County Council ("KCC") [ER 4.3.14 – 4.3.21] and Thanet District Council ("TDC") [ER 4.3.22 – 4.3.23], who are the relevant local authorities for the area of the Development, and the relevant and emerging Development Plan [ER 3.10 and 4.5]. He has also had regard to the LIRs submitted by Canterbury City Council ("CCC") [ER 4.3.2 – 4.3.9] and Dover District Council ("DDC") [ER 4.3.10 – 4.3.13] and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 105 of the Planning Act 2008. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

33. As indicated above, approximately 900 representations including redetermination correspondence have been received in response to the procedure followed by the Secretary of State pursuant to rule 20(2) of the 2010 Rules and otherwise. The Secretary of State has considered these representations carefully alongside the points raised in redetermination correspondence. Unless otherwise specified in this letter, the Secretary of State considers the representations received through the redetermination process do not raise substantial new issues not already considered by the Examining Authority in its report. The Secretary of State is of the view that a number of the representations and redetermination correspondence rehearse arguments raised during the examination of the Application and, to the extent that they have already been addressed by the Examining Authority in its consideration and subsequent report, they are not further addressed in this letter.

V. Secretary of State's consideration of the Examining Authority's findings and conclusions in relation to the planning issues

² The Applicant submitted a scoping report before the 2017 EIA Regulations came into force and so the 2009 EIA Regulations continue to apply to the Application in accordance with transitional arrangements. Further to advice issued by the Planning Inspectorate on behalf of the Secretary of State in a scoping opinion dated 10 August 2016, the Applicant took account of the 2017 EIA Regulations in relation to the production and content of its Environmental Statement. However, it did not request a new scoping opinion [ER 1.5.2 and 1.5.6].

NEED

34. The Secretary of State notes that the Examining Authority considered this matter in detail during the examination and in section 5 of the recommendation report. The Examining Authority's overall conclusion was that the levels of freight that the Development can be expected to handle are modest and could be catered for at existing airports (Heathrow, Stansted, East Midlands Airport and others if demand existed). The Examining Authority considered that the Development appeared to offer no obvious advantages to outweigh the strong competition that such airports offer. The Examining Authority therefore concluded that the Applicant had failed to demonstrate sufficient need for the Development additional to or different from the need which is met by the provision of existing airports [ER 5.7.28].

35. During the redetermination process, the Applicant responded to the consultation on the Statement of Matters contending that need is mentioned only in paragraph 1.42 of the Airports National Policy Statement ("ANPS") which states:

"the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or different from) the need which is met by the provision of a Northwest Runway at Heathrow."

36. The Applicant stated that the ANPS gives no further explanation as to what 'sufficient' means in this context. The Applicant also contends that the Examining Authority's report largely assumes that need is determinative as to whether the DCO should be granted, but does not agree that this should be the case. The Applicant also drew attention to paragraph 17 of the Stansted decision letter which states:

"There is no requirement flowing from national aviation policy for individual planning applications for development at MBU [Making Best Use] airports, such as Stansted, to demonstrate need for their proposed development or for associated additional flights and passenger movements."

37. The Secretary of State agrees with the Applicant that the ANPS does not provide an explanation of 'sufficient need'. He also agrees that the MBU policy, which is relevant to this Application, does not require making best use developments to demonstrate a need for their proposals to intensify use of an existing runway or for any associated Air Traffic Movements ("ATMs"). The Secretary of State notes, however, that the MBU policy states that a decision-maker, in taking a decision on an application, must take careful account of all relevant considerations, particularly economic and environmental impacts and proposed mitigations (MBU paragraph 1.29). The Secretary of State considers that the benefits expected from a proposed development would materialise if there is a need for that development. Therefore, in order to assess whether the expected economic benefits will outweigh the expected environmental and other impacts from this Development, the Secretary of State has considered need in the context of identifying the likely usage of the Development from the evidence submitted in the Examining Authority's Report, the Independent Assessor's Report and the representations submitted by Interested Parties during the redetermination process. The Secretary of State's consideration of need, set out in the sub-sections below, will include consideration of:

- Relevant national aviation planning policy, aviation policy and local policy;

- the capacity deficit identified in aviation policy; and
- Demand and forecasts.

38. The Secretary of State does not agree with the way in which the Examining Authority has attempted to establish whether there is a need for the Development and his reasons for this are set out below. The Secretary of State's reasons for disagreeing with the Independent Assessor, who agreed with and adopted the approach taken by the Examining Authority (IAA 1.3, p. 2), is also set out below

Relevant Policies

39. The Secretary of State agrees with the Examining Authority that, while the Application is a 'Nationally Significant Infrastructure Project' as defined in section 23 of the Planning Act 2008 by virtue of being an airfield able to handle at least 10,000 cargo movements per year [ER 1.1.9], the ANPS does not have effect in relation to the Application [ER 3.2.3]. In the absence of a specific National Policy Statement that is applicable to the Development, the provisions in section 105(2) of the Planning Act 2008 provides the bases for decision-making for the Application. In taking a decision on an application, section 105(2) requires the Secretary of State to have regard to:

- (a) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2);
- (b) any matters prescribed in relation to development of the description to which the Application relates; and
- (c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision [ER 3.1.3].

40. The Secretary of State considers that the following policies listed in section 3 of the Examining Authority's report are relevant and important in respect of establishing whether the Development complies with relevant National and Local Policy:

- Airports National Policy Statement designated in June 2018³;
- Beyond the horizon. The future of UK aviation - Making best use of existing runways⁴, 2018;
- Aviation Policy Framework 2013⁵;
- Aviation 2050 — the future of UK aviation: A Consultation⁶;
- General Aviation Strategy⁷;
- Beyond the horizon. The future of UK aviation – Next steps towards an aviation strategy⁸, 2018; and

³ [Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684222/airports-national-policy-statement-new-runway-capacity-and-infrastructure-at-airports-in-the-south-east-of-england.pdf) ("ANPS")

⁴ [Beyond the horizon the future of UK aviation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684222/beyond-the-horizon-the-future-of-uk-aviation-making-best-use-of-existing-runways.pdf) ("MBU")

⁵ [Aviation Policy Framework \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684222/aviation-policy-framework-2013.pdf) ("APF")

⁶ [aviation-2050-print.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684222/aviation-2050-print.pdf) ("Aviation 2050: TFA")

⁷ [General Aviation Strategy Responding to the HS2 Growth Taskforce \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684222/general-aviation-strategy-responding-to-the-hs2-growth-taskforce.pdf)

⁸ [Beyond the horizon – The future of UK aviation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684222/beyond-the-horizon-the-future-of-uk-aviation-next-steps-towards-an-aviation-strategy.pdf)

- Thanet District Council Local Plan⁹ (adopted July 2020); and the Local Impact Reports submitted during the examination.

41. In addition to the above documents, the Independent Assessor also identified the emerging policies and objectives in the Transport Decarbonisation Plan and the Jet Zero Consultation, which were published following the close of the examination, as relevant to the Application. The Secretary of State has considered these documents in the Climate Change section below.

National Policy

Aviation Planning Policy

42. The Airports National Policy Statement (“ANPS”) and the ‘The future of UK aviation: making best use of existing runways’ (“MBU”) policy are Government’s planning policies that apply to airport development.

Airports National Policy Statement

43. The ANPS provides the primary basis for decision making on development consent order applications for Government’s preferred scheme for a Northwest runway at Heathrow Airport to address the capacity gap identified by the Airports Commission. Paragraph 1.13 of the ANPS sets out:

- Government’s policy on the need for new airport capacity in the South East of England;
- Government’s preferred location and scheme to deliver new capacity; and
- particular considerations relevant to a development consent application to which the Airports NPS relates.

44. Chapter 2 of the ANPS sets out the need for additional capacity in the South East of England. It states that aviation demand is likely to increase significantly with all major airports in the South East of England expected to be full by the mid-2030s, and that, even on the Department’s low demand forecast, demand is expected to outstrip capacity at these airports by at least 34% by 2050 (paragraph 2.12). Chapter 2 of the ANPS notes that air freight is a key element of the time-critical supply chains used in sectors such as advanced manufacturing industries where components and products are predominantly moved by air, and that UK manufacturing competitiveness and a successful and diverse UK economy will drive the need for quicker air freight (paragraph, 2.7). Chapter 3 of the ANPS sets out why the Heathrow Northwest Runway project, with a package of supporting measures, is Government’s preferred option for meeting the need for new capacity in the South East of England set out in chapter 2.

45. Although the ANPS focuses on the delivery of capacity through the provision of the Northwest Runway at Heathrow, it states at paragraph 1.42 that:

“... in light of the findings of the Airports Commission on the need for more intensive use of existing infrastructure as described at paragraph 1.6 above, the Government accepts that it may well be possible for existing airports to demonstrate sufficient need for their proposals, additional to (or

⁹ [LP-adjusted.pdf \(thanet.gov.uk\)](https://www.thanet.gov.uk/LP-adjusted.pdf)

different from) the need which is met by the provision of a Northwest Runway at Heathrow.”

46. The ANPS also takes into account the Airports Commission’s recommendation that there remains a need to make best use of existing airport infrastructure (ANPS 2.22). At paragraph 1.39 it states:

“...Government has confirmed that it is supportive of airports beyond Heathrow making best use of their existing runways. However, we recognise that the development of airports can have positive and negative impacts, including on noise levels. We consider that any proposals should be judged on their individual merits by the relevant planning authority, taking careful account of all relevant considerations, particularly economic and environmental impacts.”

Beyond the horizon: The future of UK aviation Making Best Use of Existing Runways

47. The Examining Authority is correct that the principle of airports making the best use of their existing capacity and runways is a common theme running through Government aviation policy from the Airport Policy Framework 2013, the work of the Airports Commission, the ANPS and through to the recent aviation policy consultation documents [ER 5.5.28]. The MBU policy was published by the Department for Transport in June 2018 and adopted alongside the ANPS and confirms Government support for airports beyond Heathrow making best use of their existing runways. It recognises that development of airports can result in negative impacts as well as positive local impacts, and that any development seeking to make best use of their existing runway will therefore need to demonstrate how it will mitigate local environmental issues as part of their planning application (MBU paragraphs 1.23-1.24 & 1.29). The MBU policy is clear that it does not prejudge the decision of the relevant planning authority which must take into consideration all relevant matters, in particular the economic and environmental impacts that are expected as a result of a development and proposed mitigations (MBU paragraph 129). The MBU policy does not limit the number of MBU airport developments that might be granted and does not include a cap on any associated increase in ATMs as a result of intensifying use at MBU developments.

Aviation Policy

Aviation Policy Framework

48. The Aviation Policy Framework (“APF”) published in March 2013 recognises that the aviation sector is a major contributor to the economy and sets out Government support for the growth of the aviation sector within a framework that maintains a balance between the benefits of aviation and its costs (APF, executive summary, paragraph 5). One of Government’s main objectives is to ensure that aviation continues to make the UK one of the best connected countries in the world, and included in this is increasing links to emerging markets so that the UK can compete successfully for economic growth opportunities (APF executive summary, paragraph 9). The APF recognises the importance of the aviation sector in supporting export-led growth in sectors where the goods are of high value or time critical, and identifies air freight as a key element of the supply chain in the advanced manufacturing sector in

which the UK is looking to build competitive strength (APF paragraph 1.6). It highlights that a successful and diverse economy will drive a need for quicker air freight, with access to such services crucial to keeping UK manufacturing competitive in the global marketplace (APF paragraph 1.8). The 'Supporting airports across the UK' section (APF pages 20 – 24) recognises that airports create local jobs and fuel opportunities for economic rebalancing in their wider region or area as they act as focal points for business development and employment. The aviation sector in the UK is largely privatised and operates in a competitive international market, and, as set out in paragraph 8 of the executive summary, Government continues to welcome significant levels of private investment in airport infrastructure. The APF recognises that maintaining the UK's international connectivity is a complex and contentious one, but that solving it is crucial to securing the UK's long-term economic growth (APF executive summary, paragraph 24).

Aviation 2050: The future UK aviation - A consultation

49. The Independent Assessor identified 'The Aviation 2050: The Future of UK Aviation – A consultation' ("Aviation 2050") document as relevant to the Development and noted that there had been no change to the status of this document since the examination of the Application (IAA, page 8 – 9). The Aviation 2050 document was published by the Department for Transport in December 2018 was the final part of the Government's consultation on the policy proposals for the development of a long-term Aviation Strategy to 2050 and beyond. The Aviation 2050 paper highlights that the UK has the largest aviation network in Europe and the third largest in the world and that aviation directly contributes at least £22 billion to the economy and supports around half a million jobs. The aim of the Aviation Strategy is to achieve a safe, secure and sustainable aviation sector that meets the needs of consumers and of a global, outward-looking Britain. The objectives of the strategy are to: help the aviation industry work for its customers; ensure a safe and secure way to travel; build a global and connected Britain; encourage competitive markets; support growth while tackling environmental impacts; and develop innovation, technology and skills.

50. The Aviation 2050 paper is clear that there is a need to increase capacity in the South-East by 2030, and that the forecasted aviation demand in the period to 2030 can be met through a northwest runway at Heathrow and by airports beyond Heathrow making best use of their existing runways, subject to environmental and other impacts being addressed (Aviation 2050, paragraph 3.11). It recognises the benefits of this growth to the UK, providing it takes place sustainably, and considers that a thriving aviation sector is tangible evidence of economic confidence, growing tourism, increased trade, and business investment (Aviation 2050, page 6). Chapter 4 sets out Government support for regional growth and connectivity, and identifies regional airports as vital for local economies, providing domestic and global connectivity, employment opportunities, and a hub for local transport. It wants to maximise these benefits through markets that operate for consumers and local communities, and support airports that deliver the connectivity regions need, an industry that provides high quality training and employment opportunities to all, and a freight sector unburdened by unnecessary barriers.

51. On leaving the European Union, the consultation paper also acknowledges that the UK's future prosperity depends on our ability to reach out to the rest of the world, to forge new trade links, to connect and compete (Aviation, 2050 page 6). It notes that

the global economy could more than double in size between now and 2050 (Aviation 2050, paragraph 1.11) and the motivation behind a new aviation strategy is that in order to remain competitive on the global stage, and to safeguard its role as one of the leading aviation and aerospace sectors, the UK must be well positioned to take advantage of new opportunities, while managing the potential economic, political and environmental headwinds along the way (Aviation 2050, page 13). The Aviation 2050 paper acknowledges that future success cannot be taken for granted and that the aviation sector faces global challenges; rising demand coupled with changing customer expectations, technological change and tight profit margins in a fiercely competitive market (Aviation 2050, page 6). Infrastructure development is seen by the Government as key to unlocking growth potential (Aviation 2050, paragraph 1.12).

52. In respect of air freight, the consultation paper also notes that there were record quantities of freight handled by UK airports in 2017, highlighting the growing importance of aviation to the transport of freight. Globally, air freight grew more than twice as fast as overall global trade during 2017 – the widest margin of outperformance since 2010. The changing nature of the goods and services traded means that air freight is becoming increasingly significant to the economy, transporting high value, high tech products, medicines and just in time deliveries (Aviation 2050, paragraph 1.19).

