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Terry Ellames
Shepway District Council
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1 October 2008

Dear Terry

Application Numbers: Y06/1647/SH and Y06/1648/SH

Location: London Ashford Airport, Lydd

Supplementary environmental information to the Environmental Impact Assessment (EIA) for a terminal building to handle 500,000 passengers per annum and 637 car parking spaces and the construction of a 444 metre runway extension

Thank you for consulting the RSPB on the supplementary environmental information supplied by London Ashford (Lydd) Airport (**the applicant**) to construct a new terminal building and car parking area and a 444m runway extension (**the applications**). Thank you for allowing the RSPB an extension to the deadline of 29 September for comments.

As you are aware, the RSPB lodged objections to the applications originally submitted in December 2006 in our representation to you dated 5 March 2007, and these objections were maintained in our letter dated 15 November 2007 in response to supplementary information supplied by the applicant. In response to further requests for additional information from Shepway District Council (**SDC**), the applicant submitted supplementary environmental information in reports dated August 2008 (**SEI 2008**). The RSPB has considered these reports against each of the reasons for objection set out in our original representation. The supplementary information does not satisfy the RSPB's concerns regarding the applications; therefore, we wish to **maintain our objection**. The reasons for objection are set out in the annexes to this letter, but are summarised below.

Legal and Policy Reasons for Objection

The RSPB has remaining legal and policy concerns, explained in more detail in the attached annexes. These relate to:

Environmental Impact Assessment

The SEI 2008 adds more detail regarding impacts on the Dungeness to Pett Level Special Protection Area (**the SPA**) and the Dungeness Special Area of Conservation (**the SAC**) (**the European sites**). However, the RSPB has remaining concerns regarding impacts on the Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (**the SSSI**), for example in relation to construction traffic and deposition of spoil. Furthermore, the full implications of the applications are still unclear, and so have failed to be taken account of in the Environmental Impact Assessment, particularly the implications of upgrading the sewage treatment system.

The Birds Directive¹, the Habitats Directive² and the Habitats Regulations

In the RSPB's view, for the ecological reasons set out below, the applicant has failed to demonstrate that there will not be an adverse effect on the integrity of the SPA or the SAC. As it cannot be judged that there will not be an adverse effect, the further tests (no less damaging alternative solutions, imperative reasons of overriding public interest and compensation) in the Conservation (Natural Habitats &c.) Regulations 1994 (**the Habitats Regulations**) must be met before the applications can be consented. In the RSPB's view, these tests are not met because there may well be less damaging alternative solutions to expansion at Lydd Airport and we do not feel that there are imperative reasons of overriding public interest that would override the impacts on internationally designated sites.

Planning Policy

The Kent and Medway Structure Plan (2006) and Shepway District Local Plan (2006) include policies supporting expansion at Lydd Airport subject to there being no material harm to/significant impact on internationally designated sites. The RSPB's view is that the SEI 2008 does not demonstrate that there will be no material harm/significant impact on these interests. Therefore, the applications do not comply with these policies.

The South-East Plan (due to be adopted in 2009) does not include a policy for expansion at Lydd Airport, but it does advocate wetland creation in the Romney Marsh area (Policy NRM5 – Conservation and Improvement of Biodiversity). The SEI 2008 includes a draft Bird Control Management Plan (Vol. 6, Appendix 4, Appendix B), which includes a section on the local Safeguarding Policy. The 13km safeguarding zone includes all of the Romney Marsh area and the area of strategic opportunity for wetland creation envisaged in Policy NRM5. Wetland creation on Romney Marsh is likely to increase the number of waterfowl crossing the airport and/or its immediate airspace, i.e. is likely to be in conflict with the local Safeguarding Policy aim of guarding against new or increased bird strike hazards. Therefore, consenting the applications is likely to be in conflict with the SE Plan.

Ecological Reasons for Objection

The RSPB has a number of remaining ecological concerns with the applications. These can be summarised as:

Bird Hazard Management

The applicant has now provided a revised Bird Control Management Plan (**BCMP**) (though this is still noted as being in draft) and a Bird Hazard Risk Assessment (**BHRA**) (SEI 2008, Vol. 6, Appendix 4, Appendices B and C). However, the RSPB has remaining concerns regarding the efficacy of the BCMP, and also its impacts on the SPA:

- The BHRA identifies swans, geese, game birds, herring gull and mallard as particularly high bird strike risk, for which specific procedures will be required to minimise the threat. The BHRA states that waterbirds cannot be dealt with – aircraft will have to be grounded whilst these birds fly over. The RSPB is extremely concerned that this will not prove acceptable to the running of an expanded airport, and will result in an increase in bird scaring to provide a larger buffer around the airfield, and greater impacts on the SPA.

¹ EC Directive 79/409/EEC on the Conservation of Wild Birds

² Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora

- The BHRA considers the current game bird rearing and shooting nearby is incompatible with the growth of the airport. However, this hazard cannot be reduced without agreement from adjacent landowners, which does not appear to have been sought. Whilst not a conservation issue, the RSPB is concerned that this demonstrates a lack of commitment from the applicant to deal with a very real threat to aircraft safety in an open and upfront way.
- Whilst a BHRA has been provided, the RSPB remains concerned that the lack of information on bird flightlines and lack of understanding of gull movements means that the bird strike risk may have been underplayed. Expert advice provided to the RSPB by Wildwings Bird Management, and presented to SDC in our response dated 15 November 2007, stated that Lydd represents an extremely hazardous site in terms of what we know at present, and that further hazards are likely to be identified by studies of migratory and nocturnal movements of birds.
- The BCMP includes bird scaring to produce a 300m wide buffer round the airport boundary. The focus of this buffer is on priority bird strike species, but bird scaring will affect non-target species. Noise contour work by the applicants shows that noise disturbance will affect the SPA beyond the 300m buffer. Furthermore, the BCMP includes bird scaring to disperse acute hazards off airfield, which may also affect the SPA.

The applicant states that the BCMP is presented as a draft document for discussion and iteration, and that the bird control measures would need to be adjusted and refined as required to control risks to both aircraft safety and wildlife habitat disturbance (paragraph 1 of the BCMP). This approach is not acceptable under the Habitats Regulations as at the time of determination of the applications, the competent authority needs to have certainty that there will not be an adverse effect on the integrity of the SPA, using the best environmental information available. The RSPB considers that the applications leave uncertainty as to the bird strike risk and to the measures that will be required by the BCMP to control this risk. Therefore, the RSPB's view is that the applicant has not shown that the BCMP will not have an adverse effect on the SPA.

Disturbance to birds from air traffic

The applicant has not provided any additional or revised information on L_{Amax} noise contours resulting from aircraft movements. Therefore, the RSPB's conclusions on disturbance to birds from air traffic remain the same. The applicant states that there is likely to be a moderate impact on the SPA to the east of the airfield. However, it is the RSPB's opinion that the applicants have failed to show that there would also not be a detrimental impact on the SPA to the south of the airfield due to increased frequency of peak noise events. The RSPB is concerned that, despite the applicant's conclusion that part of the SPA will be impacted by noise, there is no certainty that the measures to mitigate noise impacts (noise performance standards and regular review of departure procedures and routes) will be possible, effective or enforceable. This is a necessary requirement for the competent authority to conclude no adverse effect on the SPA.

