

## COUNCIL MEETING 3<sup>RD</sup> MARCH 2010

### SUPPLEMENTARY INFORMATION TO SCHEDULE OF APPLICATIONS

**Y06/1647/SH            ERECTION OF A TERMINAL BUILDING, CAPABLE OF PROCESSING 500,000 PASSENGERS PER ANNUM, AND 639 CAR PARKING SPACES – LONDON ASHFORD AIRPORT**

**Y06/1648/SH            CONSTRUCTION OF A 294 METRE RUNWAY EXTENSION TOGETHER WITH AN ADDITIONAL 150 METRE STARTER EXTENSION – LONDON ASHFORD AIRPORT**

### REPRESENTATIONS

Indigo Planning on behalf of LAA have made a twenty page submission, including letter addressing the officers reasons for refusal, proposed revisions and response to BVs Revised Appropriate Assessment report. This is attached as Appendix A to this report.

Ten additional letters have been received from individuals objecting to the applications on similar grounds already identified in the September 2009 council report. These particular current letters focus on damage to important wildlife sites (including pollution, bird scaring, noise), impact on the local tourist industry, road congestion, health problems (including asthmatic children and the nearby school), noise and loss of tranquillity, safety, traffic, increased urbanisation and that the proposals are not needed.

Trudy Auty, resident of Lyminge, has made more detailed comments which are as follows:

- I understand that Natural England and RSPB are concerned about the impact that airport expansion would have on the local bird population. We believe that they are right to have such reservations as it appears LAA does not have the CAA's support in this matter.

- We had noted in the officer's report a reference to LAA's target of less than of 3 birdstrikes every 10,000 flight movements and a suggestion that this was derived using CAA approved methodology. This is not the case. Captain Chapman, the Group Director Of Safety Regulations, the CAA confirmed in a letter to the Autys dated 17th September 2009, that: 'The CAA does not and never has agreed to a target figure (birdstrikes per 10,000 movements) for any aerodrome.....From Documentation obtained via the internet, we believe that this statement was derived from a study commissioned by Lydd Ashford Airport (LAA), and conducted by Nigel Deacon of Airfield Wildlife management

(AWM) and Dr Mark McLellan of Parsons Brinckerhoff. At no point was the CAA asked to accept or to agree to the findings of this study.

- Reference to this study is also contained within evidence presented by LAA consultants, Indigo Planning Ltd, to Shepway District Council, as part of the submission for the 'Lydd Airport Assessment and Planning Application'. No CAA opinion was sought, nor was CAA asked to accept or agree to the contents of this submission'. Captain Chapman's letter then goes on to explain that the methodology used by the airport's consultant is outdated and has been replaced by a system that focuses more on the severity of the hazard, based upon the size and weight of the birds involved.

- Clearly one could expect the hazard to be classed as severe at Lydd, given that the region is under the largest migratory bird routes in Southern England and the local bird population is dominated by gulls, geese and swans; the species known to inflict most damage to aircraft engines and hulls.

- Captain Chapman also confirmed *that* ' There is no proven mathematical model relating to the probability of a birdstrike incident at a given airport. This is because local variables such as nearby attractants, local habitat management, seasonal weather variations, migratory bird patterns, etc will determine the birdstrike risk as an aerodrome.' In other words you cannot predict the birdstrike risk at one airport based upon historical information from another; so LAA's comparison with other UK airports is meaningless. Moreover, other airports are not located close to a nuclear power station, so LAA would be subject to much tougher restrictions which again invalidates their comparisons.

- We must conclude that the LAA's suggestion that airport expansion would have little impact on the local bird population is invalid. It has not sought any form of approval from the CAA for this assertion. It seems clear from Captain Chapman's letter that any promises which LAA makes to the planning process would be overruled by the CAA when it comes to licensing the expansion, given that protection of the nuclear power station will be paramount.