53. Chapter 7 of the Aviation 2050 consultation paper sets out Government support for General Aviation. The 2050 paper states that the Government aims to ensure that there are appropriate and proportionate policies in place to protect and support general aviation and its contribution to GDP and jobs. It recognises that the needs of general aviation have to be seen in the wider context of civil and military aviation. In areas such as the use of airspace and the allocation of slots it is important to balance the needs of private flying, commercial general aviation and scheduled aviation, so that all classes of aviation are properly and proportionately considered and the benefits GA can be supported.

54. In 2019, Government published a consultation response on legislation enforcing the development of airspace change proposals and an associated impact assessment.

55. Given the unprecedented challenges faced by the aviation sector as a result of the COVID-19 pandemic, instead of a response to the remaining parts of the Aviation 2050 consultation Government instead published 'Flightpath to the Future: a strategic framework for the aviation sector'¹⁰ ("Flightpath to the Future") on 26 May 2022. Flightpath to the Future is a strategic framework that builds on the responses received to the Aviation 2050 consultation. It established Government's ambitions and commitments for aviation over the next 10 years. Page 21 of the Flightpath to the future document recognises the importance of improving the UK's freight market. It identified air freight as a key enabler of international trade, playing an integral part of the future success of the UK economy. Point 4 of the 10 point plan for the future of aviation contained within the document sets out Government's plan to deliver the ambition for the use of sustainable aviation fuel by 2030 to put the sector on course for Jet Zero by 2050. Point 5 highlights a plan to capture the potential of new technology and its uses to achieve quicker, quieter and cleaner flights. Point 6 recognises the importance of the UK's extensive airport, airfield and aviation infrastructure networks in unlocking local benefits and levelling up the UK through trade, air freight, aerospace, investment

¹⁰ [Flightpath to the future \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) ("FPF")

and tourism and improved connections across the UK and regions. Point 7 focuses on the delivery of enhanced skills and diversity across the sector and Point 8 recognises the importance of general aviation and sets out the aim to make the UK the best place in the world for general aviation.

General Aviation Strategy & General Aviation Roadmap

56. The General Aviation Strategy¹¹ published in March 2015 details the Government's vision to make the UK the best place in the world for general aviation as a flourishing, wealth generating and job producing sector of the economy (GAS, page 8).

57. Page four of the General Aviation Strategy notes the role of general aviation in training future pilots and engineers, the employment of skilled workers and that general aviation accounts for nine tenths of our aircrafts and over half of our pilots. It directly supports almost 10,000 jobs and indirectly nearly 30,000 more. These include aerospace engineers, those involved in advanced avionics and those training the next generation of pilots. The General Aviation Strategy also notes that general aviation is worth three billion pounds annually to the UK economy. While general aviation flying activity has fallen significantly in recent years, business aviation and air taxis had experienced growth in movements of around 7% since 2005. The economic value of flight hours has also risen, both in real and nominal terms. Research conducted painted a picture of a sector that has enormous potential. If the level of flight hours could reach or surpass 2006 levels, while maintaining the current economic value per flight, it noted this would add some £0.7 billion to the UK economy. While the general aviation sector has been in decline Government considers that it is still possible to reverse this trend and the General Aviation Strategy sets out a number of reasons for being optimistic (GAS, page 8).

58. Section 8 of the General Aviation Strategy sets out issues in the planning system for general aviation accessible airfields. A key issue which emerged from the economic research into general aviation was the perception that low priority was being given to the strategic importance of general aviation aerodromes in the course of planning decisions and the potential for greater consideration to be given to these within planning policy in the future. In respect of planning for new airfields, the General Aviation Strategy states that a new general aviation accessible airfield had not opened in the UK for many years, partly due to market conditions but also because of the difficulty of finding suitable sites. It also notes that this was at a time that a number of airfields had closed. Opposition to new airfields is recorded as often being high within local communities, especially where the potential benefits of a general aviation airfield to the area may be poorly understood and the potential adverse effects are publicised and more readily appreciated. The Strategy also notes that improvements to infrastructure at airfields is key to their survival in an industry where technology changes very quickly, and existing general aviation airfields find it difficult to gain planning consent to develop their existing facilities. Economic research into general aviation recommended that the Government should continue to encourage planning authorities to ensure that they take the economic and employment role local airfields play into account in their Local Plans and in all planning decisions.

¹¹ [General Aviation Strategy Responding to the HS2 Growth Taskforce \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431247/General-Aviation-Strategy-Responding-to-the-HS2-Growth-Taskforce.pdf)

59. The importance of general aviation is further highlighted in the Written Ministerial Statement of 27 April 2021¹² and Government's General Aviation Roadmap¹³ published on 23 April 2021, which provides an update on Government's General Aviation programme of work to support the sector, achievements in the 12 months following the development of the General Aviation Action Plan and a summary of the work of the Civil Aviation Authority's General Aviation Unit.

The Secretary of State's Conclusions on National Policy

60. Both current and emerging policies recognise that there is a need to increase capacity in the South East by 2030 (APF paragraphs 1.54 & 1.109, ANPS paragraphs 2.11 & 2.32, Aviation 2050 paragraphs 1.20, 3.11), and that capacity is forecast to be full in the South East by the 2030(s) (APF paragraphs 1.54 & 1.109 and ANPS paragraph 2.12). The Aviation 2050 consultation document also states that capacity demand up to 2030 can be met through the Heathrow Northwest Runway project and other airports making best use of their existing infrastructure, subject to environmental issues being addressed (Aviation 2050 paragraph 3.11).

61. As well as setting out Government's policy on the need for new airport capacity in the South East of England by 2030, the ANPS also identifies the Northwest Runway project at Heathrow as Government's preferred scheme to meet the demand for additional capacity (ANPS paragraph 2.33), but is also supportive of other airports making better use of their existing runways (ANPS paragraph 1.39). The MBU policy is Government's response to the Airports Commission's recommendation on the need for airports other than Heathrow to make better use of existing infrastructure (MBU paragraph 1.3), and confirms Government support for this subject to the consideration of economic and environmental impacts (MBU paragraph 1.29). The Secretary of State notes that the Development will reopen as a freight focused airport with aircraft maintenance and repair services, General Aviation, some passenger and business services and aims to create a hub for aviation-related commercial opportunities in the South East of England. The Secretary of State also notes that the Development is not of the same scale as the Heathrow Northwest Runway scheme described in the ANPS, and the redevelopment of the site to bring it back into an operational airfield will involve the use of existing onsite infrastructure such as the existing 2,748m long runway.

62. The Secretary of State notes that the Aviation Policy Framework highlights the importance of the UK's General Aviation network (APF, paragraphs 1.86 – 1.90), and that this is supported by the General Aviation Strategy, the General Aviation Roadmap and the National Planning Policy Framework (paragraph 106(f)). The Examining Authority recorded that General Aviation was not examined in depth in the examination or covered in detail in the Applicant's Azimuth Report, but noted the support for General Aviation facilities in the Aviation Policy Framework and the National Planning Policy Framework and the representations made on this matter [ER 5.2.17, 5.7.27]. The Applicant has sought permission in the development consent order for a total annual General Aviation limit of 38,000 movements. The Secretary of State considers that granting consent would serve to implement Government aims on General Aviation activities and therefore places substantial weight on the contribution the Development would make in this respect.

¹² [General Aviation in the UK - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/written-ministerial-statements/2021/04/27)

¹³ [General Aviation Roadmap - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/general-aviation-roadmap)

63. The Secretary of State is also satisfied that the Development aligns with the objectives set out in the 'Aviation 2050: The future of UK aviation' consultation document which sets out the importance of aviation to the whole of the UK, the crucial role air freight plays in the economy in particular as the UK develops new trading relationships, the need to increase capacity through more intensive use of existing runways and airspace and the connection aviation provides both within the UK and with the rest of the world. As set out above, the Flightpath to the Future policy document was published in place of a response to the remaining parts of the Aviation 2050 consultation given the recent challenges faced by the aviation sector. This document highlights the importance of air freight as an integral part of the future success of the UK economy (FpF, page 21) and identifies airport expansion as key to enhancing the UK's global connectivity (FpF, point 3 on page 9). The Secretary of State is satisfied that the Development, which will reopen as an air freight airport, will contribute towards the main objectives of Government's aviation policies in particular increasing links with emerging markets so that the UK can compete successfully for economic growth opportunities and ensuring that the UK continues to be one of the best connected countries in the world (APF, executive summary paragraph 9 and paragraph 1.57).

64. The Secretary of State is aware that a number of Interested Parties in their responses submitted during the redetermination process argued that the MBU policy does not apply to this Development because it is a disused airport focused on providing air freight services, it was discounted as an option by the Airports Commission and because it was not accounted for in the modelling conducted in support of the MBU Policy.

65. On whether the MBU policy applies to disused airports, the Secretary of State considers that in this instance the policy does apply. While the airport is not currently in operation and requires planning permission to reopen the Development site, it includes existing airport infrastructure that the Applicant will reuse. As well as constructing new facilities to return the airport to operation, the Applicant will make use of the existing 2,748m long runway, taxiways, aprons, cargo and other facilities still extant. While the MBU policy does not specifically mention air freight, as set out in paragraph 44 above the ANPS does take into account the need for air freight capacity and is supportive of airports other than Heathrow making best use of their assets (paragraph 46 above).

66. The Secretary of State does not agree that the Airports Commission dismissed the option for the delivery of air services at the Development site in its Interim Report¹⁴. Paragraph 5.96 of the Interim Report states that several submissions drew the Airports Commission's attention to the concept of smaller airports and airfields in the vicinity of congested airports being developed for the handling of specific types of traffic, with an emphasis on business and General Aviation, referred to as 'reliever airports' (IR, page 220). The Secretary of State notes that while the focus of this Development is to provide air freight services, the Development will also deliver General Aviation activities, passenger operations, aircraft maintenance and repair services, create a hub for aviation-related commercial opportunities and provide capacity to relieve pressure in the South East and the wider UK airport network.

67. The Airports Commission recognised the benefit that reliever airports could play in reducing pressure in other airports at London and the South East, and concluded

¹⁴ [Airports Commission: Interim Report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

on page 16 in Appendix 2¹⁵ of the Interim Report the following on the potential use of Manston Airport as a reliever airport:

“This proposal presents some potential as a reliever airport, but does not address the larger question of London & South East capacity. The concept of reliever airports is considered in short and medium term work. Please see Appendix 1 for further information.”

68. On reliever airports, item 82 on page 33 in Appendix 1¹⁶ of the Interim Report concludes:

“The Commission is supportive of the reliever airports concept. The Commission recognises that this may be the best way to cater for the needs of business users without disrupting the wider airport system.”

69. In the sub-section titled ‘Reliever airports and support for business aviation’ in section 5 of its Interim Report, the Airports Commission recommends at paragraph 5.99 that:

“Government policy should promote the benefits of smaller airports in the London and South East system for accommodating business and general aviation.”

70. It is clear to the Secretary of State that the Airports Commission’s Interim Report and appendices demonstrated support for reliever airports and acknowledged there were potential benefits from the use of the Development site for this purpose. However, it ruled out recommending the proposal to develop Manston airfield as a reliever airport as a solution to the key question of providing the additional long-term capacity and connectivity in the UK identified in the ANPS.

71. Regarding the forecasts underpinning the MBU policy, the Secretary of State does not agree that an operational Manston Airport would be unforeseen growth because it was not specifically listed in these forecasts. The Secretary of State would point out that neither of the relevant aviation planning policies (the ANPS and the MBU policy) restricts growth at airports beyond Government’s preferred Heathrow Northwest Runway option to only those listed in the forecasts or those not listed but captured by the ranges used in forecasting as is the case for smaller airports. The MBU Policy acknowledges that airports making best use of their existing runways could lead to increased carbon emissions, and that environmental concerns must be taken into account as part of the relevant planning application process. All MBU developments, regardless of whether they are listed in the forecasts or not, are required to assess the environmental impacts from the proposed development on its own and also in-combination with other existing or known projects. This includes the assessment of carbon impacts. It is then for the relevant planning authority to take into account these impacts in determining whether or not an application for a MBU development should be granted.

72. For the reasons above, the Secretary of State is satisfied that the principle of the Development is supported by relevant national aviation and aviation planning policies.

¹⁵ [Appendix 2: Assessment of Long-term Options \(publishing.service.gov.uk\)](#)

¹⁶ [Appendix 1: Assessment of Short- and Medium-Term Options \(publishing.service.gov.uk\)](#)

Local Policy and Impact Reports

Thanet District Council Local Plan

73. The Secretary of State notes that the Development site is located wholly within the administrative boundary of Thanet District Council. At the time of examination, Thanet District Council was in the process of preparing a new local plan (“the emerging Local Plan”) which was published for consultation in August 2018 and submitted to the Secretary of State of the then Ministry of Housing, Communities and Local Government for examination in October 2018. The Examining Authority concluded that until the emerging Local Plan had been adopted, the Local Plan adopted in 2006 (“the 2006 Local Plan”) was the statutory local planning policy document for Thanet District Council and that the Saved Policies of the 2006 Local Plan are important and relevant [ER 3.10.2] in the case of the Development. Given the advanced stage of its preparation, the Examining Authority also considered that the policies in the emerging Local plan to be important and relevant [ER 3.10.5]. The Examining Authority recorded that while TDC’s Local Impact Report states the adopted Thanet Local Plan 2006 allocated the use of Manston Airport for aviation use [ER 8.2.12], its emerging Local Plan took a neutral stance and did not allocate the Development site for aviation or any other use so as not to prejudice the Application [ER 8.2.14].

74. The Examining Authority concluded that the principle of the development was supported by the 2006 Local Plan, subject to it being acceptable in other regards [ER 4.5.1], and afforded the emerging Local Plan moderate weight [ER 4.5.3]. Taking into consideration the relevant policies, the Examining Authority concluded that the principle of the Development is supported by the adopted development plan and does not conflict with the emerging Local Plan.

75. Following the close of the examination, the emerging Local Plan was adopted on 9 July 2020. The adopted Local Plan includes a specific policy (Policy SP07) which safeguards the Development site for aviation use which is supportive of the Development subject to it being acceptable in other regards. The Secretary of State agrees with the Independent Assessor that the principle of the Development is supported by policy SP07 (IAA section 4.3, page 13), and that more weight should be afforded to this now adopted policy in the redetermination of the Application than given in the examination to the emerging Local Plan. The Secretary of State also agrees with the Independent Assessor that while Policy SP04 (Economic Growth) which plans for a minimum of 5,000 additional jobs in Thanet to 2031 does not identify the Development as an employment site, the policy is supportive of all new job creation both within and outside of identified employment sites (IAA section 4.3, page 13).

Local Impact Reports

76. The Planning Act 2008 is clear that consideration of an Application must take into account the local impacts of any development. The Secretary of State has had regard to the Local Impact Reports submitted by TDC, KCC, DDD and CCC. The Secretary of State notes that none of the Local Impact Reports made any specific comments on the need for the Development [ER 5.2.8 - 5.2.14]. While TDC’s Local Impact Report stated that the adopted Thanet Local Plan 2006 allocates the use of Manston Airport for aviation use [ER 8.2.12], its emerging Local Plan took a neutral stance and did not allocate the Application site for aviation or any other use so as not to prejudice the Application [ER 8.2.14]. TDC’s Local Impact Report recognised the potential for the Development to deliver socio-economic benefits to the local authority

area, but stated that there is a need to understand job creation within and outside of Thanet local and regional economy [ER 6.10.4]. On socio-economic benefits, the Secretary of State notes that both DDC and CCC's Local Impact Reports recognised the positive benefits from the Development to the East Kent economy [ER 6.10.14 – 6.10.15].