Impacts of Development Control Safeguarding procedures

A local Safeguarding Policy has now been provided, which includes zones covering the wetlands to the south of the airport in which there would be a presumption that the airport would not object to wetland creation schemes, subject to certain caveats. However, the part of the SPA at Lade Pit is not included in these 'no objection zones'. Therefore, the applicant may object to the restoration of the Lade Pit area of the SPA, thereby affecting the conservation status of the SPA.

Air quality impacts on vegetated shingle

The level of nitrogen deposition currently experienced in the Dungeness area is at the critical threshold that could already be damaging vegetated shingle habitats. The RSPB remains concerned that the applicant relies on the current trend for declining baseline air pollution levels to mitigate impacts from the applications, as this trend is not set to continue and is unenforceable.

The RSPB alongside Kent Wildlife Trust, have asked consultants to assess the impact of nitrogen deposition on vegetated shingle habitats and invertebrate communities as a result of the applications. This work has not yet

been completed, but preliminary thoughts are presented within Annex 2 of this submission, and the RSPB would like to feed the full report in to the AA process if it would be helpful to SDC.

Direct loss of great crested newt habitat

In March 2008, SDC requested that the applicant provide evidence from the CAA that there is no reasonable likelihood that the great crested newt pond located within the runway strip would need to be filled in. The applicants state (in paragraph 3.1.1 of Appendix 3) that this pond will not be filled in as a result of the development proposals. However, no evidence from the CAA is presented, and the applicant has stated throughout that the pond needs to be filled in for reasons separate to the development proposals. Therefore, the RSPB considers the statement in paragraph 3.1.1 to be ambiguous, and strongly suggests that SDC seek clarification on the CAA's view as a matter of urgency.

Damage to SAC vegetated shingle habitat

The applicant proposes work to create ditches and great crested newt mitigation within the SAC, which may result in loss of vegetated shingle habitat. Furthermore, the operation of the Bird Control Vehicle may also result in damage to sensitive communities.

Other reasons for objection

The RSPB remains concerned about the impacts of airport expansion on both a global and local scale:

Climate change

Expansion of Lydd Airport would be accompanied by a significant increase in CO₂ emissions contributing to climate change, which is a significant threat to Dungeness and Romney Marsh's nature conservation and economic interests, for instance through sea-level rise. This increase would contradict national, regional and local policies on climate change and sustainable development.

Impacts on the amenity and educational use of the RSPB Dungeness Reserve

Noise levels over the RSPB Dungeness reserve are predicted to reach levels at which community annoyance is experienced. In addition, the frequency of peak noise events is likely to erode the tranquil nature of the reserve. The RSPB is concerned that this will damage the visitor and educational experience and result in a decline in numbers from the 29,694 visitors and 950 students received in the financial year 07/08.

Conclusion

It is the RSPB's belief that despite further environmental information being supplied, the applicant has failed to demonstrate beyond reasonable scientific doubt, that there will not be an adverse effect on the integrity of either the SPA or SAC (further details in Annex 2 to this letter). It is therefore the RSPB's opinion that Shepway District Council cannot consent these applications and fulfil its obligations under the Habitats Directive, as outlined above. Further, the applications cannot be consented and comply with local and county planning policies.

Yours sincerely



Alison Giacomelli
Conservation Officer

Annexes to this letter:

Annex 1 – Detailed comments on the Supplementary Environmental Information, including an assessment of whether the information requested by SDC in March 2008 has been provided.

Annex 2 – Detailed comments on the impacts on the SPA and SAC

Annex 3 – Copy of RSPB letter to Parsons Brinckerhoff, dated 20 August 2008, commenting on the study undertaken into the impacts of bird control activities on adjacent designated nature conservation sites

cc. Howard Ewing, GO-SE

Louise Bardsley, Fiona Fraser-Boulton, Natural England

Joseph Williamson, Environment Agency

Sarah Taylor, Kent County Council

Richard Moyse, Kent Wildlife Trust

Louise Barton, Lydd Airport Action Group

Rob Ryan, Keep the Marsh Special Alliance

Sean Fury, CPRE Kent

Our ref: DUN2.1.6

Appendix 4 - Ornithology Report

1. In assessing the Ornithology Report (Supplementary Environmental Information Appendix 4), the RSPB has looked at the applicant's response to the information request from Shepway District Council (SDC) made in March 2008, whether this response is adequate, and the implications if it is not adequate.

Definition of waterbirds

SDC request: Clarify with Natural England which species within the SPA would be part of the designated feature "waterbirds" under the intended revision of the SPA designation, taking into account Ramsar guidance.

2. The applicants have responded to this request adequately. The Ramsar convention defines waterbirds as 'birds ecologically dependent on wetlands'. Broadly, this includes divers, grebes, cormorants, herons, bitterns, swans, geese, ducks, waders, gulls and terns. The key thing to note regarding the assemblage of over 20,000 waterbirds is that the list in the SPA qualifiers document includes 'but is not limited to' the species on the list. Therefore, SDC's Appropriate Assessment (AA) should include consideration of all waterbirds, not just the species listed on the SPA qualifiers document.

Bird Control

SDC request: i. Clarify the information used to derive the estimate of a current bird-strike rate at LAA of "approximately one per year", as stated in the draft Bird Control Plan. In addition, if available, provide data to show the annual bird-strike rate at LAA during the past ten years (including the species involved), together with an assessment of the completeness of those data.

3. The applicants have responded to this request adequately. The RSPB notes that the Bird Control Management Plan (BCMP), presented at Appendix B, no longer seeks to achieve a bird strike rate of 1 per year. This is welcome as expert advice to the RSPB from Wildwings Bird Management (and submitted with our response dated 15 November 2007) stated that this kind of target-setting is unrealistic and the statistic is little more than a hope. One catastrophic bird strike could be sufficient to throw the safety of the airport into question. With its location on widely used migration flight lines in spring and autumn, and very close to large concentrations of waterbirds, the risk of birdstrikes must be regarded as high, but it cannot be quantified due to unknown factors that may differentiate this site from other coastal airports around the UK.

Buffer Zone

SDC request: ii. Clarify how a "buffer zone of several hundred metres wide around the [airport] perimeter", as stated in the draft Bird Control Plan, would be created and maintained, and clarify the spatial extent of the buffer zone.

4. The applicants clarify (paragraph 2.2.2) that the buffer zone will be created by clearing the target species of gulls, corvids and grassland plovers from fields up to 300m from the dispersal point. The RSPB calculates that a 300m buffer affects 1.5 hectares (ha) of the SPA at ARC pit to the south of the airport. However, the noise contour work (presented as Appendix H of the Ornithology Report) shows that bird-scaring cartridges, even if only used at airfield perimeter, affect a larger area than 300m. Therefore, it appears that the 300m buffer is the area that will be cleared of birds – focussing on the target species of gulls, corvids and grassland plovers, but the disturbance impact extends beyond this zone.
5. Paragraph 2.2.2 states that birds will be dispersed by distress calls, arm scares or lures to create the buffer zone. There is no mention here about the use of bird scaring cartridges, but they are part of the BCMP, which says they will be used, but only within the airfield perimeter. However, as noted above, even if only

used within the airfield perimeter, Appendix H shows that their disturbance impact extends beyond the 300m buffer zone.