- As well as the CAA's comments, the NII wrote to us over the issue of birdstrike. We had raised a concern relating to the probability of an aircraft collision with the nuclear power stations. We noted that recent incidents in New York and Rome prove that bird management programmes cannot eliminate birdstrike and it was unacceptable to have this risk so close to a nuclear power station. NII replied saying that a strict bird management programme would need to be put in place. Whilst this response is inadequate (one of the many reasons why the NII's position would not withstand challenge at a Public Inquiry), it does underline the fact that tough bird control measures would be imposed.

- So it is clear from these communications that both the CAA and NII would insist on much tighter controls than has been implied by the airport's consultants, thus putting the Dungeness bird reserves at risk.

- The relevant sections of Captain Chapman's letter have also been copied to Natural England and the RSPB. We trust that the planning officer's report will, in any case, maintain its recommendation to refuse the planning application. We just want to ensure that councillors are made aware of this CAA communication which validates the concerns raised by both of these organisations.

The Managing Director of GSE Design & Build Ltd has written a letter as a member of the Channel Chamber of Commerce:

- I was invited to an open day at Lydd Airport recently where I was able to view the current development proposals.

- It was very interesting to be able to view the area of land where the runway extension is planned and hear the specialist ecological consultant explain the various surveys and reports that have been carried out to assess any possible impact on the surrounding wildlife and nature reserves. It was clear that the airport have researched this proposal by taking top advice and given due and careful consideration to any effect this may have on both the local residents and the natural surroundings. This I found very reassuring as a resident of the New Romney area.

- I have had the chance to consider and evaluate the minor potential disadvantages against the many benefits and advantages to not to just Romney Marsh but Kent residents in general for improved flights and communications in nearby Ashford and Folkestone. I should therefore like to register my strong vote and approval for this scheme.

- With the current government support for sustainability and environmental strategies to reduce carbon omissions it makes perfect sense to develop regional airports. I would hope that, always providing this proposal meets with the current government planning guidance and regulations, you will recommend this scheme to the members of the council for approval

LAA's ornithology specialist and author of LAA's draft Bird Control Plan (Nigel Deacon) has written a three page letter setting out his expertise in the field of aviation bird management and professional opinion on the acceptability of LAA's proposals on the SPA and pSPA. This is summarised as follows:

- I have extensive experience and expertise in the field of aviation ornithology since 1983, including military, CAA and awards for MOD conservation work.

- There is no aerodrome in the world (and there are many of them adjacent to protected bird reserves, as we have cited) that has been restricted from developing on the grounds of collateral impact from aerodrome bird control. It must be remembered that we are proposing a moderation of, and restrictions on, the existing programme. SDC would be setting a global precedent if it were to do so in the case of London Ashford Airport, Lydd, a precedent which would no doubt attract a great deal of controversy in the field of aviation planning.

- I urge you, therefore, to be sure of your grounds if this issue is to be presented as a reason to refuse these applications. In my professional opinion, there are no convincing arguments to arrive at this conclusion, and by contrast we have presented solid evidence and case studies which show beyond reasonable doubt, that management of the birdstrike risk at LAA and protection of the integrity of the SPA and other designations, are compatible now, and can continue to be compatible into the future.

- To me, the 'acid test' of this issue is, rather than engaging in circular arguments based on human misconceptions and opinions, to sit in the hide at the RSPB reserve at Arc Pit, as we have done, observing hundreds of birds representing dozens of species, whilst pyrotechnics are fired and distress calls are broadcast at the Airport in "worst case" scenarios. The scientific conclusion is very clear; nothing happens! It would be bizarre indeed, if this non-effect was to form a central reason for refusal.

- The bird control measures at the Airport and arising as a result of LAA's expansion proposals would not, beyond reasonable scientific doubt, have an adverse affect on the integrity of the SPA or the pSPA. Indeed, it is my opinion that bird control at the Airport would improve in quality, while reducing its impact on the SPA (compared to existing levels) as a result of LAA's expansion proposals.