77. The Secretary of State received representations from TDC, KCC, DDC and CCC in response to the redetermination process. None of these responses raised any objection to the Development on the basis of need. DDC, CCC and KCC's Skills & Employment Manager's representations highlighted again the socio-economic benefits that are expected to arise as a result of the Development.

The Secretary of State's Conclusion on Compliance with Local Policy

78. The Secretary of State is aware that a number of Interested Parties put forward representations during the redetermination process objecting to the Development on the basis that it did not comply with relevant Local Policy. On the question of need, the Secretary of State agrees with the Independent Assessor that the principle of the Development accords with the use of the site as set out in Local Policy SP07 (IAA section 4.3, page 13). The Secretary of State is also of the view that granting development consent would serve to implement this policy and has therefore attached substantial weight to the contribution that the Development would make in this regard. While noting the various concerns raised in the LIRs, the Secretary of State notes that none of the LIRs submitted during the examination specifically mention whether the need for the Development has been established. Further, the socio-economic benefits which are expected to flow from the Development were highlighted in the LIRs and in responses to the redetermination process.

Air Freight Demand & Forecast

79. The Secretary of State notes that air freight demand and forecasts were scrutinised by the Examining Authority during the examination. He also notes the Examining Authority's extensive review of the various demand forecast reports submitted by various Interested Parties, and has taken note of the different approaches to forecasting employed by the Applicant and other Interested Parties [ER 5.6.60 – 5.6.69]. The Examining Authority also noted that the Department's 'UK Aviation Forecasts: Moving Britain Ahead 2017'¹⁷ ("UK Aviation Forecasts 2017") included an assumption for air freight and did not model air freight in detail [ER 5.6.70].

80. The Secretary of State notes that the Applicant's Azimuth Report sets out drivers of demand for dedicated air freight services identified through a qualitative study and a forecast for air freight and passenger traffic for the Development over the first twenty years of operation. The Secretary of State is aware that during the examination, the Applicant submitted the Northpoint Report compiled by Northpoint Aviation which takes a top-down analysis assessment of the Applicant's Azimuth Report [ER 5.6.51]. The Examining Authority noted the explanation given in the Northpoint Report on the differences between the bottom-up forecasting approach taken in the Azimuth Report and the top-down analysis used in other reports. The benefit of the bottom-up approach is described in the Northpoint Report as involving

¹⁷ [UK aviation forecasts 2017 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

discussions with key market and industry players to provide dynamic insights and is of benefit when taking into account demand for a fast moving industry such as aviation which will look very different in 10 to 20 years than it does now [ER 5.6.60]. The top-down approach is described as relying on the extrapolation of historic data and performance and on the notion that the key to the understanding the future is in the past [ER 5.6.60].

81. The Secretary of State has considered the reasons given by the Applicant for taking a qualitative bottom-up approach to forecasting in it's Azimuth Report which are: 1) data to extrapolate is only available until 2014; and 2) the history of underinvestment when it previously operated as an airport before it closed in 2014 [ER 5.6.53]. The Secretary of State also notes that the airport previously provided both passenger and air freight services, and this Development proposes to focus on the provision of air freight services.

82. The Secretary of State is aware that the Applicant conducted numerous interviews with a range of air freight companies, policy-based bodies and promotional associations [ER 5.6.54] that identified: problems with freight at Heathrow and Channel crossings; that the freight market would expand but there is considerable pressure on price for air freight carriers; that the potential effect of Brexit and changes in fuel price were trigger points for contraction / expansion; that the use of bellyhold over pure air freight was due to availability; and potential markets in perishables, outsized freight and handling of live animals [ER 5.6.55]. The Secretary of State also notes that comments were made on improved passenger access to Stansted Airport, findings regarding airport capacity in the South East and fuel savings for road freight to Manston as opposed to East Midlands Airport. The Applicant stated that the academic and industry experts that had been contacted through the research process had validated the qualitative approach taken in the Azimuth Report [ER 5.6.53]. The Secretary of State notes that during the examination, the Applicant confirmed that a separate viability assessment was conducted to ensure that the forecast in the Azimuth Report would occur at a price that would make the Development viable, but that this was confidential [ER 5.6.51]. The Examining Authority considered that because the Applicant withheld the transcripts of interviews and other sensitive data, this limits the weight that could be given to this information and concluded:

“While potentially useful and interesting, the fact that the transcripts have not been made available as part of the Azimuth Report due to the confidentiality of the interviews and the commercial sensitivity of the data collected limits the weight that can be given to them.” [ER 5.6.57] and

“...on the basis of the evidence provided, the ExA cannot conclude that academic and industry experts have validated the approach of the Azimuth Report. While noting the statement that further evidence was commercially confidential, without access to such evidence the ExA is unable to take this into account.” [ER 5.6.59].

83. The Examining Authority records that when questioned on this point, the Applicant confirmed that interviews also took place with key airports, the air freight sector, industry organisations, officials in my Department, leading academics and other consulting experts and businesses with the objective of confirming the Applicant's core forecasting analysis [ER 5.6.58]. The Secretary of State notes that during the examination, the Applicant requested the Examining Authority to take into account that other developments have been granted planning consent without the

disclosure of commercially and other sensitive information [ER 5.6.58]. The Independent Assessor's also noted that the Examining Authority reduced the weight attached to the Applicant's evidence due to a lack of interview transcripts, the size of interview sample and being unable to verify academic and industry validation (IAA section 2.1.1, page 4).

84. During the redetermination process, the Applicant commissioned a report from the International Bureau of Aviation ("IBA report") on whether additional air cargo capacity is required in the South East of England and submitted it in response to the second round of consultation. The IBA report contends that 2021 data links GDP growth and air cargo growth. The IBA Report also states that 2019 air freight figures show that cargo is being handled by airports other than Heathrow Airport, and that total UK air freight figures to 2020 (including the pandemic slump) and Civil Aviation Authority's five year data leads the IBA to forecast demand for between 13,000 and 35,000 extra full freighter flights per annum by 2030 with no additional capacity at Heathrow and only 6,000 increased movement at Stansted airport. The Secretary of State notes that these predictions are based on freight tonnage increases of circa 23% in the 10 year period 2019 to 2030, which appear consistent with the anticipated overall UK annual growth rate of between 2.4% and 1.8% between 2022 and 2036 referred to in the Independent Assessor's report (IAA, pages 40 - 41) on the subject of future freighter tonnages. The IBA report also states that there has been significant movement of air cargo to road between 2000 to 2019, and that this is likely a result of a lack pure air freight capacity which has meant that air freight is landed in continental Europe and then moved by road freight into the UK. The Applicant submitted similar evidence on increased road freight displacing air freight in its first submission in the redetermination process. The Secretary of State is of the view that this data demonstrates a sustained growth in air freight demand.

85. The Applicant and other Interested Parties also made reference to the 'Developing Cargo at Airports' July 2021 Airport Council International report and to a claimed new found importance of air cargo. It identified both direct revenue benefits to airport operators as a result of the COVID-19 pandemic such as the significant increase in e-commerce, and indirect benefits in the form of supporting local industry, creating employment opportunities, and enabling global trade. The Secretary of State also notes a number of Interested Parties submitted other similar news and industry articles and reports highlighting the increase in air freight generally, the move to narrow bodied aircraft reducing belly hold capacity, that the COVID-19 pandemic has demonstrated that air freight cannot rely on passenger flights, and of road freight vulnerability to disruption.

86. The Secretary of State notes that in respect of vulnerability to disruptions, the lorry data submitted during the examination to demonstrate that the Development might attract existing and future road freight was not accepted by the Examining Authority. [ER 5.6.111 – 5.6.112 and 5.6.133].

87. The Secretary of State has also considered the references to the Airport Council International report and to a claimed new found importance of carbon reduction and sustainable practices, the Air Cargo News dated November 2021 which states that shipping operators were expanding into air freight and other Air Cargo News extracts dated July – August 2021 reporting on bellyhold capacity constraints, continued growth in e-commerce demand and a move from shipping to air freight.

88. The Secretary of State notes that the Independent Assessor's report highlights on page 29 that *"Even the most up-to-date data used cannot be said to reflect a fully post-Covid world, although travel restrictions are being relaxed, some remain in force, for example for unvaccinated passengers, and supply chain disruption continues to have impacts"* Page 38 of the Independent Assessor's report states that the long-term impacts of Brexit and the extent to which recent figures have been affected by Covid-19 are unclear, and states: *"To the extent that Brexit leads to growth in the UK's long-distance trade in goods, and to which this generates demand for dedicated air freight, it will support the need case for Manston Airport, but the Independent Assessor has not seen any evidence – one way or another – on these matters."*

The Secretary of State's Conclusion on Demand & Forecast Assessments

89. The Secretary of State accepts that there will always be a level of uncertainty in any demand forecast and agrees with the author of the Azimuth Report that assessing demand for freight is no easy matter [ER 5.6.53]. The Secretary of State notes that the approach taken by the Applicant relies on an in-depth understanding of the changes that are taking place within the sector in a way that does not miss any currently unmet demand. The Examining Authority concluded that the Applicant's forecasts seem ambitious in light of the historical performance of the airport [ER 5.7.4]. The Secretary of State considers that, given the circumstances noted in paragraphs 81 - 82 above, the qualitative approach taken in the Azimuth Report is preferable to the other forecasts considered by the Examining Authority. Given the dynamic changes that are currently taking place in the aviation sector as a result of the challenges and opportunities from the COVID-19 pandemic, the opportunities from the UK's emergence as a sovereign trading nation and the age of the available data allied with historic under investment, the Secretary of State, contrary to the Examining Authority [ER 5.7.4] and the Independent Assessor, places little weight on forecasts that rely on historic data and performance to determine what share of the market the Development might capture.

90. The Secretary of State notes that while the Examining Authority found the Applicant's Azimuth Report potentially useful and interesting, it gave it limited weight because the transcripts of interviews and other commercially sensitive or confidential information had not been made available [ER 5.6.57]. The Secretary of State notes that the Independent Assessor observed the reduced weight that the Examining Authority gave the Azimuth Report and made no further comment (IAA, page 4). While the Secretary of State agrees with the Examining Authority that the Azimuth Report is a comprehensive document, he disagrees with the Examining Authority that the lack of access to the information withheld by the Applicant reduces the weight that can be placed on it [ER 5.7.13]. The Secretary of State is of the view that withholding commercially and other sensitive information from the planning process is justified. The Secretary of State notes that Table 3 in Volume II of the Azimuth Report provides a list of the organisations and key market players it interviewed. A forecast of demand is included in Table 1 in Volume III of the Azimuth Report and a more detailed forecast was included in Appendix 3.3 of the Applicant's Environmental Statement. The Application was publicised and examined in the normal way and all Application documents and representations submitted during the examination were made publicly available such that there was opportunity for anyone not notified to also submit comments. The Secretary of State did not receive any representations that persuaded him that the conclusions of the Azimuth Report are incorrect.

91. The Secretary of State is aware that his Department's UK Aviation Forecasts 2017 does not model air freight in detail and therefore labelled it as an assumption. However, he is satisfied that the Azimuth Report, which is supported by the Northpoint Report and provides a top-down view of the air freight market and employs a scenario-based analysis [ER 6.6.60], demonstrates that there is demand for the air freight capacity that the Development seeks to provide. The Secretary of State has therefore afforded the Azimuth Report substantial weight in the planning balance.

92. The Secretary of State agrees that industry and other news reports submitted during the redetermination process support the view that e-commerce and air freight demand is increasing, and that these news reports are consistent and support some of the assumptions made in the Azimuth Report. However, the Secretary of State is only able to attach little weight to such reports because they have not been assessed for whether they represent a balanced view of material that is in the wider press.

93. The Secretary of State accepts that there is uncertainty in how the aviation sector may look post-Brexit (IAA page 55) or post-Covid (IAA section, page 29), and agrees with the Independent Assessor's that even the most up-to-date data cannot be said to fully reflect how the sector may look going forward (IAA, page 29) However, it is because of this uncertainty that the Secretary of State places significant weight on the reopening and development of the site for aviation purposes, rather than losing the site and existing aviation infrastructure to other redevelopment.

94. Finally, the Secretary of State places substantial weight on the fact that there is a private investor who has concluded that the traffic forecasted at the Development could be captured at a price that would make the Development viable, and is willing to invest in redeveloping the site on that basis.

Capacity

95. The Secretary of State notes that the Examining Authority concluded that it was not convinced that a substantial gap between capacity and demand for general air freight within the South East existed. This was on the basis that capacity is available or could be available within the South East or at other airports in reach of the South East should the demand exist [ER 5.7.23]. The Examining Authority was of the opinion that general air freight would continue to be well served in the UK with spare capacity at Stansted in the short term (to 2030) and the proposed Northwest Runway at Heathrow in the longer term, and that new integrators are more likely to wish to be sited in a more central location [ER 5.7.24]. The Secretary of State notes that that the Examining Authority's conclusions also relied on capacity that might become available at existing airports elsewhere [ER 5.6.2 – 5.6.37]. It also relied on capacity that the Examining Authority considered could largely be achieved relatively simply through permitted development rights or existing facilities [ER 5.7.23].

96. The Secretary of State also notes that the Independent Assessor employed the same approach as the Examining Authority in considering capacity and took account of capacity at: Heathrow Airport; Gatwick and Luton; Stanstead Airport; and developments at East Midlands Airport (IAA, section 5.3). The Independent Assessor concluded that the delay in the delivery of the Heathrow Northwest Runway project is a significant change with potential to improve the need case for the Development (IAA, page 47). The Independent Assessor considered that a delay in the opening of the Heathrow Northwest Runway project is likely, and that this strengthens the need for

the Development (IAA, page 47). The Independent Assessor also concluded that if the Heathrow Northwest Runway project were to be prevented or substantially delayed by factors such as successful legal challenge to a decision to grant consent in future or on planning grounds, this would also support the need for the Development to address the shortfall in capacity that this would create (IAA, page 47). However, the Independent Assessor also concluded that the uncertainty in respect of this delay needs to be considered alongside existing capacity, and in light of other airports expansion plans which are progressing (IAA, page 48). The Independent Assessor took into account capacity that will be made available through the Stansted appeal decision (IAA, pages 48 – 51) and capacity that might come forward in future through the Gatwick and Luton Airport expansion plans (IAA page 48). The Secretary of State notes that the Gatwick and Luton Airport expansion projects are at the pre-application consultation stages and have yet to come forward. The Secretary of State also notes that the conclusion that there will be capacity to meet any demand for air freight could be met at East Midlands Airport, reached by the Independent Assessor and some Interested Parties, is based in part on the potential for growth at this airport [ER 5.6.31] & (IAA page 52). The Examining Authority's conclusion that capacity is available or could be made available at other airports within the South East of England [ER 5.7.23] also relies in part on the potential for growth at these other airports.