Bird scaring activity

SDC request: iii. Clarify how bird-scaring activity will change inside and outside the LAA boundary between current conditions and the proposed development scenarios so that any changes to the type, frequency and spatial extent of such activities are clear and well-substantiated.

6. Paragraph 2.3.2 states that there will be no changes to the current type or spatial extent of bird control activities, other than a reduction in the reliance on pyrotechnics, and a move to maintaining surveillance continuously through daylight hours. However, the BCMP does not state that there will be a reduction in the use of pyrotechnics, and in fact states that in some instances they are preferred over distress calls, eg for rapid dispersal when time is short (paragraph 8.3.2 d).
7. The Bird Hazard Risk Assessment (BHRA), presented at Appendix C, states (Section 4) that the risk of bird strikes increases with a move to commercial aircraft due to their longer take-off and landing runs and higher speed than light aircraft. The BHRA identifies swans, geese, herring gull, game birds and mallard as presenting a 'particularly high risk and additional specific procedures will be required to minimise the threat' (section 6.9). The RSPB, therefore, is not confident that the applicant will be able to maintain the safety of the airport without any change to the type or spatial extent of bird control activities, when the risk is increased.

Radar and/or manual vantage point surveys

SDC request: iv. In consultation with RSPB and Natural England, assess the need for conducting radar and/or manual vantage point surveys of birds for the purpose of the EIA and AA.

8. RSPB maintains that robust information on bird use of the area is necessary to determine bird flightlines, correctly assess the risk of bird strike, and devise a BCMP that will be effective. Radar surveys have advantages over manual vantage point surveys in that they can provide information on bird strike risk from nocturnal or migratory movements of birds, which are highly likely in this area and would not be picked up by a daytime observer.
9. The RSPB advised that, in the absence of radar studies, flightlines should be inferred from the manual vantage point surveys undertaken, and other bird data available. This has been done in part (see comments below) but the RSPB remains concerned that a robust assessment of the hazard has not been undertaken, reducing confidence in the efficacy of the BCMP.

Bird flight lines

SDC request: v. Clarify what, if any, information on bird flight-lines relevant to the proposed developments can be generated from existing bird survey data and assess how this may be used to inform activities aimed at reducing bird-strike risk under the proposed development scenarios.

10. The RSPB has a number of concerns with the information on flightlines presented:
 - The focus of section 2.5 is on species for which the SPA or SSSI are designated. Whilst these species are important, and a number of them present a bird strike risk, there are additional species that present a bird strike risk, but have not had flightlines assessed, for example herring gull.
 - The Wetland Bird Survey (WeBS) data presented is three years out of date.
 - There are several species (tufted duck and Mediterranean gull) mentioned in paragraph 2.5.9 as having flightlines that will inevitably cross the airport site, but are not mentioned in the BHRA. Therefore, the flightline information in section 2.5 does not appear to have informed the BHRA.
11. Due to the above concerns, the RSPB does not consider that robust flightline information has been presented, and therefore, that a robust BCMP can have been presented. Hence, it does not appear that the question posed by SDC has been answered. The RSPB is therefore concerned that the lack of relevant data regarding flight lines means that the BCMP is not adequate to deal with the hazard and may need to be

amended for safety reasons, altering the impacts on the SPA. This makes assessment of the impacts on the SPA under the Habitats Regulations difficult.

Management of agricultural land

SDC request: vi. Clarify how and where the management of agricultural land outside the LAA will likely change as a result of the proposed developments, as indicated in the draft Bird Control Plan.

12. Paragraph 2.6.2 states that the applicants would like to work with local landowners and occupiers to agree mutually beneficial land use throughout the area, for example timing of ploughing. However, there is no indication that such approaches have been made, and the BCMP no longer mentions agricultural land practices, even though these will be crucial in influencing movements of gulls and lapwings, which are priority bird strike species for the Civil Aviation Authority (CAA). Therefore, the BCMP does not consider all the methods that will be used to reduce the hazard to an acceptable level.
13. Paragraph 2.6.2 goes on to say that one land use change that LAA would welcome would be to see a stop to the rearing and shooting of red-legged partridge on neighbouring land as these birds present a significant bird strike risk. However, it does not appear that agreements have been sought with local game bird interests. The existing data on bird strike at LAA shows that gulls, lapwings and game birds present the biggest risk. The BCMP must deal with these otherwise LAA will not operate safely.
14. This question from SDC cannot be answered because LAA cannot direct landowners to adopt favourable practices, and they appear to have made no attempt to negotiate with landowners. Therefore, the RSPB is concerned that impacts on birds for which the SPA (and potential revisions) is designated (for example Bewick's swans, lapwing, golden plover) cannot be assessed fully. Furthermore, if the applicants cannot control agricultural practices to manage the bird strike hazard, off-airfield bird scaring may have to be resorted to, resulting in further unquantified and unassessed impacts on the SPA.

Safeguarding

SDC request: vii. Provide a copy of the current Local Safeguarding Policy and that which would be implemented under the proposed development scenarios.

15. A Local Safeguarding Policy has been provided. Paragraph 2.7.1 states that it has been recently updated in response to a request from the CAA to provide more detailed information. It would be helpful if the applicants noted whether CAA were satisfied.

*SDC request: viii. Clarify how local safeguarding in relation to bird-strike risk management has been implemented at LAA over the past five years.
ix. Clarify how local safeguarding in relation to bird-strike risk management will change between current conditions and the proposed development scenarios, and clarify how this will reduce the bird-strike risk.*

16. Paragraph 2.7.2 states that the Safeguarding Policy has not been used in the past 5 years, but paragraph 2.7.3 goes on to state that there will be no change in safeguarding between current conditions and the proposed development scenarios. As the risk is predicted to increase (according to the BHRA), the RSPB questions whether this is a safe stance to adopt.

SDC request: x. In consultation with the RSPB and Natural England, clarify how any changes in the Local Safeguarding Policy may affect the SPA (plus intended revision), intended Ramsar Site and SSSI, particularly with regard to the maintenance or enhancement of wetlands.

17. Despite saying that there will be no change in the Local Safeguarding Policy between current conditions and the proposed development scenarios, the applicants propose that there will be a locally negotiated safeguarding priority map, which is a new proposal. This priority map shows areas, including the RSPB reserve, wetlands on the MoD ranges, and the gravel pits at Scotney, that will have the presumption of 'no objections expected' to new wetlands. This is with the exception of wetlands that have features with the

potential to increase breeding populations of large gulls, or incorporate reedbeds of larger than 1ha (which would not attract an objection, but the airport would like the facility to disperse any hazardous starling roost).

18. The 'no objection zones' reassure the RSPB that impacts on these parts of the SPA, potential SPA revision and potential Ramsar site will be minimised. Although the caveats may still limit activity to maintain and enhance the sites, and there is still the risk that off-airfield bird scaring will be necessary and impact on these sites. Furthermore, the Lade Pit part of the SPA is not included in the 'no objection zones'. Therefore, the applicant may object to the restoration of the Lade Pit area of the SPA, thereby affecting the conservation status of the SPA.