LAA have also submitted a letter from Professor Callum Thomas (Chair of Sustainable Aviation, Manchester Metropolitan University) to support their case. This sets out Professor Callum Thomas's considerable qualifications and experience in the field of Bird hazard management and aerodromes and also his observations on LAA's proposals:

- It is my understanding that the issue of concern in respect of proposals to develop LAA is the potential of airfield bird dispersal activities to cause disturbance to birds in the immediate surrounding area, some of which is designated as an SPA. Based on my personal experience in the field of bird hazard management and my understanding of the situation at LAA, I would make the following observations.

- There are a number of examples of airports around the world that are situated close to, or even within the geographical area of sites designated for bird conservation. My understanding is that these examples have been set out in detail to Shepway District Council.

- I am confident that the Bird Control Management Plan for LAA which has been submitted in draft in order to incorporate views from stakeholders post-planning, could be made to operate in a way that would ensure the integrity of the bird reserves (especially the SPA) is protected.

- My personal experience is that once an effective bird control programme has been implemented and habitat management measures have had time to take effect, the amount of effort required for bird detection and dispersal can be reduced significantly.

- However, under the circumstances, it would seem appropriate to include a planning requirement that would require that liaison be maintained with bodies responsible for the SPA, and other bird reserves. This would ensure the integrity of the bird reserves (especially the SPA) is protected.

## **Comments**

Issues raised by individual objections are summarised in the September 2009 council report and addressed (as appropriate) in the appraisal sections of the September 2009 and Supplementary report. Issues raised by the Managing Director of GSE Design & Build Ltd are also considered to be addressed in these reports.

Officers have responded to LAA's ornithology specialist, which includes the following:

- We note your extensive experience in the field of aviation ornithology and have read your overview, along with our environmental consultants BV.

- As you will be aware LAA's planning applications for expansion have been before the council for approximately 3 years. The council has during that time received various submissions from LAA, including aviation and ornithology. The council has received substantial submissions from Natural England (the Government's statutory advisor), RSPB (national experts in the field of bird conservation with substantial interests in the local area), Kent County Council's ecologist and others. The council has also engaged international environmental consultants Bureau Veritas to independently advise, including an ornithology specialist (Kevin Webb).

- As you may now be aware SDC has now completed a supplementary report for the 3 March Council meeting, which includes comments and recommendations about the impact on birds, including potential conditions if the council decides to resolve to grant consent.

- Please note BV do not agree they have accepted that aircraft noise is not an issue. I understand their position is that aircraft noise in isolation (with no visual and no BCMP activity) would probably be habituated to, but evidence in the literature is extremely varied, one study suggesting no effect and another suggests that aircraft movements have a large effect. BV acknowledges your views and professional opinion, although disagree with your conclusions. Natural England, RSPB, KCC and others all reach the same and differing conclusion on this point to that of LAA.

- Officers acknowledge this is a matter of professional opinion and a very specialist area, but find it difficult to ignore the views of its own consultant, Natural England, KCC and RSPB.

- As this is a key issue in the determination of these applications we can only suggest your points are made as part of the LAA presentation to council on 3 March.

The above comments also apply to the Professor Callum Thomas comments. With regard to the Indigo Planning (LAA) comments this arrived at the time of writing this supplementary information sheet and will be responded to verbally at the council meeting.

## APPENDIX A

Mr Terry Ellames  
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CT20 2QY

**By email and post**  
**Terry.Ellames@shepway.gov.uk**  
SMG/EL/586001

25 February 2010

Dear Mr Ellames

### **LONDON ASHFORD AIRPORT, LYDD (LAA) PLANNING APPLICATIONS Y06/1647/SH AND Y06/1648/SH**

We write on behalf of LAA in response to the Officer's Supplementary Report A/09/05 to all Council Members published on 19 February 2010 (the Officer's Report). We would be grateful if you could make this letter available to Councillors prior to the meeting on 3 March 2010.