Secretary of State's Conclusion on Capacity

97. On the matter of capacity being made available at airports elsewhere, the Secretary of State accepts that there is potential for all existing airports to expand in future to increase capacity. However, the Secretary of State is of the view that in considering whether there is a demand for the capacity the Development aims to provide, he is not able to attach weight to applications that have yet to come forward. This is because there is no certainty that capacity from such applications will be delivered. For example, aspiration plans setting out future growth may be modified or changed, or they may not come forward at all. Where planning permission is required, both the ANPS and the MBU policies are clear that they do not prejudge the decision of the relevant planning authority responsible for decision-making on any planning applications. Such applications are subject to the relevant planning process and may not ultimately be granted consent by the decision-maker. In addition, the aviation sector in the UK is largely privatised and operates in a competitive international market, and the decision to invest in airport expansion is therefore a commercial decision to be taken by the airport operator. This means that while increase in demand for air freight services could potentially be met by expansion at other airports, those airport operators may not decide to invest in changes to their infrastructure to meet that demand. It is therefore not possible to say with any certainty whether indicative capacity set out in growth plans will result in actual future capacity.

98. The Stansted Airport expansion plan also demonstrates why potential capacity from future plans at other existing airports can only be indicative of future capacity and is therefore not a material consideration. During the examination of this Application, the planning application seeking expansion at Stansted Airport sought an annual cap of 274,000 ATMs including 20,500 air freight movements. The planning permission granted following appeal, in May 2021, maintains an overall annual ATM cap of 274,000 but has reduced the cap of freight ATMs to 16,000, thereby increasing allowable passenger ATMs over freight. The Secretary of State is aware that the

Applicant raised in the Azimuth Report and during the examination the possibility that Stansted Airport would prioritise passenger flights over freight, and that the Examining Authority concluded that there was no clear evidence to suggest that this might be the case [ER 5.6.26]. The Secretary of State also notes that the Independent Assessor took into account capacity that might come forward in future through the Gatwick and Luton Airport expansion plans. The Secretary of State would point out that both the Gatwick Airport Northern Runway project and the Expansion of London Luton Airport project are at the pre-application consultation stages.

99. The Secretary of State received representations from a number of Interested Parties on the uncertainties in the delivery of the Heathrow Northwest runway during the redetermination process. As set out above, this is also acknowledged by the Independent Assessor who concluded that the uncertainty about the future expansion at Heathrow now than at the time of the examination of the Application strengthens the need for this Development (IAA, page 48). The Secretary of State is aware that an application for the Heathrow Northwest Runway project has yet to be submitted to the Planning Inspectorate, and a timetable for the submission of an application has yet to be confirmed. As also set out above, the Independent Assessor considered that the uncertainty in respect of Heathrow's expansion plan needs to be considered alongside existing capacity and in light of other airports expansion plans which are progressing. However, the Secretary of State notes that having agreed with the Examining Authority's conclusions (IAA, page 2), the Independent Assessor has taken the same approach as the Examining Authority in taking into account capacity that may become available through aspirational and potential future growth at other existing airports.

100. The Secretary of State also received representations that referenced the Loadstar article dated 8 November 2021, International Air Transport Association ("IATA") data from 2019 and commentary on the inability of Heathrow to accommodate rising freight demand. The Secretary of State also notes that the IBA report also contends that reliance should not be made on capacity at Heathrow. Using 2019 and 2021 data, the IBA forecasts a return to pre-pandemic belly hold freight levels at Heathrow by 2023, and that 2019 data shows that belly hold capacity is dominant at Heathrow for meeting freight demand.

101. The Secretary of State disagrees with the reliance the Examining Authority places on capacity could largely be achieved through permitted development rights or existing airport facilities [ER 5.7.23]. As set out by the Examining Authority, permitted development rights for the extension or construction of a runway or passenger terminal is not permitted above a certain level, and should an Environmental Impact Assessment be required then permitted development rights would not apply [ER 5.6.38]. An airport operator is also required to consult the relevant Local Planning Authority(s) before carrying out any extension or construction works under permitted development rights [ER 5.6.39]. As with aspirational growth plans for expansion, the decision to increase capacity through general permitted development or existing facilities is a commercial decision to be taken by the airport operator, and the Secretary of State's is unable to place weight on capacity that airport operators have not indicated they intend to and are able to create through permitted development rights.

102. The Secretary of State notes that the Examining Authority [ER 5.6.45] and the Independent Assessor (IAA section 5.3) consider that there is spare capacity at other airports [ER 5.6.45]. It appears that in concluding this, the Examining Authority and the Independent Assessor are relying in part on aspirational growth plans and the

potential for growth at other airports. Such capacity is not required to be taken into account by policy, and it is not in the Secretary of State's view otherwise obviously material to the Secretary of State's decision on this Application for the reasons set out above, principally the lack of any certainty that such potential capacity will ever come forward. To the extent that possible capacity is legally material, the Secretary of State gives no significant weight to it for the same reasons. The Secretary of State accepts that there may currently be existing capacity at other airports such as Stansted and East Midlands Airport. However, the Secretary of State's focus is on the long-term capacity gap identified in relevant aviation policy and forecasted to occur by 2030 in the South East of England. Even if the impacts from the COVID-19 pandemic and other recent events result in short-term fluctuations in demand as suggested by the Independent Assessor (IAA, p. 31, 39, 41, 42 and 56) and other Interested Parties, by their nature such short-term impacts would not give rise to certainty over the long-term demand forecast.

Locational Factors

103. The Examining Authority considered whether the Development is favourably located to meet air freight demand in the South East of England [ER 5.6.125 – 5.6.145]. The Examining Authority notes that there was a split in the view on the suitability of the location of the Development between Interested Parties. The Applicant argued that the time taken to travel from Manston to most M25 and London destinations is faster from Manston than from EMA, and that the geographical location of the Development provided cost advantages to customers [ER 5.6.126]. Others argued that Manston is not favourably located because: it is not positioned to serve the wider South East Area or the UK; that only the South East and the East of England can be reached within a three-hour drive from Manston whereas most of England and Wales is within three hours of the East Midlands Airport; freight is less time sensitive than passengers; the extensive network of long haul flights from Heathrow means that it attracts freight from the whole of the UK; there is a lack of critical mass of manufacturing nearby; the lack of a passenger hub; and proposed night flight restrictions, [ER 5.6.127 & 5.6.128]. The Examining Authority also records that many Interested Parties said that with the sea to the north and east, the Development site is not conducive to attracting freight or to act as a centre for imports, and conversely that Manston is ideally located to release pressure on the South East [ER 5.6.130]. The Secretary of State notes that these arguments were largely mirrored in the representations submitted by Interested Parties in response to the redetermination process, including the representation by air freight company Midnight Zulu Limited that Manston has particular benefits over other UK locations for air freight arriving from East Africa. The Examining Authority concluded that while Manston may be in closer proximity for the significant import demand from the population density in the South East, East Midlands Airport is in a position that can benefit from fairly easy access to this import demand and also the export demand from the manufacturing heartlands of England and Wales [ER 5.6.137]. The Independent Assessor considered representations submitted during the redetermination on locational requirements, and concluded that the evidence submitted in these representations did not lead to them to conclude differently to the conclusion reached by the Examining Authority on this matter in its report (IAA, page 54).

104. The Examining Authority agreed with the Applicant that price is not the only determinant in where freight businesses may locate, and that other factors such as

facilities, speed, handling efficiency and location are also relevant [ER 5.7.25 While accepting that evidence was not strong on the point of whether bellyhold freight would be cheaper than pure freight from the representations submitted, the Examining Authority was attracted to the argument that freight transported on passenger flights would be substantially cheaper than freight transported on a flight whose sole income is from freight [ER 5.6.113]. The Examining Authority concluded that while factors such as efficiency would play a key role on how to transport freight, price must be a determining factor.

105. The Examining Authority also considered that should demand be present, facilities could be constructed at other airports that could match the Applicant's plan and was therefore not convinced that the location of the Development was entirely favourable [ER 5.7.25].

Secretary of State's Conclusion on Locational Factors

106. While the Secretary of State considers that there are locational advantages of existing facilities that are available in both the East Midlands and in East Kent, there is no requirement in the MBU policy for an applicant to demonstrate that it is better placed locationally in comparison to other existing airports to intensify use of its runway. In addition, as set out in the Aviation Policy Framework, aviation in the UK is largely privatised and operates in a competitive international market. The Government supports competition as an effective way to meet the interests of air passengers and other users (APF, paragraph 8).

107. For these reasons, the Secretary of State does not consider the advantages of one location over the other as being a decisive consideration in this case.

E-Commerce

108. The Examining Authority noted that the Applicant aims to attract new e-commerce retailers and distributors which it refers to as 'new integrators'. The Secretary of State notes that the Applicant is of the view that there has been an increase in e-commerce air freight operations, and that this increase cannot be provided at other constrained airports in the South East [ER 5.6.114 – 5.6.115]. The Examining Authority considered that time is less important to new integrators [5.6.140] and therefore the proximity of the Development would not provide a great benefit to these new integrators as it is located in the South East of England [ER 5.6.141].

109. During the redetermination process, the Applicant and other Interested Parties brought to the Secretary of State's attention 2021 data from IBA setting out a demand more generally from e-commerce, the 2021 Centre for Economics and Business Research ("CEBR") report on economic growth post-Brexit and the importance of aviation trade routes, CBRE's global e-commerce outlook report, data on freight diversion to EU aviation hubs, data on increase in B2B e-commerce, and references to 2021 DHL data, 2017 Arup data and undated IATA data.

110. Interested Parties also brought to the Secretary of State's attention the IBA Report dated November 2021 which suggests that commerce requires full freighters and not bellyhold freight, and information such as the DHL 2021 data and the Loadstar December 2021 report that indicates against a return to the pre-pandemic freight / bellyhold split. The Secretary of State also notes that the Applicant references the Skift

Report published in November 2021 on pandemic trading patterns boosting e-commerce and that it suggests a return to previous patterns is unlikely. The Secretary of State has also noted the references to the IBA report which set out that the increasing levels of e-commerce is increasing the percentage of freight carried by air because of delivery time pressures. The Secretary of State also notes the 2021 data from retailers suggesting an increase in retailer flight capacity.

111. The Independent Assessor agrees that e-commerce demand is growing, but is of the view that there is no robust data to demonstrate that e-commerce has increased levels of air freight (IAA, pages 15 – 24). The Independent Assessor notes that air freight has not increased its market share over this time-period and remains at 1.5% of the total in comparison to shipping (IAA, page 19). The Secretary of State notes that there is clearly a dispute over the 2020/2021 figures which remains unresolved, particularly on the point as to whether there has been an increase in air freight generally or whether this is a short-term increase as a result of the COVID-19 pandemic.

112. The Independent Assessor considered the representations made by the Applicant on the role of new integrators using their own in-house air transport operation and the difference between them and that of traditional air freight integrators (IAA, page 23 - 24). It is the Independent Assessor's view that the large-scale use of in-house air transport is not consistent with how e-commerce retailers have organised their supply chains as they tend to use shipping and road transport in preference to air transport as the distances are shorter in the UK in comparison to the U.S.A, China and to a lesser extent Europe (IAA, page 24).

113. The Independent Assessor considered the submissions which stated that the reduction in passenger flights as a result of the COVID-19 pandemic resulted in an increase in the number of dedicated air freight flights, but concluded that this is not evidence of longer term demand in increase in air freight, that the increase in air freight flights at Heathrow Airport was filling available slots and that the supply chains will adjust and return to previous trade patterns (IAA, pages 25 - 31). A number of Interested Parties including the Applicant are of the view that this recent freight increase is evidence of an increase in underlying unmet demand for air freight due to the dominance of bellyhold freight capacity in the UK.

The Secretary of State's Conclusions on E-Commerce

114. The Secretary of State considers that there will always be a level of uncertainty in the precise extent to which this data establishes a sustained increase in air freight demand from new e-commerce integrators. He considers that the information submitted by various Interested Parties appears to support the assumption that air freight demand is likely to increase post 2019, and that there is a potential for the increase in total amounts of air freight even if they do not represent an increase in the proportion of total freight. However, the Secretary of State is only able to place little weight on news reports.

115. On the question of new integrators and the use of in-house air transport, the Secretary of State is of the view that it is unlikely that e-commerce would not make some use of increased air freight capacity if such capacity were made available.

116. The Secretary of State considers both the view that the recent increase in dedicated air freight movements demonstrates unmet and pent up demand for air

freight, and the Independent Assessor's view that this increase in air freight movements was a temporary direct replacement of lost bellyhold capacity as a result of the freight market operating freighters in the slots vacated by passenger flights (IAA, page 28), both rely on a degree of assumption. The Secretary of State notes that while the Independent Assessor considers that there is no clear evidence that recent growth in e-commerce sales has created a shift in transport modes to favour air cargo (IAA, page 24), he concludes that it is possible that the evidence submitted does in fact demonstrate an increase in air freight demand. Further, the Secretary of State notes that the Independent Assessor's conclusion that there is no underlying and unmet demand for air freight conflicts with its explanation that an increase in air freight was due to airport operators taking advantage of available capacity (IAA, page 27 & 28), as it would only be able to do so if underlying demand existed.

Air Freight Demand and Brexit

117. The Secretary of State has considered the Applicant's argument that continuing post-Brexit trade deals should be recognised as a generator of demand for air freight services and makes reference to the Air Cargo news report dated August 2021, CEBR data released in July 2021 and the Thames Estuary Growth Commission report published in 2018. Thirty seven trade agreements have taken effect since 1 January 2021 and the Secretary of State acknowledges that this is indicative to some extent of a rising demand for air freight services. The Secretary of State notes that the Applicant has argued that if GDP shrinks, the Development would help redress that and referenced IATA data from 2015 and ICAO data from 2005.

118. The Secretary of State notes that while the Independent Assessor considers that increase in post Brexit trade will drive demand for air freight services is a plausible argument, the Independent Assessor also considers that there is no clear evidence to support this (IAA, page 39). The Independent Assessor is of the view that the if GDP shrinks, this would lead to a drop in demand for air freight and that the Applicant's projections may be overly optimistic (IAA, page 40). The Independent Assessor does not appear to accept the conclusions in the CEBR Report on trade growth, but the Secretary of State notes that this also appears to be influenced by locational factors and whether the Development is locationally suited to meet air freight demand (IAA, page 37 – 38).

The Secretary of State's Conclusion on Air Freight Demand and Brexit

119. The Secretary of State accepts that there is unlikely to be clear evidence about what may happen in the future as a result of trade deals. However, the Secretary of State is of the view that it is important to approach this question with the accommodation of growth that could occur in the UK economy in mind. While the Secretary of State notes the Independent Assessor is of the view that a falling GDP may result in a drop in air freight, the Secretary of State, taking into consideration the important role aviation plays in the growth of the UK economy as set out in the Aviation Policy Framework, takes a more optimistic view. For these reasons, the Secretary of State considers that Brexit factors weigh in favour of the granting of the Development. For the reasons given in paragraph 106 above, the Secretary of State does not consider the question of whether East Midlands Airport or the Development is better

located to provide air freight is decisive, and therefore gives little weight to the Independent Assessor's conclusions on the CEBR Report on growth.