SDC request: *xi. In light of the above and in consultation with RSPB and Natural England, revise and resubmit the Bird Control Plan as a finalised document, ensuring that it is compliant with the CAAs guidance on Bird Control Management Plans. The revised plan should clearly consider all bird species that are a bird-strike hazard and methods that will be used to reduce that hazard to an acceptable level.*

19. The BCMP presented at Appendix B is still in draft form. Section 1 states that it is a draft document presented for discussion and iteration; and that bird control measures would need to be adjusted and refined as required to control risks to both aircraft safety and wildlife habitat disturbance. Therefore, this is not the finalised plan that SDC requested, and as such, does not give confidence that what is presented will actually achieve the reduction in bird hazard necessary to operate the airport safely. Therefore, there is a risk that the bird control measures will have to be increased, and a risk that this will increase the impacts on the SPA. Therefore, it is still difficult to determine full impacts on SPA, and so the Appropriate Assessment will have to take a precautionary approach.

Previous surveys

SDC request: *Based upon the bird survey data collected for the EIA and WeBS data, and in consultation with the RSPB and Natural England, provide a series of maps that shows the location of observations and counts of designated bird species of the SPA (plus intended revision), SSSI and intended Ramsar Site, noting the intention to include all 'waterbirds' in the SPA and Ramsar Site.*

These maps should show the following boundaries:

(i) LAA; (ii) the current SPA boundary; (iii) the intended extension to the SPA boundary; (iv) the SSSI boundary; (v) the intended Ramsar Site boundary; and (vi) boundaries of bird census surveys.

20. WeBS data is only presented from 1999 to 2004 and is therefore out of date. The Habitats Regulations require the developer to present the competent authority with all the information necessary to carry out an Appropriate Assessment. If the applicants are not providing the most up-to-date data, they are not complying with this requirement.

Noise disturbance

SDC request: *i. Provide data that shows: (i) the number of aircraft movements per month during 2003 to 2007; and (ii) the projected number of aircraft movements per month under the proposed development scenarios. These data should be broken down by aircraft type (helicopter or aeroplane) and size (small, medium and large) for each month, and an assessment made of the data accuracy.*

21. These figures are presented. However, there are some discrepancies in the tables presented in Appendix F regarding existing operations, in that the tables for northerly and southerly operations record movements of larger aircraft, whereas the table for all operations does not. The RSPB's understanding is that larger aircraft (e.g. BAe 146) do not currently use the airport, as this fits with information presented in Appendix 8 on noise, and so the baseline for assessment is that no larger aircraft currently use the airport.

SDC request: *ii. Provide a series of LAmox noise contour maps that show all of the reasonably foreseeable departure and arrival routes when travelled by aircrafts of different size (small, medium and*

large). Each map must show: (i) the current SPA boundary; (ii) the intended extension to the SPA boundary; and (iii) a robust estimate of how often the route is travelled currently and under the proposed development scenarios. These maps should be accompanied by an assessment of noise contour accuracy.

22. Paragraph 4.1.5 states that the L_{Amax} noise contour maps are provided at Appendix G. However, the maps presented at Appendix G just show noise contour maps for bird scaring techniques, not noise from aircraft. Paragraph 4.1.6 mentions 'new noise contours', which implies that the maps are different from those presented previously, so it appears that information is missing. Appendix 8 and 9 of the SEI 2008 contain noise contour maps, but these just present the L_{Aeq} noise contours, not the peak noise levels as requested. Therefore, the question has not been answered.
23. However, paragraph 4.1.6 states that the conclusions reached in previous environmental information remains unchanged, i.e. increased noise levels at protected habitats east of LAA, representing a moderate impact, and to the south there will be no net increase in peak level noise impact. Therefore, potentially RSPB's conclusions presented previously still apply.
24. The RSPB agrees that the increase in noise level and frequency of peak noise events at the Lade Pit part of the SPA is likely to result in a moderate impact. We would add that the increase in frequency of peak noise events at the SPA to the south of the airfield could also potentially result in a detrimental impact. Impacts on birds outside the designated SPA area, for example golden plover and lapwing on the airfield and areas adjacent to the airfield, have not been assessed and could also be adversely affected.

Visual disturbance

SDC request: i. In consultation with Natural England and RSPB, clarify the need, or otherwise, to consider within the EIA and AA the visual disturbance that aircrafts may have upon birds. If the need is reasonably necessary, undertake an assessment and submit the results

25. Paragraph 4.4.3 states that the potential additive effect of visual stimuli at LAA is unquantifiable. The RSPB maintains that as the risk of a visual disturbance was identified in the Environmental Impact Assessment (EIA), then the Environmental Statement (ES) should at least aim to quantify the total risk from disturbance. Stating that the risk is unquantifiable does not help SDC in its Appropriate Assessment of impacts on the SPA. Without a quantified risk, the AA has to take a precautionary approach and assume that the noise disturbance from aircraft will be a minimum disturbance level, as there is an unquantified additive visual effect.

Effects on bird populations

SDC request: ii. In consultation with the RSPB and Natural England, clarify what areas of the SPA (plus intended revision), SSSI and intended Ramsar Site would be significantly negatively affected by increased noise disturbance arising from changes in bird-scaring activities and aircraft movements under the proposed development scenarios.

Bird scaring impacts

26. The RSPB's comments on the study into the potential impact of bird scaring were provided to the applicants and copied to SDC, dated 20 August 2008 (attached at Annex 3 for ease of reference). In summary, the RSPB disagreed with the conclusion that this study demonstrated that there would be no significant impact on birds using adjacent nature conservation sites because:
 - The study was carried out in the summer, so says nothing about the reaction of wintering birds (the principal interest of the SPA and intended revisions);
 - The study is not fully applicable to real-life implementation of the BCMP because it just tested on-airfield bird control, when the BCMP states that the bird control team may be deployed off-airfield to deal with an acute hazard.
 - The study showed that, far from reducing the bird strike risk, the playing of herring gull distress calls actually caused birds to fly towards the airfield, actually increasing the bird strike hazard. This

demonstrates that the use of distress calls alone is unlikely to be effective, and so more disturbing measures, such as bird scaring cartridges are likely to be needed.

- The bird scaring study showed that noise disturbance impacts would be felt within the SPA, particularly from use of bird scaring cartridges, but also from distress calls where the target is also part of the SPA (revision) interest, e.g. lapwing.

Aircraft movements

27. Paragraph 4.3.3 states that the impacts of aircraft noise on the SPA to the east of the airport can be adequately mitigated by setting noise performance standards for aircraft based at LAA, and departure procedures and routes being regularly reviewed for their noise impact. It is not clear that either of these mitigation measures are practical or enforceable. Aircraft used will be dictated by the airlines. LAA can specify noise standards, but if the airlines cannot meet them they will not take their business to LAA. Therefore, it is likely that if the noise standards mean that LAA cannot attract airlines, the standards would be dropped. Departure routes are dictated by the runway, weather conditions and the exclusion zones round the MoD ranges and nuclear power station. It is, therefore, difficult to see how the applicants expect to mitigate noise by altering routes. If these mitigation measures are to be relied upon to avoid an adverse effect on the SPA, SDC need to be confident that the measures will be effective and enforceable.

Conclusion on area of SPA affected

28. The applicants have not provided any information on the areas of designated sites affected by noise disturbance from aircraft or bird scaring because they conclude that no part of the designated sites would be significantly adversely affected. For the reasons set out above, the RSPB disagrees with this conclusion. Furthermore, the applicant's stance is not helpful, as information is not provided to enable SDC to reach this conclusion in their AA. It is the applicant's duty under the Habitats Regulations to provide the information necessary for SDC to make a fully informed decision via the AA.