LAA is pleased with the positive approach that the Case Officer has taken in the Officer's Report in relation to the following:

- the removal of the reason for refusal associated with the Special Area of Conservation (SAC) (first part of paragraph 9.2);
- the acknowledgment that the proposed planning restrictions form an adequate basis to move forward in the event of a decision to grant permission (paragraph 7.46);
- agreement that the noise issues are relatively minor and do not, by themselves, constitute a valid reason for refusal (paragraph 7.32);
- agreement that we have carried out adequate ecological assessments at Hammonds Corner (paragraphs 7.20 and 9.5); and
- the acknowledgment that it may be possible to refine the Bird Control Management Plan to the Council's satisfaction, so this reason for refusal could then fall away (7.11).

However, it is very disappointing that the Officer is still recommending the refusal of the applications on environmental grounds. It is even more disappointing that the Officer considers that the noise impacts are a reason for refusal. We believe these are not justified reasons for refusal.

We address each of the reasons for refusal in turn, but first we address the errors in the Revised Appropriate Assessment (RAA).

## The Revised Appropriate Assessment

The first recommendation of the Officer's Report is for the Council to agree and adopt the AA, which concludes that:

*"A) The proposals for a runway extension and new terminal and car park are considered not to have any adverse effects on the integrity of the Dungeness Special Area of Conservation (SAC), subject to mitigation.*

*B) The applicant has not demonstrated the proposals will not have an adverse effect on the integrity of the Dungeness to Pett Level Special Protection Area (SPA), and by applying the 'precautionary principle' the proposals should not be allowed."*

Whilst the RAA is correct in its conclusions for the SAC, the RAA is incorrect in its conclusions for the Dungeness to Pett Level Special Protection Area (SPA).

Specifically, LAA has previously advised that the issues in respect of the SPA require an advanced understanding of aircraft noise and aerodrome bird control and their environmental impacts on birds. Given the errors and misunderstandings on the issue of bird control impacts contained within the RAA, it would appear that the RAA has not been written with the requisite experience and expertise in these matters.

The enclosed document, "*Applicant's Proposed Revisions to the February 2010 Revised Appropriate Assessment Report*" contains at Appendix 1 a table (Table 1) that sets out the key paragraphs in the RAA which contain errors and misunderstandings.

## The Recommended Reasons for Refusal

### Reason 2A: Significant adverse effect Dungeness to Pett Level Special Protection Area (SPA)

The first recommended reason for refusal states that LAA has not demonstrated that the proposals will not have a significant adverse effect on the Dungeness to Pett Level Special Protection Area (SPA). We strongly disagree with this reason for refusal as it is completely unjustified.

Firstly, the wording is incorrect; the test for the SPA is whether the integrity of this site would be adversely affected. As highlighted previously, Circular 06/2005 defines integrity of a site as follows:

*"the integrity of a site is the coherence of its ecological structure and function, across its whole area that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified. It is for the decision-taker to consider the likely and reasonably foreseeable effects and to ascertain that the proposal will not have an adverse effect on the integrity of the site before it may grant permission."*

The applicant has shown, beyond reasonable scientific doubt, that the integrity of the SPA would **not** be adversely affected, by presenting vast evidence in respect of aircraft noise and visual impact and for bird control activities. The evidence cited in the Officer's Report, in



particular in relation to advice from BV for the integrity of the site being affected, is insubstantial and is not supported by evidence. LAA's evidence has been based on fieldwork undertaken since 2004 by experts in the field ornithology at aerodromes. BV, Natural England and Kent County Council have not even visited the site and their views are based on a lack of experience and expertise in these matters leading to incorrect interpretation of the evidence presented by LAA.

The Officer's Report sets out a summary of the information that LAA submitted in December 2009 on this topic at paragraphs 7.6 – 7.11. LAA disagrees with this section, which is based on an RAA that contains inaccuracies (as highlighted above).

Reason 2B: Adverse effects on the Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (SSSI) and Dungeness National Nature Reserve.