Supply chain Resilience

120. The Secretary of State notes the argument put forward by the Applicant in its response to the second round of consultation that the Development would provide resilience against unprecedented events, and referenced Bloomberg's 10 November 2021 article which reports that there has been an increase in air freight movements to overcome surface supply chain transport obstructions. The Secretary of State has also considered the points made by the Applicant on the issue of resilience that the training of pilots at the Development will provide.

121. The Independent Assessor concluded that as the Development would create dedicated air freight capacity this would result in resilience against transport disruptions, but concluded that while this supports the case for the Development it is not a decisive factor (IAA, page 42). The reasons given by the Independent Assessor for this conclusion is that such events are rare, some would lead to short-term disruption and would not create a sustained demand and because it was of the view that a high impact/long-term event or enough lower impact/short-term events would not generate sustained demand.

The Secretary of State's Conclusion on Supply Chain Resilience

122. Whether or not a factor is decisive is a matter for the Secretary of State to determine. The Secretary of State agrees with the argument that providing capacity to increase air freight to respond to worldwide logistics constraints will add vital resilience to the UK's trading position, although as set out elsewhere in this decision letter he is able to give news and industry articles only limited weight. The Secretary of State would refer to the recently published 'The Future of Freight: a long-term plan'¹⁸ ("the Freight Plan") which places resilience as one of Government's key objectives for the freight sector. Resilience is identified as critical because the sector underpins every supply chain into, within and out of the UK, and is therefore a theme that runs throughout the issues and priorities identified in the Freight Plan (FFP, paragraph 2.17). The Freight Plan states that reliability in the freight sector must be complemented by resilience and in particular the sector's ability to anticipate, absorb, resist, or avoid disruption and to recover when it does occur (FFP, paragraph 2.5).

123. The Freight Plan ascribes Government and business focus on the resilience of supply chains to a number of recent external factors and unforeseen events such as the COVID-19 pandemic, shortage of drivers for heavy goods vehicles, congestion and price increases within the global deep-sea shipping market, impacts from the UK's exit from the EU as a sovereign trading nation, and the ongoing conflict in Ukraine (FFP, paragraph 2.17). It recognises that resilience in the freight and logistics sector will continue to be tested in the future as geopolitical tensions continue to evolve, noting that the global maritime freight system relies heavily on flows through the South China Sea, Straits of Malacca and Hormuz and the Suez Canal (paragraph 2.18). The Plan highlights the importance of the air freight network and states that looking forward, Government will update and improve the UK's extensive portfolio of Air Service Agreements; enabling international connectivity and breaking down market

¹⁸ [Future of Freight \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

access barriers in the air cargo sector, giving operators commercial and operational flexibility (FFP, paragraph 1.9). It also highlights the importance of air freight both at the national and regional level, acting as a catalyst for national and local benefits (FFP, paragraph 1.9).

124. The Secretary of State is of the view that as the Development would create dedicated air freight capacity this would result in resilience against surface and other supply chain transport disruptions and unanticipated events. The Secretary of State also considers that while the training of pilots at the Development site is not directly relevant to air freight demand, he acknowledges the connection between the ability to train commercial pilots in the UK and overall trade resilience in the UK. The Secretary of State affords the contribution the Development would make in terms of resilience of the freight sector substantial weight in the planning balance.

The Secretary of State's Overall Conclusion on Need

125. The Secretary of State notes that the Examining Authority attempted to establish whether there are any existing and future capacity constraints in the South East and wider UK airports [ER 5.2.5]. The Secretary of State would point out that the ANPS and other aviation policies are clear that capacity in the South East of England will be full by 2030 if capacity is not delivered through the Heathrow Northwest Runway project and other airports making best use of their existing runways (subject to environmental issues being addressed) (Aviation 2050: TFA, 3.11). The Secretary of State accepts that there may be some existing capacity at other airports. However, the Secretary of State would point out that his focus is on the long-term capacity gap identified in the relevant aviation policies as occurring by 2030, and not detailed forecasts for individual airports which can vary depending on the scope of such forecasts and inputs such as specific local and commercial information which are of particular relevance in the short-term (UK Aviation Forecasts 2017, paragraph 1.3). Nevertheless, as set out above the Secretary of State has considered the Examining Authority's consideration of the various demand forecasts submitted during the examination of the Application and is satisfied that the Applicant's Azimuth Report demonstrates that there will be a demand for the capacity that the Development will release. The Independent Assessor highlights that the uncertainty around the delivery of the Heathrow Northwest Runway project strengthens the need for this Development (IAA, page 48). The Secretary of State notes that the Independent Assessor asserts that the uncertainty in respect of the Heathrow Northwest Runway project must be considered alongside existing capacity and in light of other airport expansion plans (IAA, page 48). However, as set out above, the Secretary of State cannot give weight to capacity that might come forward through growth aspirations, planning applications that might come forward in future, and capacity that could in principle be released through general permitted development. The Secretary of State therefore places substantial weight on the capacity that this Development will deliver in the South East of England.

126. The Secretary of State agrees with the Examining Authority that the Azimuth Report is a comprehensive document [ER 5.7.13] but disagrees that it can only be given limited weight due to the withholding of sensitive information [ER 5.6.57]. The Secretary of State also disagrees with the Examining Authority's reliance on historical data and performance to determine whether there will be a demand for the capacity that the services the Development will deliver [ER 5.7.4]. As set out above, the

Secretary of State is satisfied that the approach taken in the Azimuth Report, which is supported by the Northpoint Report, is appropriate and preferable. The Secretary of State is therefore satisfied that the Development will relieve pressure on the UK airport network in the South East of England, where a shortfall in capacity is expected to occur by 2030.

127. The Secretary of State considers that refusing this application is likely to result in the permanent loss of an existing and important aviation asset to redevelopment, and this would be contrary to the MBU policy which sets out the need for airports beyond Heathrow to make intensive use of their existing runways, subject to environmental issues being addressed. The Secretary of State therefore places substantial weight on the Development's compliance with the MBU policy. Further, refusing the Development would not be in keeping with the Thanet District Council Local Policy SP07 which safeguards the Development site for aviation use.

128. The Secretary of State also places substantial weight on the capacity that would be released by the Development to address demand for air freight services, particularly in light of the Independent Assessor's conclusion that new trade deals following Brexit may increase demand for air freight services (IAA, page 34). The Secretary of State also places substantial weight on the supply-chain resilience the Development would provide against unforeseen disruptions (FFP, paragraph 2.17). The Secretary of State notes that General Aviation was not covered in detail during the examination [ER 5.7.27]. Given Government support for General Aviation highlighted in the General Aviation Strategy, the General Aviation Roadmap and the Written Ministerial Statement of 27 April 2021, the Secretary of State also places substantial weight on the General Aviation movements that the Development will release.

129. As set out above, the MBU policy is clear that the Secretary of State, in taking a decision on an application, must give careful consideration to the expected economic benefits that may flow from a proposed development and weigh those benefits against the various impacts from that development. The Secretary of State consideration of the expected economic benefits from the Development is considered in the 'Socio-Economic' and 'Planning Balance' section below. The Secretary of State's consideration of the residual harm that would occur as a result of the Development has also been taken into account in the following paragraphs and in the 'Planning Balance' section below.

ARCHAEOLOGY AND THE HISTORIC ENVIRONMENT

130. The Examining Authority's consideration of archaeology and the historic environment is set out in Chapter 6.3. The Examining Authority concluded that the Development would cause less than substantive harm to 15 heritage assets and limited harm to the character of Conservation Areas in St Nicholas at Wade and Ramsgate Heritage Action Zone due to the visual effects of aircrafts [ER 6.3.205].

131. The Secretary of State notes that during the examination, Historic England raised concerns regarding impacts on non-designated assets and in particular the demolition of the T2 Hangar and the WWII Dispersal Bay. The Supporters of Manston Airport also raised concerns regarding the potential loss of the Dispersal Bay [ER 6.3.189]. The Secretary of State also notes that Historic England was of the view that inadequate surveying of these assets meant that it had not been possible to determine

the importance of these structures [ER 6.3.188] and there was therefore a lack of sufficient data to make properly informed decisions about the Development.

132. The Applicant stated that Manston Airport is not listed as a historically significant key military site and that the 2017 Historic England Listing Selection Guide for Military Structures guidance identified that it is only groups of structures and individual examples of strong intrinsic or associational importance that would be considered of national significance [ER 6.3.187]. The Examining Authority records that Historic England accepted that Manston is not a historically significant key military site, but stated that inadequate surveying of these assets meant that their importance was unknown [ER 6.3.188].

133. The Secretary of State notes that the Applicant considers it unlikely that either of these assets would be of a level of value required for designation [ER 6.3.190 – 192]. During the examination, the Written Scheme of Investigation was updated to ensure a detailed assessment of these two assets, along with a drawn and photographic record in accordance with Historic England guidance, and a Statement of Significance setting out a brief narrative of the historical use and alterations of these structures and setting out the significance of these assets to allow informed decision-making during master planning [ER 6.3.192]. The Examining Authority considered the effect of the loss of these assets are appropriately mitigated by further survey and assessment works and the reporting of such works, alongside the recording of the structures before removal. The Examining Authority concluded that there would remain less than substantial harm that would be caused by the demolition of these assets which weighs against the granting of the Development.

134. The Examining Authority's overall conclusion on Archaeology and Heritage Assets was that the public benefits outweigh the harm caused by the Development, to which it has ascribed considerable weight [ER 8.2.99]. However, given its conclusions on need and noting that heritage assets are irreplaceable, the Examining Authority did not consider clear and convincing justification for that harm has been demonstrated by the Development [ER 8.2.102].

The Secretary of State's Conclusion on Archaeology and the Historic Environment

135. The Secretary of State thanks Historic England for alerting him to the changes to the historic environment policy in the National Planning Policy Framework ("NPPF") and the publication of the Ramsgate Conservation Area Appraisal Consultation Draft document. The Secretary of State has taken these into consideration in taking his decision.

136. The Secretary of State agrees with the Examining Authority that there will be limited harm due to visual impacts during operation of the Development on the character of the Conservation Areas in St Nicholas at Wade and Ramsgate Heritage Action Zone (ER 6.3.205). The Secretary of State also agrees with the Examining Authority's overall conclusion that the public benefits outweigh the harm from the Development on heritage assets [ER 8.2.99], and that this weighs considerably in favour for the granting of the Development.

137. However, the Secretary of State notes that the Examining Authority's conclusion of less than significant harm on the non-designated T2 Hangar and WWII Dispersal Bay relies on the recording of the assets before demolition. The Secretary of State notes that the ANPS (paragraph 5.209) advises that the ability to record

heritage assets should not be a factor in deciding whether consent should be granted. The Secretary of State is persuaded by the Applicant's argument that it is unlikely that a detailed assessment of these assets will find that they are of designatable importance. However, the Secretary of State accepts that it is not possible to confirm this to be the case until the detailed assessment has been completed. The Secretary of State has therefore included a requirement for the Applicant to consult Historic England on any further steps they should take before the removal of these assets should the detailed assessment required by the revised Written Scheme of Investigation find that they are of designatable quality.

138. The Secretary of State has considered the impacts on the T2 Hangar and WWII Dispersal Bay, St. Nicholas at Wade Conservation Area and the Ramsgate Heritage Zone further in the planning balance section below.

CLIMATE CHANGE

Decarbonising Transport – A Better, Greener Britain

139. The 'Decarbonising Transport – A Better, Greener Britain'¹⁹ ("the Decarbonising Transport Plan") was published on 14 July 2021 and follows on from 'Decarbonising transport: setting the challenge' published in March 2020 which laid out the scale of reductions needed to deliver transport's contribution to carbon budgets and delivering net zero by 2050. The Decarbonising Transport Plan sets out Government's commitments and the actions needed to decarbonise the entire transport system in the UK. It sets out the pathway to net zero transport in the UK, the wider benefits net zero transport can deliver and the principles that underpin Government's approach to delivering net zero transport. It states that the combining of projections for domestic and international aviation emissions through the inclusion of international aviation in the UK's sixth carbon budget in 2033 means that aviation emissions will continue to fall to 2050. The Decarbonising Transport Plan recognises that the technology pathway to zero emissions is not yet certain for aviation (DTP, page 30) and accepts that where positive emissions remain in transport sectors, these will need to be offset by negative emissions elsewhere across the economy (DTP, 46). However, it also highlights that with the right investment and the emergence of new zero emission technologies it could be possible for achieving even deeper cuts in greenhouse gas emissions from aviation (DTP, page 46).

Jet Zero: our strategy for net zero aviation

140. The 'Jet Zero: our strategy for net zero aviation'²⁰ ("Jet Zero") consultation document set out Government's Vision for the aviation sector to reach net zero aviation by 2050. The consultation ran from 14 July 2021 to 8 September 2021. A further technical consultation to help inform the final outcome of the Jet Zero consultation ran from 31 March 2022 to 25 April 2022²¹. This consultation invited views on the 'Jet zero: further technical consultation' and the accompanying 'Jet zero: modelling framework' documents. These documents updated the evidence and analysis on the abatement potential and costs of four policy measures (proposed system efficiencies, sustainable

¹⁹ [Decarbonising Transport – A Better, Greener Britain \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) ("DTP")

²⁰ [jet-zero-consultation-a-consultation-on-our-strategy-for-net-zero-aviation.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) ("JZS")

aviation fuel, zero emissions flight and markets and removals) in the Jet Zero consultation. These documents also set out the results of modelling using the updated evidence for the four illustrative scenarios to UK net zero aviation by 2050 contained in the Jet Zero consultation document, and summarised the outcomes and overall impact of the new analysis on Government's strategy for achieving Jet Zero.

141. 'The Jet Zero Strategy: delivering net zero aviation by 2050'²² ("the Jet Zero Strategy") and the 'Jet zero consultation: summary of responses and government response'²³ were both published on 19 July 2022. The Jet Zero Strategy states that Jet Zero can be achieved without Government intervention to directly limit aviation growth (JZS, paragraph 3.57). It sets out policies that will influence the level of aviation emissions the sector can emit, and maximise in-sector emissions reductions through a mix of measures that will ensure the UK aviation sector reaches net zero by 2050 (JZS, paragraph 3.1). These measures include: improving the efficiency of the existing aviation system; sustainable fuels; new technology; markets and removals; sustainable travel choices for consumers; and addressing non CO₂ emissions (JZS, page 26). The Jet Zero Strategy also sets out how the aviation sector will achieve net zero aviation by 2050 and introduces a carbon emission reduction trajectory that sees UK aviation emissions peak in 2019, with residual emissions of 19.3 MtCO_{2e} in 2050, compared to 23 MtCO_{2e} residual emissions in the Climate Change Committee's Net Zero Balanced Pathway (JZS, paragraph 3.58).

142. The Examining Authority noted that, specifically for the Development, it will need to be demonstrated to make economic sense (i.e. to establish a need case) in a net-zero world and the transition towards it [ER 6.5.45]. For the reasons set out above, the Secretary of State considers there is a clear need and public benefit case for the Development.