SDC request: iii. In consultation with the RSPB and Natural England, clarify what proportion of the populations of designated bird species (including those that are intended to become designated features) would be negatively affected by changes in bird-scaring activities, agricultural land management, local safeguarding and aircraft movements as a result of the proposed developments.

29. The applicants have declined to provide this information, as their view is that bird scaring, agricultural land management, safeguarding or aircraft movements would not affect the designated bird populations. This is an unhelpful stance, as it does not provide the information to allow SDC to come to the same conclusion.

30. The RSPB's view is that designated bird populations could be affected due to the following issues:

- Bird scaring on airfield – A 300m buffer zone will be virtually bird free (focus is on priority bird strike species, but bird scaring will affect non-target species), but the disturbance influence of bird scaring goes beyond this buffer zone (see 4.3.1 and appendix H). Noise contour maps at Appendix G show the 80dB(A) contour affecting a significant part of the SPA (in their Statements to Inform, submitted in October 2007, the applicants use 80dB(A) as the threshold above which a particular disturbance response is seen). However, the maps at Appendix G do not show the full extent of area affected as they only show use of bird scaring from 2 points within perimeter. Actual bird scaring could take place at any point within perimeter.
- Bird scaring off-airfield – the BCMP includes bird scaring to disperse acute hazards off airfield. No attempt has been made by the applicants to quantify this risk to SPA species. Therefore, the precautionary principle has to apply and the RSPB considers that on the evidence provided, it cannot be determined that there will be no adverse effect on the SPA.
- Disturbance from aircraft movements – The applicants predict noise levels to affect Lade Pit, and the RSPB contends that the SPA to the south of the airfield will also be affected. Mitigation measures suggested by the applicant are unproven and unenforceable.

- Agricultural land management – The applicants admit they have no control over this, but would like to work with landowners to agree mutually beneficial land use. The RSPB is concerned that impacts on birds for which the SPA (and potential revisions) is designated (for example Bewick's swans, lapwing, golden plover) cannot be assessed fully without knowing where there will be changes to agricultural practices. Furthermore, if the applicants find they cannot control agricultural practices to manage the bird strike hazard, off-airfield bird scaring may have to be resorted to, resulting in further unquantified and unassessed impacts on the SPA.
- Local safeguarding – the no objection zones appear to avoid significant impact on most of the SPA. But Lade Pit is excluded from these zones, so there is potential for LAA to object to the restoration of this area, thereby affecting the conservation status of the SPA.

Annex 2
Detailed comments from the RSPB on the impacts on the SPA and SAC

General Points

Application of the Habitats Regulations

1. The test in Regulation 48(5) of the Habitats Regulations states that:-
“In the light of the conclusions of the assessment, and subject to regulation 49, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site.” Therefore, it is not for Shepway District Council to assess whether the proposal would adversely affect the SPA, but to determine whether it has been shown that it will not have an adverse impact. Where there is uncertainty, or reasonable scientific doubt, over impacts or their mitigation, Regulation 48 and Government³ and EC⁴ guidance clearly states that an effect should be assumed and permission (subject to regulations 49 and 53) not granted.

Consideration of intended revisions to the SPA

2. Following on from the notification of the Dungeness, Romney Marsh and Rye Bay SSSI in August 2006, Natural England (NE) is working on the designation of an extended Dungeness to Pett Level SPA. NE provided the list of provisional SPA qualifying species to the applicant, and this is included at Appendix A of Appendix 4 of the SEI 2008. Clearly, the potential SPA interest features have been known since the time of SSSI notification and delays in the designation process should not be used to allow damaging proposals to be granted. In this respect, SDC should consider the application of the judgment of the European Court of Justice in the *Commission v. France Case C-374/98* relating to the Basses Corbières site. At the very least in accordance with Government policy (paragraph 6 of PPS9⁵) the area should be treated as a SPA for the purposes of considering these applications.
3. NE has provided a provisional list of qualifying features for the extended SPA. The key thing to note regarding the assemblage of over 20,000 waterbirds is that it includes ‘but is not limited to’ the species on the list. Therefore, SDC’s Appropriate Assessment (AA) should include consideration of all waterbirds, not just the species listed on the SPA qualifiers document.

Impacts on Dungeness to Pett Level SPA (plus intended revisions)

4. The Appropriate Assessment should assess the applications alone and in combination. Therefore, the following comments relate to impacts arising from both the runway and terminal applications combined, rather than separating out the impacts of each application.

Potential impacts during construction

5. Disturbance to waterbirds from noise, lighting and visual intrusion – The terminal building is proposed to be sufficiently far away for its construction to be unlikely to disturb birds using the SPA. However, the runway will be relatively near the likely extension to the SPA at the northern Lade Pit (around 600m). Therefore, the AA should assess the risk of impact to this part of the SPA revision, particularly in combination with disturbance from the operation of an expanded airport. Similarly, the possibility of visual disturbance from runway construction should be assessed. Furthermore, SPA birds using areas

³ ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system. (Figure 1)

⁴ European Commission Environment DG (Nov 2001) Assessment of plans and projects significantly affecting Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC

⁵ Planning Policy Statement 9: Biodiversity and Geological Conservation. ODPM. August 2005.

outside the designated site may be disturbed by noise and visual intrusion and effectively lose available habitat.

6. Lighting may also be a disturbance issue. The Statements to Inform (dated October 2007) suggests mitigation that light will not be emitted above the horizontal. This may be acceptable to mitigate impacts, but the AA should assess where the lighting is proposed and whether prevention of light spillage is possible.
7. Contamination of watercourses or groundwater, which then affects habitats of the SPA – The Construction Environment Management Plan (CEMP) (Appendix 6) sets out mitigation to minimise potential contamination of water resources. The RSPB strongly advises getting the Environment Agency's view on whether these measures are adequate to protect water resources, in order for SDC to be certain of their efficacy.