The reasons given for recommending refusal of the applications in relation to the impacts on the SSSI appear to be based on a favouring of the views on this matter of BV and Natural England. The reasons given appear to relate to nitrogen deposition, and impacts on birds (both from aircraft noise and bird control).

It is especially surprising that BV cite nitrogen deposition as an issue, when they have not done so for the SAC. LAA has clearly shown (and had thought agreement had been reached with BV's expert on this matter) that nitrogen was not an issue for the SSSI. Even if nitrogen deposition were a material concern for the SSSI, Officers have already proposed in the report that stringent monitoring be carried out, and any possible adverse effects (which would take place near to the runway) would be compensated by the proposal to foster and protect high quality vegetated shingle away from the runway area.

The impact on the SSSI in respect of birds (both from aircraft noise and bird control) would be no greater than at present, and improvements to bird control and improvements to the habitat of non-hazard birds would result in an overall improvement.

Reason 2C: Adverse effect on the proposed extension to the SPA and potential Ramsar.

Again, we dispute the justification for this recommended reason for refusal in relation to the proposed extension to the SPA and potential Ramsar site. The proposed extension to the SPA (which has not even been formally proposed by Natural England) and non-listed Ramsar are not afforded statutory or policy protection and less planning weight should be attached to them compared with the designated SPA. Nevertheless, the impacts are not significantly worse than the SPA and, therefore, are not a reason to refuse the applications on either of these grounds.

Despite the lack of statutory and policy protection for the non-listed Ramsar, the Environmental Statement (and supplementary environmental information 2006 - 2009) assessed the proposed extension to the pSPA and the non-listed Ramsar as if they were designated, rather than proposed designations. Our letter of 7 February 2010 addresses this (Appendix 3 of the Officer's Report, however, we note the enclosures to this letter are omitted). LAA's assessment of the proposed extension to the pSPA and the non-listed Ramsar goes over and above the legal requirements for assessment. The conclusion reached is that there is no reasonable scientific doubt that the integrity of the proposed sites would not be adversely affected.

We note that paragraph 7.30 of the Officer's refers to any agreement on compensation being recorded in an agreement made pursuant to Section 11.1 of the Local Government Act 1972. The correct reference should be to Section 111 of the Local Government Act 1972, being the Council's power to do anything, which is calculated to facilitate the discharge of any of their functions. We would also just make the point that given LAA's offer of not claiming compensation should the Council revoke or modify any planning permission granted, that this makes any potential revocation or modification neutral and emphasises the non-material nature of this issue.

Our point with respect to the Council's requirement to review any planning permission should the non-listed Ramsar be designated is that there is no legal requirement placed on the Council to undertake such a review. Instead, the Council would be free to decide whether it should follow the Government's policy and carry out a review of an extant planning permission or whether there would be good reasons to depart from policy (within the confines of Wednesbury reasonableness) and not carry out a review of an extant planning permission. However, this really is just background non-material information as any potential revocation or modification would have a neutral consequence on the Council in light of LAA's offer. Councillors do not need to concern themselves with this procedural point, but rather assess the application based on the application material before them.

Reason 2D: There will be adverse noise effects on the local community, especially near the Lydd Airport.

It is absurd that noise impacts are a recommended reason for refusal. The Officers Report recognises at paragraph 9.2 that it would not be a reason for refusal by itself. Officers appear to have included on the basis that there are other reasons for refusal. This is not a reasonable or proper way to assess this important issue. The fact is that the impact from noise is relatively minor and should not be a reason for refusal.

Reason 2E: No Overriding Strategic Justification

In our letter of 7 February 2010, we addressed this issue, which Officers have clearly overlooked. Firstly, this test does not apply to the SSSI. It is a test under the Conservation (Natural Habitats &c.) Regulations 1994 and, therefore, applies to the SPA and SAC. However, there would not be any significant impacts on the features of the SSSI which cannot be adequately compensated by implementing the recommendations proposed within the Airfield Biodiversity Action Plan.