143. The Applicant noted that action will need to be taken at UK Government level to deliver net zero by 2050, with air related emissions being managed at a national level. In its response to the Statement of Matters, the Applicant suggested that the Government is more likely to achieve the highest carbon reductions and meet the sixth carbon budget by way of a new facility built around an existing runway, rather than seeking to upgrade existing facilities while they are operational.

144. The Independent Assessor noted that the policy position in the Jet Zero Strategy consultation documents when the policy is confirmed is likely to remain broadly as it was at the time of the examination in relation to carbon emissions from airport expansion proposals, with individual promoters needing to demonstrate that their proposal would not jeopardise the achievement of the sector-wide goal [IAA, pages 10 - 11].

Aviation Strategy and 6th carbon budget

145. The Secretary of State has considered subsequent changes to the Government's position on climate change, including the announcement by the Government that it would target a 68% reduction in UK emissions by 2030 compared to 1990 levels pursuant to Article 4 of the Paris Agreement, and the inclusion of international aviation emissions in the sixth carbon budget and its target to reduce

²² [jet-zero-strategy.pdf \(publishing.service.gov.uk\)](#) ("JZS")

²³ [Jet Zero consultation: summary of responses and government response \(publishing.service.gov.uk\)](#)

emissions by 78% by 2035 compared to 1990 levels. The carbon budget for the 2033-2037 budgetary period was set at 965 Mt CO₂ by way of Carbon Budget Order 2021.

The Secretary of State's Conclusions on Climate Change

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

147. However, more widely, the Examining Authority noted that under section 30 of the Climate Change Act 2008 greenhouse gas emissions from international aviation do not count as emissions from sources in the UK for the purposes of carbon targets and budgeting, except as provided by Regulations made by the Secretary of State [ER 6.5.21 and 6.5.44]. On 1 May 2019 the UK Government declared a climate emergency and 'Net Zero-The UK's contribution to stop global warming' was published the following day. This publication included the Committee on Climate Change's recommendation of a new emissions target for the UK of net-zero greenhouse gases by 2050 [ER 6.5.23]. The Climate Change Act 2008 was amended on 26 June 2019 through the Climate Change Act 2008 (2050 Target Amendment) Order 2019 to establish the net-zero greenhouse gas target in law [ER 6.5.25]. The Examining Authority noted that the Committee on Climate Change accordingly advised that the planning assumptions for international aviation should be to achieve net-zero emissions by 2050 [ER 6.5.44], and its emerging advice to Government was that this should be reflected in the UK's emerging Aviation Strategy, which means reducing actual emissions in the international aviation sector.

148. The Examining Authority concluded that the Development's Carbon Dioxide contribution of 730.1 Kt CO₂ per annum (N.B. at full capacity on a worst-case scenario assessment), would according to the Applicant have formed 1.9% of the total UK aviation carbon target of 37.5 Mt CO₂ for 2050, will have a material impact on the ability of Government to meet its carbon reduction targets, including carbon budgets [ER 8.2.74]. The Examining Authority concluded that this weighs moderately against the case for development consent being given [ER 8.2.75].

149. However, the Secretary of State is satisfied that Government's Transport Decarbonisation Plan and the Jet Zero Strategy, which set out a range of non-planning policies and measures that will help accelerate decarbonisation in the aviation sector, will ensure Government's decarbonisation targets for the sector and the legislated carbon budgets can be met without directly limiting aviation demand. For this reason, he does not accept the Examining Authority's view that carbon emissions is a matter

that should be afforded moderate weight against the Development in the planning balance, and considers that it should instead be given neutral weight at the most.

150. For the reasons set out in the paragraphs above, the Secretary of State is content that climate change is a matter that should be afforded neutral weight in the planning balance.

NOISE AND VIBRATION

151. The Secretary of State notes that a significant proportion of the relevant representations received by the Examining Authority raised aviation noise as a concern and the examination therefore primarily focused on operational noise effects [ER 6.8.5]. The Secretary of State also notes that the Examining Authority examined a wider scope of potential noise affects including noise and vibration impacts from construction and operational activities in order to take into account impacts on a range of potential human and ecological receptors [ER 6.8.3].

152. The Examining Authority concluded that with the controls and measures included in the DCO during the examination, noise from the Development would be sufficiently mitigated. The controls and measures within the DCO covering operational noise mitigation, airport operation and monitoring include:

- a ban on night flights – restricting scheduled flights between 23:00 and 06:00 (requirement 21) and a restriction on noisier aircraft between 06:00 to 07:00 (requirement 9) [ER 8.2.124];
- noise Quota Counts (“QCs”) to control noise impacts (requirement 9) – setting a QC for aircraft in the 06:00 to 07:00 period and restricting noisier aircraft with QC 4, 8 or 16 to mitigate noise in the late part of the night-time quota period [ER 8.2.125];
- contour to limit annual noise emissions – the contour area and relevant noise contours are secured in the DCO (requirement 9) and the contour area cap is considered a reasonable approach to mitigate and minimise the population exposed to aircraft noise above the day and night-time Lowest Observed Adverse Effect Level (“LOAEL” – the level above which adverse effects on health and quality of life can be detected) [ER 8.2.126];
- residential properties –with habitable rooms within the 60dB LAeq (16 hour) day time contour will be eligible for noise insulation and ventilation detailed in the noise mitigation plan (Requirement 9) [ER 6.8.247];
- schools – the restrictions on passenger air transport departures during the period 09:00 to 12:00 is, with the funding commitments for insulation and ventilation in the UU in favour of Kent County Council, considered adequate to avoid significant adverse noise effects [ER 8.2.136]; and caps on the annual air traffic movements for cargo, passenger and general aviation (requirement 21) to the worst-case assessment in the Environmental Statement [ER 8.2.123].

153. The Examining Authority concluded that the financial contribution for insulation and ventilation for schools in the Unilateral Undertaking (“UU”) in favour of Kent County Council together with requirement 21 covering Airport Operations would adequately mitigate the impacts of noise and vibration effects of the Development on schools. The

Examining Authority was also satisfied that a financial contribution for Noise Monitoring Stations and independent noise monitoring assessment of their data in the UU in favour of Thanet District Council will ensure that the provisions of the Noise Mitigation Plan and DCO are complied with [ER 8.2.148].

154. The Secretary of State notes that the Examining Authority's overall assessment of the Developments compliance with the Noise Policy Statement England 2010 ("NPSE"). The NPSE, which is mirrored in the ANPS, states at paragraph 1.7 that a proposal should meet the following aims:

Through the effective management and control of environmental, neighbour and neighbourhood noise within the content of Government policy on sustainable development:

- *avoid significant adverse impacts on health and quality of life;*
- *mitigate and minimise adverse impacts on health and quality of life; and*
- *where possible, contribute to the improvement of health and quality of life.* [6.8.489]

155. The Examining Authority concluded that with the inclusion of its recommended measures and controls to mitigate impacts from noise, it is able to conclude that on balance, the Development meets the first and second aim of the NPSE. As the third aim is to be achieve "where possible", the Examining Authority considered that the Applicant has demonstrated that it has addressed the third aim and notes the annual financial contributions for monitoring and for school insulation and ventilation mitigation [ER 8.2.491 – 8.2.492].

156. The Examining Authority also concluded that with the inclusion of its amendments to the DCO related to the control of noise and appropriate mitigation, and given the evidence presented, the Development generally accords with the relevant national and local policies and guidance in respect of noise [ER 6.8.489 – 6.8.493 and ER 8.2.145 – 8.2.149].

157. However, given the uncertainty regarding the efficacy of noise insulation and ventilation schemes for caravans, there remained a potential that the mitigation of noise impacts may not be possible for up to 40 residential caravans at Smugglers Leap caravan park, and there remained the possibility of SOAEL being exceeded at this receptor [ER 6.8.366]. The Secretary of State notes that the should it prove impossible to achieve an appropriate level of acoustic performance as defined by BS 3632:2015, then the Applicant will consider relocation in line with the provisions in section 5 of the Noise Mitigation Plan [ER 6.8.364]. The Examining Authority considers relocation is likely to result in significant effects on health and quality of life and therefore fails to satisfy the first aim of the NPSE [ER 8.2.147] and that this weighed against the Development [ER 8.2.150].

158. The Examining Authority also considered that while the inclusion of requirement 21(2) in the recommended DCO mitigates against potential impacts from night flights, the impacts for night noise flights from emergency flights and flights for humanitarian purposes could not be entirely excluded [ER 8.2.124].

159. On implication of noise impacts from a Human Rights perspective, the Examining Authority concluded that because the Applicant has been unable to demonstrate sufficient need for the Development and because the socio-economic benefits of the Development are overstated, the proposed interference with the Human

Rights of individuals is not justified in the public interest and the degree of interference would not be proportionate [ER 6.8.434 – 6.8.435].

The Secretary of State's Conclusion on Noise and Vibration

160. The Secretary of State agrees with the conclusions of the Examining Authority at paragraphs ER 8.2.121-8.2.123, ER 8.2.127-8.2.135, ER 8.2.137, ER 8.2.139-8.2.141 and ER 8.2.144-8.2.146.

161. The Secretary of State disagrees with the Examining Authority's conclusion on need for the Development [ER 8.2.142] and has reached his own conclusions on the need for the Development which is set out in the 'Need' section above. The Secretary of State's conclusion on the implications of noise impacts with respect to Human Rights therefore differs from that of the Examining Authority set out in paragraphs ER 6.8.433 – 6.8.435. The Secretary of State has concluded that in light of the reasons given in the 'Need' section above and in the 'Socio-Economic' section below, there are no additional restrictions which are required to be imposed to safeguard the Human Rights of persons adversely affected by the Development, and that the proposed interference is justified in the public interest and proportionate.

162. The Secretary of State agrees with the Examining Authority that given the uncertainty over the effectiveness of the noise insulation measures for residential caravans, the potential for significant effects from noise cannot be ruled out for up to 40 residential caravans at Smugglers Leap caravan park. In respect of relocation, should the noise insulation measures prove ineffective the Secretary of State accepts that relocation can have significant effects on health and quality of life [ER 8.2.147]. The Secretary of State also agrees that potential impacts from emergency or humanitarian night flights cannot be entirely excluded [ER 6.8.470]. The Secretary of State has considered this further in the planning balance section below.

163. Although subject of a separate regulatory procedure on which the Secretary of State expresses no views, he notes that in considering its relevance to noise controls, in making a recommendation the Examining Authority has accorded no weight to the separate Manston Airspace Change Process ("ACP") application relating to the detailed design of airspace and specific flight paths [ER 6.8.286]. The Secretary of State also notes that should the flight paths assessed as part of the ACP application differ to the extent that likely significant effects not assessed as part of the Applicant's Environmental Statement are identified, the Examining Authority considers that this could potentially constitute a material change which would require an application to be submitted to the Secretary of State under the Planning Act [ER 6.8.297]. Given that the Applicant and CAA also have a Statement of Common Ground in place, the Secretary of State agrees with the Examining Authority that the potential for new or previously unassessed impacts to arise is limited [ER 6.8.298, 6.8.474 and 8.2.127].

OPERATIONAL ISSUES

164. The Secretary of State notes the Examining Authority's consideration of operational matters in Chapter 6.9 of its report. The Secretary of State agrees with the Examining Authority in respect of its conclusions on operational matters [ER 8.2.151 – 8.2.176], except where stated below. In light of the areas where he disagrees with the conclusions of the Examining Authority, the Secretary of State also does not

consider that operational matters weigh moderately against the granting of development consent being given for the Development.

165. The Examining Authority concluded that overall, given the illustrative nature of the proposed development of the Norther Grass Area (“NGA”), insufficient justification had been provided for the inclusion of this area in the DCO [ER 8.2.161]. However, the Examining Authority recommended [ER 10.4.80], to restrict development in this area to development that has a direct relation to the Development, that the definition of “airport-related” development be amended to read:

“airport-related” development means development directly related to and required to support operations at Manston Airport including, but not limited to freight distribution centres, including freight forwarding and temporary storage facilities”

166. The Secretary of State notes that the Applicant intends to use the NGA for airport related businesses consisting of B1 and B8 use class development [ER 6.9.64]. The Secretary of State also notes that the Applicant confirmed during the examination of the Application that the range of uses it has provided for this area is illustrative rather than definitive because it had not marketed the site and therefore had no definitive list of end users to assign to different plots or buildings [ER 6.9.65]. The Secretary of State disagrees with the Examining Authority’s conclusion that insufficient justification has been provided for this area. The Secretary of State accepts that the Applicant is unable to confirm the exact use and layout of this area of development until further information becomes available in future, and is satisfied with the illustrative nature of the proposed development for this area. This will allow for greater flexibility during the detailed design and implementation stages when the Applicant is able to finalise the layout and assigned uses to the area. The Secretary of State is also satisfied with the definition of the works relating to this development area included within the DCO. The Secretary of State has also included in the DCO the Examining Authority’s recommended amendment to the definition of “airport-related” development and is satisfied that this will restrict development in this area to such developments. The Secretary of State considers that the whole NGA is essential so that the airport has adequate land for airport-related development.

167. As indicated above in the ‘Noise and Vibration’ section above, the Secretary of State expresses no views in relation to Airspace Change Process [ER 8.2.163] or the Aerodrome Certificate [ER 8.2.162] as these are both the subject of separate regulatory procedures.

168. The Secretary of State notes the conclusions of the Examining Authority concerning the possible requirement in future of Public Safety Zones (“PSZs”). These are the subject of separate procedures and are contingent on a number of factors including future growth, future fleet mix and crash data, calculations of risk, and policy in force at the time. The Secretary of State therefore considers it is not possible to currently say with any certainty in what year of operation a PSZs would be likely to be imposed. In addition, the socio-economic impacts of the PSZs are difficult to determine as they are dependent on future decision making by land-owners, developers and the Local Planning Authority. Due to the uncertainty of a number of factors that could alter before a PSZ may be required, the Secretary of State places little weight on the Examining Authority’s conclusion that the negative effects of the PSZ weigh against the Development [ER 8.2.164 – 8.2.168].

169. The Secretary of State notes the discussion during the examination regarding the High Resolution Direction Finder (“HRDF”- a navigational aid to aircraft operating in the area and critical to maintaining the UK emergency response capabilities for the management of air safety incidents) and that the Applicant and MoD remained some way apart from agreement at the end of the examination [ER 6.9.129]. The Ministry of Defence (“MoD”) objected to the Development as it considered that it would have a significant and detrimental impact on the capability of safeguarded technical equipment located within the boundaries of the Development [ER 6.9.130]. The Secretary of State notes that in its response dated 31 January 2020 to his consultation letter of 17 January 2020 the MoD maintained its objection to the relocation of the HRDF and confirmed no resolution on this matter appeared imminent. In response to the redetermination process, the MoD confirm in its letter dated 9 July 2021 that it maintained its objection to the Development and that the matter or relocation of the HRDF remained outstanding.

170. The Secretary of State has given careful consideration to this issue. He notes the proposals from the MOD in their letter dated 31 January 2020 and agrees to MOD’s proposed amendment to requirement 24(1) but disagrees with the amendments proposed for 24(3). Notwithstanding this requirement, the Secretary of State also accepts that there is still no guarantee that the HRDF can be moved at this time, but would encourage the Applicant and the MOD to continue to engage in constructive dialogue to seek a workable solution to resolve this issue. The Secretary of State’s consideration of the compulsory acquisition of the HRDF land is set out below.