Potential impacts during operation

8. Bird Hazard Management – the RSPB has a number of concerns relating to bird hazard management at an expanded airport:
 - The Bird Hazard Risk Assessment (BHRA) (Appendix 4, Appendix C) identifies swans, geese, game birds, herring gull and mallard as particularly high bird strike risk, for which specific procedures will be required to minimise the threat. The BHRA states that waterbirds cannot be dealt with – aircraft will have to be grounded whilst these birds fly over. The RSPB is extremely concerned that this will not prove acceptable to the running of an expanded airport, and will result in an increase in bird scaring to provide a larger buffer around the airfield, and greater impacts on the SPA.
 - The Bird Control Management Plan (BCMP) (Appendix 4, Appendix B) is still in draft form. It, therefore, does not give confidence that what is presented will actually achieve the reduction in bird hazard necessary to operate the airport safely. Therefore, there is a risk that the bird control measures will have to be increased, and a risk that this will increase the impacts on the SPA. Therefore, it is still difficult to determine full impacts on SPA, and so the AA will have to take a precautionary approach.
 - Whilst a BHRA has been provided, the RSPB remains concerned that the lack of information on bird flightlines and lack of understanding of gull movements means that the bird strike risk may have been underplayed. This means that the BCMP may need to be amended for safety reasons, altering the impacts on the SPA.
 - The BCMP includes bird scaring to produce a 300m wide buffer round the airport boundary, which the RSPB calculates would affect 1.5 hectares (ha) of the SPA at ARC pit to the south of the airport. The focus of this buffer is on priority bird strike species, but bird scaring will affect non-target species. Noise contour maps at Appendix G (Appendix 4) show the 80dB(A) contour from use of bird scaring cartridges affecting a significant part of the SPA (in their Statements to Inform, submitted in October 2007, the applicant uses 80dB(A) as the threshold above which a particular disturbance response is seen). Therefore, use of bird scaring cartridges within the airfield disturbs the SPA beyond the 300m buffer. However, the maps at Appendix G do not show the full extent of area affected as they only show use of bird scaring from 2 points within perimeter. Actual bird scaring could take place at any point within perimeter. Furthermore, use of distress calls where the target species is also an SPA species (e.g. lapwing) will affect the SPA beyond the 300m buffer.
 - The BCMP includes bird scaring to disperse acute hazards off airfield, but may include dispersal of, for example, starling roosts within the SPA or bird scaring from agricultural fields nearer the SPA than the airfield. The applicant has not quantified the risk, but the RSPB considers it highly likely that bird scaring off airfield will be necessary. For example, a peak count of 100,000 starlings was recorded on the RSPB Dungeness reserve in September 1999, though the 5-year peak mean is around 42,000 individuals.
 - The RSPB is concerned that changes to local agricultural practices will be necessary to reduce the bird strike risk, but this has not been quantified. Therefore, the impacts on birds for which the SPA (and

potential revisions) is designated (for example Bewick's swans, lapwing, golden plover) cannot be assessed fully. Furthermore, if the applicant cannot control agricultural practices to manage the bird strike hazard, off-airfield bird scaring may have to be resorted to, resulting in further unquantified and unassessed impacts on the SPA.

9. Mitigation for impacts from bird hazard management - Paragraph 2.3.2 (Appendix 4) states that there will be a reduction in the reliance on pyrotechnics to minimise disturbance impacts. However, the BCMP does not state that there will be a reduction in the use of pyrotechnics, and in fact states that in some instances they are preferred over distress calls, e.g. for rapid dispersal when time is short (paragraph 8.3.2 d). Furthermore, the study into noise impacts at Appendix H showed that the playing of herring gull distress calls actually caused birds to fly towards the airfield, actually increasing the bird strike hazard. This demonstrates that the use of distress calls alone is unlikely to be effective, and so more disturbing measures, such as bird scaring cartridges are likely to be needed. Therefore, the RSPB does not consider this mitigation measure to be practical or realistic.
10. Further mitigation seems to be that bird scaring will be largely limited to the airfield. However, it is not certain that this will be possible, as noted above, and the BCMP recognises that there will be a need to bird scare off-airfield to deal with acute hazards.

Disturbance from aircraft noise and visual intrusion

11. Revised peak noise maps have not been presented, but as paragraph 4.1.5 states that they have been produced, they should be easily provided on request by SDC. The RSPB recommends that SDC do this, so that the area of the SPA affected by peak noise levels of over 80dB(A) can be seen. The map presented previously (in the October 2007 supplementary information) show the 81 dB(A) L_{max} contour for southerly departing BAe146 aircraft overlaps with 100ha of the existing SPA to the south of the airport (RSPB calculation), which is 6.8% of the total area. In addition, the SPA at Lade Pit will be subject to increase frequency and level of peak noise events.
12. The RSPB agrees with the applicant that the increase in noise level and frequency of peak noise events at the Lade Pit part of the SPA is likely to result in a moderate impact. We would add that the increase in frequency of peak noise events at the SPA to the south of the airfield could also potentially result in a detrimental impact. Impacts on birds outside the designated SPA area, for example golden plover and lapwing on the airfield and areas adjacent to the airfield, have not been assessed and could also be adversely affected.
13. Paragraph 4.4.3 (Appendix 4) states that the potential additive effect of visual stimuli at LAA is unquantifiable. Without a quantified risk, the AA has to take a precautionary approach and assume that the noise disturbance from aircraft will be a minimum disturbance level, as there is an unquantified additive visual effect.
14. Mitigation for impacts from aircraft noise disturbance - Paragraph 4.3.3 states that the impacts of aircraft noise on the SPA to the east of the airport can be adequately mitigated by setting noise performance standards for aircraft based at LAA, and departure procedures and routes being regularly reviewed for their noise impact. It is not clear that either of these mitigation measures are practical or enforceable. Aircraft used will be dictated by the airlines. LAA can specify noise standards, but if the airlines cannot meet them they will not take their business to LAA. Therefore, it is likely that if the noise standards mean that LAA cannot attract airlines, the standards would be dropped. Departure routes are dictated by the runway, weather conditions and the exclusion zones round the MoD ranges and nuclear power station. It is, therefore, difficult to see how the applicants expect to mitigate noise by altering routes. If these mitigation measures are to be relied upon to avoid an adverse effect on the SPA, SDC need to be confident that the measures will be effective and enforceable.
15. The RSPB disagrees with the applicant's conclusion that birds are likely to habituate to disturbance. Insufficient evidence is presented, or known, as to the effects of aircraft noise on the SPA species and

whether they are likely to habituate or not. The presence of bird populations near to other airports (case studies submitted with the October 2007 supplementary information) does not necessarily mean that they are not affected by the noise - their behaviour may change (they may be alert and not feeding when the noise stimulus is present), and there could potentially be effects on body-condition and/or breeding productivity if disturbance was sustained.

16. Local safeguarding policy - The 'no objection zones' reassure the RSPB that impacts on these parts of the SPA, potential SPA revision and potential Ramsar site will be minimised. However, the caveats may still limit activity to maintain and enhance the sites, and there is still the risk that off-airfield bird scaring will be necessary and impact on these sites. Furthermore, the Lade Pit part of the SPA is not included in the 'no objection zones'. Therefore, the applicant may object to the restoration of the Lade Pit area of the SPA, thereby affecting the conservation status of the SPA.
17. Contamination of watercourses or groundwater, which then affects habitats of the SPA - The Sewage Report (Appendix 6 of the SEI 2008) recognises that the current septic tank arrangement needs to be upgraded for the development proposals and recommends that there is on-site treatment of effluent. It is not clear what the impacts of this treatment plant would be on the designated sites, but may result in discharge of effluent to water courses that feed the SAC and SPA. As the upgrading of sewage treatment at LAA is an integral part of the development proposals, and may have a significant effect on the European Sites, it is not acceptable to leave the choice of type of upgrading until after permission is granted. The applicant must provide information to SDC on the full implications of the development, so the full impacts can be assessed in the AA.
18. Bird strike - The loss of individual birds to bird strike should be considered in the AA. Loss of individual birds to bird strike is not likely to have an impact on population levels, and therefore on the integrity of the SPA, unless the species is present in very low numbers and/or is slow reproducing. The population of Mediterranean gull within the SPA is 21 pairs, representing 19.4% of the GB population. This species is a bird strike risk, therefore loss of birds from a small breeding population could be significant. In addition, this species is easily confused with black-headed gull, and could be mistakenly subject to lethal control by the Bird Control Team. Bewick's swan is a bird strike risk species, but with a population of 127 individuals, bird strike alone is not likely to have a significant impact on the population. Similarly, golden plovers and species that form part of the waterbird assemblage are bird strike species, but form part of sufficiently large populations that loss of individual birds is not likely to have a significant effect.