In summary, LAA has demonstrated, beyond reasonable scientific doubt, that there would not be an adverse affect on the integrity of any of the European designated (or proposed) sites or the SSSI. Therefore, there is no well-founded reason to refuse the applications.

In short, we are confident that the conclusions of LAA's assessments are correct and these applications should be approved.

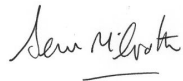
Finally, we would like to draw your attention to paragraph 9.8. Whilst this paragraph correctly refers to the level of certainty being beyond "reasonable scientific doubt", the paragraph incorrectly applies the test by stating that Members need to be satisfied there are "no reasonable prospects that BV were right in its conclusions." This is clearly not correct, as Members must look at **all** of the evidence before them and form a decision as to whether that evidence (from BV, LAA, Natural England etc) enables them to conclude that there is no reasonable scientific doubt that the proposals would not have an

adverse affect on the integrity of the SPA. This correction will need to be made to Members

We would also point out that a number of local plan policies that have not been saved under paragraph 1(3) of schedule 8 of the Planning and Compulsory Purchase Act 2004, have been cited as policies that have been considered in coming to your decision. These are policies BE7, BE15, U7, U8, CO3, CO15 and TR1.

If you have any queries regarding the above please do not hesitate to contact Eilish Loftus or myself.

Yours sincerely



Sean McGrath

Indigo Planning

Enc: Applicant's Proposed Revisions to the February 2010 Revised  
Appropriate Assessment Report  
cc: Chris Lewis, SDC  
Keith Cane, SDC  
Jonathan Gordon, LAA

# Applicant's Proposed Revisions to the February 2010 Revised Appropriate Assessment Report

Whilst the Revised Appropriate Assessment (RAA) is correct in its conclusions for the Dungeness Special Area of Conservation (SAC), the RAA is incorrect in its conclusions for the Dungeness to Pett Level Special Protection Area (SPA). This incorrect conclusion is as a result of errors and misunderstandings that have informed the RAA. Appendix 1 to this paper summarises the key errors and misunderstandings. In light of these errors and misunderstandings, it can be said that the conclusion of the RAA in respect of the Dungeness to Pett Levels SPA should be as set out in this paper.

*References to "AN1" "S109" "L5" "BHCP1" "BHCP2" "SI09" "SI2" "WBS1" "ES1" "ES2" "ES3" and "ES4" are references to the documents as identified in section 2 of the RAA.*

## 1. DUNGENESS TO PETT LEVELS SPA

### 1.1 Direct Impacts

1.1.1 There will be no direct impacts on habitat loss on the SPA.

### 1.2 Indirect impacts

1.2.1 Indirect Impacts assessed are:

- (a) Noise impacts from aircraft;
- (b) Cumulative impacts of aircraft noise and visual disturbance by aircraft; and
- (c) Impacts arising from bird control measures.

#### Noise impacts from aircraft

1.2.2 Information considered was **AN1**, **S109** and **L5**. In addition, a discussion on this issue was held in September 2009. Scientific literature on the impacts of aircraft noise has been reviewed. Case studies of other aerodromes lying next to SPAs have been considered.

1.2.3 On balance, though the literature cannot be absolutely conclusive (and in any event this is not the legal test under the Conservation (Natural Habitats &c.) Regulations 1994), it is reasonable to take >80db (A) as a scientifically reasonable threshold to assess impacts on birds from aircraft. No other measure has been proposed or brought forward during discussions or consultations. Using this measure, it is concluded that birds at the SPA gravel pits would not suffer undue disturbance, and therefore the integrity of the SPA would be unaffected. Evidence at other aerodromes reinforces this conclusion.

#### Cumulative impacts of aircraft noise and visual disturbance by aircraft.

1.2.4 The scientific literature on this issue is sparse, as it is impossible to separate out the cumulative impacts of noise from any visual effects. Nevertheless, a photomontage in **L5** shows the difference in visual impact at one part of the SPA for the existing aircraft and the larger aircraft that would be able to use the extended runway. The assertion that birds at the gravel pit would suffer no greater disturbance seems a reasonable one based on that graphic, especially when combined with evidence at other aerodromes.