TRAFFIC AND TRANSPORT

171. The Secretary of State has carefully considered the traffic and transport evidence put before the Examining Authority and has had regard to the comments and conclusions of the Examining Authority [ER 6.11 and ER 8.2.192 – ER 8.2.218]. The Secretary of State notes that the Transport Assessment submitted in support of the Application was revised during the examination following the development of KCC’s SATURN strategic highway model (Thanet Strategic Transport Model) and to take into account a request from the Examining Authority to ensure robust modelling (“the revised Transport Assessment”) [ER 6.2.90], and that the revised Transport Assessment was subsequently updated. The Secretary of State also notes the Examining Authority’s view that the assessment of impact in the original and revised Transport Assessment and additional work undertaken by the Applicant has been robust [ER 6.11.66].

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

173. The Secretary of State is satisfied that there would be no unacceptable impacts from construction traffic, which would be controlled by measures in the Construction Traffic Management Plan and secured through requirement 6 in the DCO [ER 8.2.206].

174. The Secretary of State welcomes the measures proposed by the Development in relation to accessibility for persons with additional needs. He notes that the Examining Authority was unable to reach a firm conclusion as to whether the Development appropriately seeks to promote sustainable modes of transport and recommended that the Secretary of State seek clarification from relevant parties before coming to a view on this matter [ER 8.2.212]. The Examining Authority also considered that the recommended draft DCO should contain a specific Requirement on this matter. The Secretary of State consulted on the Examining Authority's recommended revised text of requirement 7, which sets out that the Applicant must agree a Bus Service Enhancement Scheme. This also includes the enhancement of existing services and the provision of shuttle bus services. The ExA considered that with the imposition of the revised text in requirement 7 there would be sufficient provision of bus services to allow accessibility to the airport by means other than private vehicles and thus considered the Development has made all reasonable attempts to ensure that the airport would be accessible for users with additional needs. In its response to the Secretary of State's consultation during the decision-making period, the Applicant agreed to the inclusion of revised requirement 7. The Secretary of State is satisfied that there would be suitable provision of bus services and has concluded that on the evidence submitted the Development would appropriately promote sustainable modes of transport [ER 6.11.433 – 6.11.435, ER 8.2.193 – 8.2.197 and ER 8.2.207-8.2.212].

175. The Secretary of State notes the conclusions of the Examining Authority in relation to the impact of the Development on the local road system and on the off-site junctions in particular, and also notes the findings of the Examining Authority in relation to the mitigation schemes proposed in relation to those junctions (and those where no mitigation is proposed). The Secretary of State sees no reason to disagree with the Examining Authority's findings and has taken these into account as part of the planning balance. The Secretary of State also notes the Examining Authority's conclusions in respect of the proposed UU to KCC and agrees that it is an appropriate mechanism to secure junction improvement works in this case. The Secretary of State notes the concerns of KCC and the findings of the Examining Authority in relation to the amounts and timings of the financial contributions for junction improvements and to the UU not fulfilling the requirements of regulation 122 of the Community Infrastructure Levy ("CIL") Regulations 2010 and that it should be disregarded in reaching a conclusion on this matter. However, the Secretary of State notes that the Applicant asserts that the cost estimates prepared for each junction improvement have been based upon a combination of engineering experience, recognised industry publications and recently returned tenders for schemes of a comparable scale and complexity. Furthermore, he also notes that the Examining Authority acknowledges that the junction improvement schemes are not yet fully detailed and have been developed to a concept preliminary design standard and that a 44% optimism bias allowance has been made to the costs [ER 6.11.294 – 6.11.302]. On balance, the Secretary of State is satisfied that the UU would comply with the requirements of the CIL Regulations 2010 and therefore should be taken into account and disagrees with the Examining Authority that it should be disregarded as part of concluding on this matter. The Secretary of State accepts that there is the potential for short term congestion and delays on the local road system caused by the Development to occur before appropriate mitigation is delivered; however, he considers that the residual cumulative impact on the road network would not be severe and gives limited weight to these effects [ER 8.2.199 – 8.2.204]. On a related matter, it is also noted that if not all of the mitigation for junction improvements

is considered necessary the UU provides for the contributions to be put towards other highways improvements which KCC deem necessary to mitigate the effects of the Development project. KCC consider this would be compliant with regulation 122 of the CIL Regulations 2010 and the Examining Authority accepts this view [ER 6.11.308 - 6.11.309].

176. It is noted that the Applicant's approach to contributing to the delivery of the Manston-Haine link road is considered by the Examining Authority to be reasonable and pragmatic to its delivery and that this is a matter of neutral weight [ER 8.2.205]. Given the importance of delivery of the link road locally, and the Examining Authority's conclusion that the provisions set out in the UU in favour of KCC will help to deliver the link road [ER 6.11.392], the Secretary of State disagrees with the Examining Authority that this should be a matter of neutral weight. While the Secretary of State agrees that the Development would help deliver the link road, he accepts that the delivery of the link road is not certain as it is not part of the Development [ER 6.11.369 – 370] and has therefore given this minor weight in favour of the Development in the planning balance [ER 6.11.369 - 6.11.392].

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

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

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

therefore in accordance with KCC's PRow requirements. In light of this, the Secretary of State considers that this issue is of neutral weight.

180. The Secretary of State notes there was disagreement between the Applicant and KCC on the proposed junction layout at the Manston Road / B2050 / Spitfire Way junction (junction 12) to mitigate impacts from the Development. The Secretary of State is aware that KCC's concerns with the layout of the junction relate to highways safety associated with uncontrolled right turns and junction intervisibility, and pedestrian safety issues due to the narrowing of the proposed footpath alongside the approach to the junction. The Examining Authority concluded that there were several failings associated with junction 12 [ER 6.11.362] that could result in highway and pedestrian safety impacts, and that these potential impacts would be moderate adverse impacts in terms of pedestrian amenity and delay, fear and intimidation, and major adverse-significant effects in terms of accidents and road safety [ER 6.11.362 - 363].

The Secretary of State's Conclusions on Traffic and Transport

181. With the exception of junction 12, while the Secretary of State accepts that there is the potential for short term congestion and delays on the local road to occur before appropriate mitigation is delivered, he considers that the residual cumulative impact on the road network would not be severe and gives limited weight to these effects [ER 8.2.199 – 8.2.204].

182. The Secretary of State agrees with the Examining Authority that the potential impacts at junction 12 could result in highways and pedestrian safety impacts. The Secretary of State is aware that the Applicant's original Transport Assessment proposed a fully signalled junction 12 with integrated pedestrian crossing facilities [ER 6.11.339]. The revised Transport Assessment tested two mitigation schemes: 1) an amended signalised junction to the one in the original Transport Assessment; and 2) KCC's preferred option of a roundabout alignment [ER 6.11.342]. The Secretary of State notes that while a roundabout is KCC's preferred junction, KCC stated during the examination that it would be prepared to compromise on the form of the signalised junction if this enables common ground to be reached and a smaller footprint to be utilised as required by the Applicant [ER 6.11.350].

183. Having noted the willingness demonstrated by KCC during the examination to engage with the Applicant to resolve this issue, the Secretary of State has inserted a requirement in the DCO to ensure that the Applicant submits, for the approval by KCC, a junction layout which is considered to be safe and appropriate. The Secretary of State is satisfied that, with the inclusion of the requirement to address the outstanding issues at junction 12, there are no traffic and transport issues that weight against the granting of the Development.

SOCIO-ECONOMIC BENEFITS (EMPLOYMENT, TOURISM, AND EDUCATION, TRAINING AND SKILLS)

184. Examining Authority's consideration of the expected socio-economic benefits from the Development is considered in section 6.10 of its report. The Examining Authority records that DCC, CCC and TDC's Local Impact Reports referred to socio-economic matters. Specifically from a socio-economic perspective, both DCC and

CCC confirmed that they generally concur with the Applicant's assessment and recognised the potential for positive economic impacts to the local and wider economy [ER 6.10.13 and 6.10.15]. The Secretary of State notes that while TDC accepted that the Development has the potential to deliver significant positive socio-economic benefits to the local area, it was of the view that there was significant uncertainty on what the effect on the economy of Thanet would be [ER 6.10.4].

185. The Examining Authority also records that Interested Parties, both in favour and against the Development, submitted representations largely contained in the list at paragraph 6.10.3 of the Examining Authority's report, with many also commenting on the current and changing situation in terms of socio-economic related matters in the Thanet area. The Secretary of State notes that these issues were also raised in representations submitted during the redetermination period.

186. Having carefully considered the Azimuth Report, the York Aviation Report and other representations submitted on socio-economic issues, the Examining Authority concluded that the socio-economic benefits from the Development had been overstated, and that in terms of employment the actual direct jobs from the Development would likely to be 19% lower than the numbers forecasted by the Application [ER 6.10.153]. On indirect job creation, the Examining Authority concluded that while the Applicant's predicted indirect and induced jobs from the Development may be realistic, achievable and robustly assessed, these would be at a national level as opposed to the Thanet, East Kent and wider Thames Estuary area [ER 6.10.154]. However, the Examining Authority considered that the Applicant's education, training and skills commitments would have the potential to have a significant positive benefit Thanet and the wider East Kent area [ER 6.10.163].

187. The Examining Authority considered that the Development would have an adverse effect on tourism in Ramsgate. In its Local Impact Report, TDC stated that tourism is a significant aspect to the local economy in Thanet, all indicative flight paths would travel over Ramsgate, and multiple flights during the day could adversely affect the tourism sector. TDC's Local Impact Report also highlights the importance of ensuring visitors are not deterred from visiting the area during both the construction and operation of the Development [ER 6.10.8]. While the Examining Authority was of the view that the Development might bring tourists to the wider area, it also agreed that impacts from construction and operation would adversely affect tourism in Ramsgate [ER 6.10.140].

188. Overall, the Examining Authority concluded that the Development would still generate a socio-economic benefit to Thanet and East Kent, but such benefits are substantially lower than that forecast by the Applicant. The Examining Authority also concluded that such benefits are also dependent on the need for the Development; without the need and the forecasts based on this need, socio-economic benefits (aside from the education, training and skills commitments) would reduce further [ER 8.2.188].

The Secretary of State's Conclusion on Socio-Economic Benefits

189. The Secretary of State agrees with the Examining Authority that socio-economic benefits are dependent on the need for the Development [ER 8.2.188]; without demand for the services the Development would provide the expected benefits would not materialise. As set out in the 'Need' section above, the Secretary of State

disagrees with the Examining Authority's conclusion on need and is satisfied that the Applicant has sufficiently demonstrated that there will be demand for the services the Development will provide.

190. The Secretary of State accepts it is not possible to precisely predict the economic benefits that may arise as a result of any airport development, and recognises that there will therefore always be uncertainty in forecasting economic benefits from aviation. The Secretary of State accepts that there will always be a level of uncertainty in the forecasting of economic benefits, particularly benefits resulting from connectivity that aviation provides. Paragraph 1.3 of the Aviation Policy Framework sets out that the exact value of aviation benefits to the UK economy, both at a national and regional level, differs depending on the assumptions and definitions used. However, the Airports Commission found that the responses submitted to both the scoping document and consultation document demonstrated that there is broad agreement that the economic benefits from aviation are significant.

191. The Secretary of State is aware that a number of Interested Parties have highlighted that Policy SP04 (economic growth) in Thanet District Council's adopted Local Plan, which is aimed at creating 5,000 jobs in the local area on identified employment sites, does not include Manston Airport. The Secretary of State agrees with the Independent Assessor that while Manston may not be mentioned specifically in SP04, SP04 is supportive of all new job creation both within and outside identified employment sites (IAA, page 13).

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

193. The Secretary of State notes that the Examining Authority is of the view that the jobs created as a result of the Development would not be to the same extent as forecast by the Applicant [ER 8.2.183]. The Secretary of State considers that should job creation levels materialise at the lower levels suggested by the Examining Authority, there would still be socio-economic benefits from the Development that would weigh in favour of the granting of development consent [ER 11.2.12].

194. While the Secretary of State considers that overall, socio-economic benefits carry substantial weight in favour for the granting of the Development, he agrees with the Examining Authority that there is potential for negative impacts on the tourist industry at Ramsgate. While he is sympathetic to any residents and business holders that may be affected, he also agrees with the Examining Authority's overall view that the Development would increase the attraction of tourists to other parts of Thanet and the wider East Kent area [ER 8.2.184 – 8.2.186]. The Secretary of State has considered the impact on tourism in Ramsgate further in the planning balance section below.

195. The Secretary of State agrees with the Examining Authority that socio-economic impacts weigh in favour of the Development but disagrees that this would only carry moderate weight in favour of the Development [ER 8.2.183]. The Secretary of State places substantial weight on the socio-economic benefits that are expected to flow from the Development to Thanet and East Kent, as well as more widely including benefits from employment creation, education, tourism to the wider East Kent area, benefits to General Aviation and regeneration benefits.

PLANNING BALANCE

196. The following are considerations that the Secretary of State has weighed in the planning balance against the case for this Development:

- Noise: as set out in paragraph 162 above, while the Secretary of State considers that the impacts have been mitigated as much as possible, he accepts that there remains a potential that noise mitigation may not be possible for residential caravan owners at Smugglers Leap. He therefore agrees with the Examining Authority's conclusion that impacts on this receptor cannot be ruled out and has afforded moderate weight to this issue.
- Heritage Assets: The Secretary of State accepts that harm would occur from the demolition of the T2 Hangar and WWII Dispersal Bay if these assets are found to be of a level of value required for designation, and that recording does not mitigate against this harm. As set out in paragraph 137 above, the Secretary of State has included a requirement to ensure that in the event that further assessment identifies these assets as being of designatable quality, the Applicant must consult Historic England to identify what additional steps they might take before demolishing these assets. The Secretary of State therefore gives this issue little weight in his decision making. The Secretary of State also accepts that there will be limited visual impact harm on the character of the Conservation Areas in St Nicholas Wade and Ramsgate Heritage Action Zone during the operation of the Development.
- Traffic and Transport: The Secretary of State accepts that there is the potential for short term congestion and delays on the local road system caused by the Development to occur before appropriate mitigation is delivered. However, he considers that the residual cumulative impacts would not be severe and gives little weight to these effects. In the case of impacts at junction 12, as set out in paragraph 183 above the Secretary of State has included a requirement to ensure that the Applicant obtains agreement with KCC on appropriate mitigation measures at this junction before the commencement of the Development. The Secretary of State is therefore satisfied that KCC's concerns in relation to this junction will be addressed and has afforded little weight to this matter.
- Tourism in Ramsgate: The Secretary of State agrees with the Examining Authority that while the Development may bring further tourists to other parts of the East Kent area, the amenity impacts from construction and operation of the Development may lead to adverse effects on the tourism industry in Ramsgate. The Secretary of State has afforded substantial weight to this issue.

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

198. The Secretary of State does not agree with the Examining Authority that operational matters weigh moderately against the granting of development consent. The Secretary of State considers that with the restrictions included in the DCO set out in the 'Operational Issues' section above, operational matters do not weigh against the Development. The Secretary of State is also of the view that Climate Change does not weigh against the Development for the reasons given in the 'Climate Change' section above. The Secretary of State agrees with the Examining Authority that socio-economic benefits weigh in favour of the Development.