Potential cumulative impacts

19. Noise disturbance - There are likely to be cumulative noise disturbance impacts on the SPA from the increase in aircraft movements due to the terminal building and runway extension, the increased frequency and geographic coverage of bird hazard management, and gravel extraction.
20. Visual disturbance - This will affect the same areas as noise disturbance, plus there will be a cumulative impact from Little Cheyne Court wind farm.
21. Bird strike - There may be a cumulative impact from loss of Bewick's swans to bird strike and collision with turbines at Little Cheyne Court wind farm. However, mitigation for collision risk at the wind farm involves agreements with landowners to plant crops to attract birds away from the turbine array.

Mitigation

22. Mitigatory measures are necessary to deal with water quality, dust and lighting during construction, and water quality and lighting after construction. Mitigation is also needed for noise and visual disturbance from aircraft movements, bird hazard management, bird strike and runway construction. The AA must be clear that sufficient mitigatory measures are able to be implemented and enforced.

Conclusion

23. The RSPB concludes that the applicant has failed to show that there will not be an adverse impact on the integrity of the SPA, and potential SPA extension, due to disturbance from the BCMP, aircraft noise and runway construction as part of the applications alone, but also in combination with aggregates extraction activities. The Conservation Objectives for the SPA (presented in the Statements to Inform, October 2007) state that there should be no significant displacement from human disturbance (human disturbance absent or at a low level). An expanded airport will clearly not meet this objective. The applicant has not suggested sufficient measures to mitigate their impacts, therefore, it cannot be shown that there will not be an adverse effect on the integrity of the SPA.

Impacts on Dungeness SAC

Potential impacts during construction

24. Contamination of watercourses - Spills and surface run-off could impact on both great crested newt and vegetated shingle if there is hydrological connectivity. The RSPB recommends that the Environment Agency's views and agreement on such a the CEMP be sought to give SDC certainty on its efficacy.
25. Dust production – Could impact on vegetated shingle by smothering and nutrient inputs. Mitigation in CEMP (section 5.10) may be adequate but SDC should ensure all measures are enforceable.
26. Direct loss of habitat due to runway extension – Mitigation is proposed for loss of great crested newt habitat. The RSPB recommends that NE's views are sought on the adequacy of this mitigation.
27. Damage to habitats from vehicle movements – mitigation in CEMP – vehicles confined to existing roads and access tracks. NE advice should be sought on whether this is acceptable, or whether existing tracks are already causing damage to vegetated shingle habitats.
28. Temporary habitat loss due to stockpiling of soils – whereas previously the applicant had stated that spoil would be spread on the runway strip, it now appears that it will be used to infill certain ditches and spread on an area southwest of the runway (paragraph 5.12.13 of the CEMP). The area for stockpiling spoil shown on figure 2 of the CEMP appears to avoid impact on the SAC or other designated sites.

Potential impacts during operation

29. Air pollution – Nitrogen deposition levels at the Dungeness SAC are already at the point where vegetated shingle habitats could be damaged. It is not sufficient to rely on a trend of improving background air quality to mitigate impacts of the applications, because this trend is unlikely to continue, and it is unenforceable.
30. The RSPB alongside Kent Wildlife Trust, have asked consultants to assess the impact of nitrogen deposition on vegetated shingle habitats and invertebrate communities as a result of the applications. This work has not yet been completed, but the RSPB would like to feed it in to the AA process if it would be helpful to SDC.
31. Preliminary findings of this work are that there has been no real assessment of the implications of the proposals with regard to the edge effect of the applications on the SAC and SSSI, there being no provision for a buffer zone and no space for one. The long term to 100 years or more is not adequately considered. Also the precautionary principle necessary for an Appropriate Assessment for a SAC should be applied. This is especially important for the nitrogen (N) deposition where the Critical Load of 10-15 kg N.Ha⁻¹.y⁻¹ is concerned. The current deposition levels and those for the medium term future are already within the range of the Critical Level, and therefore by definition could cause an effect. The emissions from the

applications add to this load, and therefore are likely to cause an effect. Although this may be claimed to be small when in conjunction with deposition from other sources, it could be significant.

32. The Critical Load of 10-15 kg N.Ha⁻¹.y⁻¹, which is referred to in the SEI 2008, appears to be at the highest end of the likely range that would cause no damage. Critical Loads for other lichen-dominated ecosystems are set lower at 5-10 kg N.Ha⁻¹.y⁻¹. Blanket application of national Critical Loads and general habitat categories results in considerable uncertainty as to the safe levels that a site can withstand without damage.
33. The edge effects are important and would result in the eutrophicated zone next to LAA gradually creeping into the SAC and SSSI. The long term effect of this will be an extension of the eutrophicated zone beyond that which is directly caused by any deposition due to the movement of nutrients. Nutrient movement can be caused by grazing animals and on this site there is a large population of wild rabbits.
34. Loss of ditches – Mitigation includes new ditch being created linking existing ditch to the southeast of runway. Pond A will be improved as habitat for great crested newt. However as this pond is already designated as part of the SAC for its great crested newt population, any work on it can only be considered mitigation if it constitutes genuine enhancement to habitat. If the work is to restore a degraded habitat, it should be done anyway to maintain the condition of the SAC, and cannot be considered mitigation for other damage to the SAC.
35. Direct loss of habitat due to creation of replacement ditches and creation of great crested newt scrapes – mitigation proposed for impacts on great crested newts and loss of ditches is within the SAC, and therefore may result in loss of SAC vegetated shingle habitat.
36. Management of runway strip – the RSPB's view is that it is still not certain whether Pond A needs to be filled in. SDC requested the applicant to provide CAA's view, but this has not been done. The applicant now appears to be saying that filling in of Pond A will not be necessary because the runway strip will be maintained at 105m either side of the centre line. However, CAA regulation CAP 168 requires a runway strip extending to 150m either line of the runway centre line for the type of runway proposed at LAA. It is vital for the AA that the status of the pond and the nature of the runway strip is clarified by the CAA.
37. Contamination of watercourses – CEMP states (p.9) that vegetated ditch banks will be enhanced and additional buffer zones planted, such as reedbeds/wetlands, to act as filters to naturally retain silt and potential contaminants. The CEMP states that NE's advice will be taken on this mitigation measure. The RSPB advises that NE's advice is taken on whether this mitigation will damage the vegetated shingle habitat (by replacing it with reedbed/wetland), and that the Environment Agency's advice is taken as to whether this mitigation will be sufficient to avoid contamination of watercourses and groundwater. The advice of the statutory agencies is necessary to provide SDC with the confidence that the applicant's suggested mitigation will avoid an adverse effect on the integrity of the SAC.
38. As noted above, the Sewage Report (Appendix 6 of the SEI 2008) recognises that the current septic tank arrangement needs to be upgraded. As this is an integral part of the development proposals, and may have a significant effect on the SPA and SAC, it is not acceptable to leave the choice of type of upgrading until after permission is granted. The applicant must provide information to SDC on the full implications of the development, so the full impacts can be assessed in the AA.
39. Damage to habitats from vehicle movements, e.g. of Bird Control Team – the bird control vehicle will be mainly acting within the airfield perimeter, according to the BCMP, but the SAC vegetated shingle habitats extend into the airfield. Therefore, they are likely to be affected by the bird control vehicle. In addition, the vehicle will have to act off-airfield to deal with acute hazards, and therefore, may damage vegetated shingle off-airfield. The area of damage should be calculated and assessed in the AA, in combination with damage from air pollution.

Conclusions

40. There is likely to be a residual impact, which has not been mitigated, from air pollution on the vegetated shingle interest of the SAC. There may also be a detrimental impact on the SAC vegetated shingle habitat from great crested newt mitigatory measures and creation of new ditches, and damage from the activities of the Bird Control Team. Therefore, it is the RSPB's view that the applicants have failed to demonstrate that there will not be an adverse effect on the integrity of the SAC, and that as a result, the applications cannot be granted and comply with the Habitats Regulations.

Annex 3

Copy of RSPB letter to Parsons Brinckerhoff commenting on the study undertaken into the impacts of bird control activities on adjacent designated nature conservation sites

Paul Claughan
Parsons Brinckerhoff
Amber Court
Willima Armstrong Drive
Newcastle upon Tyne
NE4 7YQ

20 August 2008

Dear Mr Claughan

Lydd Airport Expansion proposals (Y06/1647/SH and Y06/1648/SH) Short study: the impacts of on-airport bird control activities at LAA on bird communities at adjacent bird reserves

Thank you for your letter dated 7 August 2008 consulting the RSPB on the study undertaken into the impacts of bird control activities on adjacent designated nature conservation sites (the Study).

Shepway District Council's letter of 5 March 2008 stated that clarification was needed on

- i. what areas of the SPA (plus revision), SSSI and intended Ramsar site would be significantly affected by increased noise disturbance arising from changes in bird-scaring activities and aircraft movements; and
- ii. what proportion of the populations of designated bird species (including those that are intended to become designated features) would be negatively affected by changes in bird-scaring activities, agricultural land management, local safeguarding and aircraft movements.

The Study submitted starts to answer part of these questions, but, in the RSPB's opinion, falls some way short of providing the information asked for by Shepway District Council to enable them to determine the applications for expansion at Lydd Airport.

The major problems with the Study are in the timing of the work, the applicability to real-life implementation of a Bird Control Plan at Lydd Airport, and the links made to the designated sites. Taking each of these areas in turn:

Timing of the Study

The Study was undertaken on two days in June, which is the wrong time of year to be able to assess impacts on the wintering interest of the Dungeness to Pett Level Special Protection Area (the SPA) or the SPA revision. Paragraph 4.1.7 of the Study appears to concede this by recommending that it be repeated in the winter months, despite also concluding (paragraph 4.1.5) that bird scaring will not affect protected bird species.

The breeding bird interest of the SPA (terns and Mediterranean gull) is not found on the ARC pit or Lade Pit (the parts of the SPA closest to the Airport and the subject of this Study). However, the Study does not show that bird scaring will not deter these SPA breeding birds from using these parts of the SPA in the future.

Applicability to real-life implementation of Bird Control Plan

The Study just looked at on-airport bird control. However, the draft Bird Control Plan (submitted to Shepway District Council in October 2007) states that the Bird Control Team (BCT) will operate beyond the airfield to deal with acute hazards, and that the BCT will look for hazardous birds in fields adjacent to the airfield creating a buffer 'several hundred metres wide' (section 5.2). Therefore, restricting bird scaring activities to the airfield will not provide the necessary reduction in bird strike risk according to the draft Bird Control Plan submitted, and means that the Study does not reflect the actual implementation of the Bird Control Plan or present a 'worst-case scenario' as claimed. Furthermore, as the wind was carrying sound away from the SPA on the days tested (paragraph 2.1.5), the Study did not represent a 'worst case scenario'.

Links to designated sites

The Study does not address the question of what proportion of the designated bird species would be negatively affected by the bird-scaring activities. If the distress calls and bird scaring cartridges were sounded from a number of locations around the airfield (and any likely off-airfield locations) and the sound levels recorded at a number of receptor sites around the SPA, a picture of the area of the SPA affected by different noise levels could be built up. This could then be matched with survey data on bird populations in order to assess the proportion of populations that could be affected. However, the use of only two 'source' and two 'receptor' points in the Study does not enable this to be addressed.

Conclusions of the study

The RSPB has the following points to make regarding the conclusions of the study:

- Paragraph 4.1.3 concludes that bird distress calls would not adversely affect the SPA. The Study demonstrates that distress calls cause species specific reactions, which is their purpose. However, the species that are causing the bird strike risk will not always be those for which the distress calls were tested in the Study. Swans, geese and golden plover all feed in fields around the airport and may present a bird strike risk that needs to be dispersed. Are distress calls available for these additional species, and will the Bird Control Plan use such calls? If so, the RSPB considers that the Study needs to reassess how species react when these distress calls are used. Furthermore, though lapwing distress calls were played, there were very few lapwings present in the area because it is the wrong time of year (wintering numbers are much higher than breeding numbers). If the Study had been carried out in winter, lapwings are likely to have been affected. Therefore, the RSPB disagrees with the conclusion that the Study demonstrates that distress calls would not adversely affect SPA species.
- The Study showed that, far from reducing the bird strike risk, the playing of herring gull distress calls actually caused birds to fly towards the airfield, actually increasing the bird strike hazard. This demonstrates that the use of distress calls alone is unlikely to be effective, and so more disturbing measures, such as bird scaring cartridges are likely to be needed. Therefore, the guidance in the draft Bird Control Plan that bird scaring cartridges should be avoided on parts of the airfield closest to the SPA is unlikely to be wise given the need to reduce risk to public safety. The RSPB recommends that this is considered in the revised Bird Control Plan requested by Shepway District Council (in their 5 March 2008 letter).
- Paragraph 4.1.5 does state that bird scaring cartridges did cause disturbance behaviour. It is disappointing that the Study does not note where the birds that flew off from ARC pit went to or how quickly they returned, if at all. If this Study is intended to be a proxy for the reactions of wintering birds, and to enable a conclusion to be reached on impacts on the SPA, we need to know whether the disturbed birds find suitable alternative habitat, and/or whether they have their energy budget (and hence survival) compromised. As this information is not available, the RSPB cannot agree with the conclusion that the use of bird scaring cartridges would be very unlikely to cause noise disturbance to protected bird species.

- The Study recommends (paragraph 4.1.12) that Shepway District Council could limit use of bird scaring cartridges to the vicinity of the runway, rather than near the SPA. The RSPB disagrees with this suggestion as the two source points used in the Study were close to the runway anyway, so restricting use of bird scaring cartridges to closer to the runway would not significantly reduce noise levels at the SPA.

I hope these comments will be useful to you in making your formal submission to Shepway District Council.

Yours sincerely

A handwritten signature in black ink that reads "Alison Giacomelli". The signature is written in a cursive, flowing style.

Alison Giacomelli
Conservation Officer

cc. Terry Ellames, Shepway District Council
Louise Bardsley, Natural England

Our ref: DUN2.1.4