The Secretary of State's Conclusions on the Planning Balance

199. The Secretary of State agrees with the Examining Authority that socio-economic benefits are dependent on the need for the Development [ER 8.2.188]. For the reasons given in the Need section above, the Secretary of State disagrees with the Examining Authority's conclusion on need and considers that there is a clear case of need for the Development. The Secretary of State therefore concludes that significant economic and socio-economic benefits would flow from the Development and gives this should be given substantial weight in the planning balance.

200. The Secretary of State is also satisfied that the Development would support Government's policy objective to make the UK one of the best-connected countries in the world and for the aviation sector to make a significant contribution to economic growth of the UK. The Secretary of State also considers that the Development complies with Government aviation policies that support airports making best use of their existing capacity and runways. Substantial weight is given by the Secretary of State to the conclusion that the Development would be in accordance with such policies and that granting development consent for the Development would serve to implement such policy.

201. Having carefully weighed the expected benefits which include job creation, regeneration, tourism in the East Kent area, training and skills, education, and benefits to General Aviation, against the potential negative impacts such as impact on tourism in Ramsgate, noise impacts for up to 40 residential caravan owners at Smugglers Leap, short term congestion and delays on the local road system and the limited visual impacts that would occur to the St Nicholas at Wade Conservation Area and Ramsgate Heritage Action Zone as a result of the operation of the Development, the Secretary of State is of the view that the potential negative impacts do not outweigh the projected benefits.

VI. Findings and Conclusions in Relation to Habitats Regulations Assessment ("HRA")

202. The Secretary of State for Transport is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 ("the Habitats

Regulations”) which transpose the Habitats Directive (92/43/EEC) into UK law for transport applications submitted under the Planning Act 2008. The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site(s), as defined in the Habitats Regulations²⁴.

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

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

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

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

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

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

208. In the Secretary of State’s view, the material provided during and since the examination contained sufficient information to inform consideration under regulation 63 of the Habitats Regulations as to the likely impact on the European Sites. The AA has considered the conclusions and recommendation of the Examining Authority and

²⁴ <https://www.legislation.gov.uk/ukxi/2017/1012/regulation/8/made>

in light of the updated air quality assessment provided by the Applicant. The AA has also taken account of the advice of the Statutory Nature Conservation Body, which in this case is Natural England, and the views of other interested parties as submitted during and since the examination.

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

VII. Compulsory Acquisition and Related Matters

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

Compelling Case in the Public Interest

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

Funding

212. The Secretary of State notes the discussion at examination regarding how the authorisation of compulsory acquisition powers is to be funded [ER 9.8]. The Secretary of State notes the Examining Authority's view that there is insufficient evidence that the Applicant itself holds adequate funds to indicate how a DCO that contains the authorisation of compulsory acquisition is proposed to be funded [ER 9.8.69], but that the Joint Venture Agreement and Deed of Variation provide a degree of reassurance that a mechanism exists to provide the Applicant and associated companies funding up to £15m [ER 9.8.76]. Taking into account the document '*Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*'²⁵ published by the Ministry for Housing, Communities and Local Government in September 2013 ("the 2013 Guidance") and the evidence provided, the Examining Authority concluded that there is an indication of how any potential shortcomings are intended to be met [ER 9.8.102] and the Secretary of State sees no reason to disagree.

²⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236454/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf

213. The Secretary of State notes also the Examining Authority's consideration of the availability of funds from other funders in respect of capital costs [ER 9.8.78 – 9.8.102]. He notes that the Applicant had been engaged with potential funders for two years and accepts its view that no project will have secured full funding to cover project costs until there is certainty as to the decision on whether to grant the DCO [ER 9.8.96]. The Secretary of State also notes the Examining Authority's view that the letters from potential funders and range of other information provided during the examination, do provide an indication of the degree to which other bodies have agreed to make financial contributions or to underwrite the Development, and on what basis such contributions or underwriting is to be made [ER 9.8.101]. Taking into account the 2013 Guidance and evidence provided, the Secretary of State sees no reason to disagree with the Examining Authority's conclusion that these provide an indication of how any potential shortfalls in funding are intended to be met [ER 9.8.102]. He also agrees with the Examining Authority's other conclusions relating to funding [ER 9.19.5].

Alternatives to compulsory acquisition

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

The use of the land which it is proposed to acquire

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

Risks and Impediments

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

Human Rights and the Public Sector Equalities Duty

217. On the provisions of the Human Rights Act 1998, the Secretary of State disagrees with the Examining Authority in that he is satisfied that the purposes for which the DCO authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. The Secretary of State agrees with the Examining Authority that article 19 of the DCO provides sufficient assurance that those affected by the request for compulsory acquisition will receive compensation. He also agrees with the Examining Authority that in relation to the specific cases of two employers within the proposed DCO lands, Polar Helicopters and Aman Engineering, and also in respect of Helix AV (its objection is considered further below in paragraphs 221 -222 the interference is for a legitimate purpose, that the land is needed for the Development and proportionate and that the Applicant has proposed relocation proposals that the lease holders are content with [ER 9.11.15, ER 9.11.18, ER 9.11.25 and ER 9.19.9].

218. In respect of the Public Sector Equality Duty established through section 149 of the Equality Act 2010,

219. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not. The Secretary of State notes that the Examining Authority, in coming to its conclusions in its report, has had close regard to its duties under this legislation in both the managing of the examination [ER 3.5.25] and in respect of those persons that share a relevant protected and who may be impacted by aspects of the Development, particularly in relation to issues of transport and noise [ER 3.5.26]. However, it is also noted that the Examining Authority is not aware of any specific representations from affected persons drawing its attention to persons sharing a particular protected characteristic [ER 9.19.11]. Overall, the Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics referred to in section 149(7) of the Equality Act 2010. On that basis there is no breach of the public sector equality duty.

Consideration of individual compulsory acquisition requests

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

Helix AV

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

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

compulsory acquisition powers in respect of Helix AV's interests in plot 15 should be granted.

Kent County Council

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

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

225. The Secretary of State notes that in recommending refusal of all the plots in which KCC has an interest, the Examining Authority's consideration focuses only on the arguments between the Applicant and KCC in the examination over the pipeline plots [ER 9.13.40 – 9.13.52]. Given that the conditions for compulsory acquisition set out above are considered by the Secretary of State to have been met, he is satisfied that there are sound reasons to disagree with the Examining Authority and grant compulsory acquisition powers over the non-pipeline plots for which KCC have an interest.

226. In respect of pipeline plots in which KCC has an interest, the Secretary of State notes that KCC objects to the compulsory acquisition of these plots on the basis that they might be required for ongoing highway maintenance. In coming to its view, the Examining Authority has had regard to KCC's statement that a failure to reach agreement in respect of KCC freehold or highways land should not result in a grant of compulsory acquisition powers under the DCO, as there appears to be an alternative means of bringing about the delivery and maintenance of the pipeline in question [ER 9.13.50]. KCC's view is that the Applicant's aims could be achieved by obtaining a licence under section 50 licence under the New Roads and Street Works Act 1991 ("a section 50 licence"). However, the Applicant has expressed doubts about the viability of seeking a section 50 licence in a situation where a body that is not in itself a Statutory Undertaker does not own the pipeline in question [ER 9.13.51].

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

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

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

Thanet District Council

230. The Secretary of State notes the Examining Authority's conclusion that the request for compulsory acquisition in relation to TDC's interest in plots 113, 119, 120, 184, 185, 185a, 185b, 185c, 185d, 185e, 185f, 186, 187, 188, and 188a should not be granted on the basis that, in line with the 2013 Guidance, the Applicant could have continued negotiations throughout the examination period [ER 9.13.62 - ER 9.13.63]. However, it is noted that TDC has not objected to the compulsory acquisition of its land or interests and this does not appear to have been an issue that was before the examination. TDC confirmed in its Local Impact Report that it has had regard to the Land Plans and Book of Reference [ER 9.13.56] and also played an active role in the examination and has closely reviewed and scrutinised the draft DCO in particular, as evidenced by its numerous detailed representations throughout the examination period. The Applicant's final Compulsory Acquisition Status Report also states that discussions and negotiations between the Applicant and TDC took place between February 2018 and April 2019.

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

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

Edward Martin Spanton

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

234. The Secretary of State considers that the Applicant's final Compulsory Acquisition Status Report clearly demonstrates that the Applicant made repeated attempts to engage with Mr Spanton between February 2018 and June 2019 and that the Applicant intends to continue to contact Mr Spanton to seek to advance voluntary negotiations. The Secretary of State does not agree with the Examining Authority's recommendation of refusal of compulsory acquisition powers solely on the basis that a party has only chosen to engage in the final stages of the examination, and particularly when they have not raised any objection to compulsory acquisition. For the same reasons as given for TDC above in paragraph 230 - 232 (in so far as they apply to Mr Spanton), the Secretary of State therefore considers there are sound reasons to disagree with the Examining Authority's reasoning and compulsory acquisition powers should be granted on the basis that there is no objection to compulsory acquisition from Mr Spanton, the 2013 Guidance has been satisfied and there appears to be no reason why compulsory acquisition should be refused.

Crown land

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

236. The appropriate Crown Authority is the government department having the management of the land. In this instance, the Examining Authority indicated that section 135 consent for Crown land plots had not been given by the following Crown Authorities at the close of the examination: the Government Legal Department; the Met Office and the Secretary of State for the Ministry of Housing, Communities and Local Government ("MHCLG"); the Secretary of State for Transport; and the Secretary of State for Defence. Accordingly, in the absence of section 135 consent, the Examining Authority has recommended that the request for compulsory acquisition in respect of the former should be refused and that any provisions relating to these Crown Authorities should not be included in the DCO should it be made [ER 9.19.14]

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

The Government Legal Department ("GLD")

238. In his letter of 17 January 2020, the Secretary of State sought consent from the GLD regarding plots 019c and 050b in respect of bona vacantia land. No reply was received. The Secretary of State considers the request for compulsory acquisition powers in respect of GLD is refused. The DCO has been amended accordingly and

the Secretary of State considers the Applicant will need to secure the necessary Crown interests by negotiation after the grant of the DCO.

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

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

The Secretary of State for Transport

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

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

The Secretary of State for Defence

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

243. In the absence of section 135 consent, the Examining Authority has recommended that the request for compulsory acquisition in respect of the Secretary of State for Defence's interests in plots 018, 018a, 018b, 025, 026, 038, 042, 042a, 044, 045, 045a, 045b, 014, 015, 015a, 016a, 017, 019b, 020, 020a, 023, 024, 026a, 027, 028, 036, 037, 039, 040, 040a, 041a, 043, 043a, 046, 047, 047a, 048, 048a, 048b, 049, 049a, 049b, 050, 050a, 050b, 050c, 050d, 050e, 051b, 053a, 053b, 054, 055, 058, 068, 069, 070, 070a, 102, 103, 114 and 114a be refused and that any

provisions relating to Secretary of State for Defence should not be included in any final DCO [ER 9.16.16].

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

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

246. The Secretary of State notes that there are a number of other plots where the MOD has refused consent. However, the Applicant has indicated in its representation of 19 March 2020 that it now owns the freehold in respect of plots 015, 027, 028, 036, 037, 039, 043, 046, 047, 049, 050, 055, 058, 068, 069 and 070, and no longer needs compulsory acquisition powers. In the absence of section 135 consent for the plots, the Secretary of State considers the compulsory acquisition powers in respect of the plots should be refused and that any provisions relating to Secretary of State for Defence for the plots should not be included in the DCO.

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

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

Statutory Undertakers

BT Group plc

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

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

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

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

Southern Gas Networks ("SGN")

253. SGN has Category 1 or 2 interests in plots 014, 167, 015, 016, 016c, 017, 019, 019a, 019b, 020a, 022, 023, 026, 028, 036, 037, 038, 039, 043, 043a, 044, 045, 045b, 048, 048b, 050, 050d, 050e, 053b, 061, 062, 063, 078, 081, 082, 094, 095, 096, 097, 107, 111, 112, 113, 115, 116, 117, 118, 119, 124, 127, 128, 129, 151, 153, 156, and

167 [ER 9.18.38]. The Secretary of State notes that SGN formally withdrew its compulsory acquisition objections on 12 July 2020 after the close of the examination. The Secretary of State therefore considers that the request for compulsory acquisition of rights over land held by SGN should be granted.

South Eastern Power Networks (“SEPN”)

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

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

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

Network Rail Infrastructure

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

258. The Secretary of State understands that the Applicant has not been able to identify the legal or beneficial owner of the existing pipeline and seeks powers of

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

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

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

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

of well precedented Protective Provisions enclosed with this letter to be incorporated in the Order [DCO], if made.”²⁶

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

VIII. Draft Development Consent Order and Related Matters

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

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

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

²⁶ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR020002/TR020002-005249-Network%20Rail's%20response-%20Manston.pdf>

Examining Authority in relation to article 22 (compulsory acquisition of rights and restrictive covenants) that the power to impose restrictive covenants should not be included in the Order. Corresponding changes have been made in relation to article 23 (subsoil or new rights only to be acquired in certain land); article 24 (private rights over land); article 31 (statutory undertakers) and to the inserted Schedule 2A in Schedule 6;

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

IX. Redetermination Correspondence

265. In addition to the representations received in response to the Secretary of State’s redetermination consultations, the Secretary of State also received 82 items of correspondence on the Application from a number of Interested Parties during the redetermination process. This correspondence covered a range of issues, including the need for the Development, environmental impacts, emissions and climate change, heritage impacts, socio-economic benefits, funding and financing, noise and health impacts and other developments since the close of the examination. Unless addressed in this letter above, the Secretary of State considers that the redetermination correspondence he received does not raise any new issues that are material to his decision on the Development. As such, he is satisfied that there is not any new evidence or matter of fact that needs to be referred again to Interested Parties under Rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

X. Other Matters

Natural Environment and Rural Communities Act 2006

266. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.
267. The Secretary of State is of the view that the Examining Authority’s report, together with the environmental impact analysis, considers biodiversity

sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

XI. Secretary of State's overall conclusions and decision

268. For all the reasons given in this letter, the Secretary of State is satisfied that there is a clear justification for authorising the Development. He has therefore decided to grant the Manston Airport Development Consent Order Application, subject to the changes referred to above. The Secretary of State is satisfied that none of these changes constitute a material change. He is therefore satisfied that it is within the powers of section 114 of the Planning Act 2008 for him to make the DCO as now proposed. This decision has been taken having regard to the UUs completed by the Applicant for the benefit of TDC and KCC dated 17 June 2020²⁷.

XII. Challenge to decision

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

XIII. Publicity for decision

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

Yours faithfully,

Natasha Kopala
Head of Transport and Works Act Orders Unit

²⁷ The UUs for the benefit of TDC and KCC were resubmitted by the Applicant to correct an administrative error in that the UUs dated 31 January 2020 had been signed but not dated and also to correct an error agreed with TDC in respect of the "CPZ Contribution by removal of paragraph 2.2 in the Fifth Schedule of the UU in favour of TDC. They are the same documents in all other respects.

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

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

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

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

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