- 1.2.5 It is concluded that visual disturbance from aircraft is not a significant consideration, over and above aircraft noise. Indeed, it is more likely that other forms of visual disturbance, including from dog walkers and bird watchers is more significant, and this was observed during the short studies in **L5**. It can therefore be concluded with reasonable scientific certainty that the cumulative impacts of aircraft noise and visual disturbance by aircraft would not adversely affect the integrity of the SPA.

#### Bird Control

- 1.2.6 Information considered was **BHCP1, BHCP2, SI09, SI2, WBS1, ES1, ES2, ES3** and **ES4** along with supplementary letters, **L5** Appendix 5 and various submissions during the consultation process.
- 1.2.7 It has previously been established that the draft Bird Control Management Plan (BCMP) comprises four components:
- (a) On-airfield management techniques such as long grass policy, bramble removal and other habitat management;
  - (b) Off-airfield management agreements with neighbouring land owners or citing Air Navigation Orders;
  - (c) Safeguarding negotiations in a 13km radius; and
  - (d) On-airfield active dispersal.
- 1.2.8 The only component of the BCMP which is most likely to affect the integrity of the SPA is on-airfield active dispersal. This in itself contains a number of components and options, including:
- (a) Trapping or shooting birds;
  - (b) The use of distress calls;
  - (c) The use of cartridge pyrotechnics; and
  - (d) Manual disturbance using vehicles and arm waving.
- 1.2.9 Of these, the use of distress calls and cartridge pyrotechnics are considered most likely to affect the integrity of the SPA. It is noted that the short study to investigate the extent of impact in these respects in August 2008 was repeated in December 2009 (**L5**).
- 1.2.10 These studies show that under worse case scenarios, both pyrotechnic cartridges and distress calls can cause disturbance to the SPA. However, these worse case methods were deployed to assess the acceptable thresholds for the BCMP. The BCMP would contain these acceptable levels and as the BCMP would be secured through an appropriately wording planning condition agreed with Shepway District Council, it can be concluded with reasonable scientific certainty that the BCMP would not affect the integrity of the SPA.

## 2. **DUNGENESS TO PETT LEVELS PROPOSED SPA**

### 2.1 Direct Impacts

- 2.1.1 There will be no direct impacts on habitat loss on the SPA.

## 2.2 Indirect Impacts

- 2.2.1 The likely boundary of the pSPA is shown in Figure 3 to the RAA. The inclusion of a gravel pit to the north of Lade Pit would result in the SPA being slightly nearer to the airfield than at present.
- 2.2.2 The environmental impact issues for the pSPA are exactly the same as for the SPA:
- (a) Noise impacts from aircraft;
  - (b) Cumulative impacts of aircraft noise and visual disturbance by aircraft; and
  - (c) Impacts arising from bird control measures
- 2.2.3 It is concluded that any increase in the extent of the impacts as a result of the boundary of the SPA being closer to the Airport site would not be significant so as to have an adverse affect on the integrity of the SPA should the pSPA become a formally proposed pSPA and subsequently a designated SPA. Accordingly, the impact assessment tests are the same as in section 1 above, and the same conclusions are reached. The integrity of the proposed SPA (as it is currently understood) would be unaffected by aircraft noise, cumulative impacts of aircraft noise and visual disturbance by aircraft, and bird control.

## 3. **PROPOSED RAMSAR**

### 3.1 Direct Impacts

- 3.1.1 Whilst there would be a likely land loss of habitat within the proposed Ramsar site, it is considered that the land to be lost is of low value to birds for which the proposed Ramsar would be designated and as such would not have an adverse affect on the integrity of the Ramsar site should it be listed.

### 3.2 Indirect Impacts

- 3.2.1 The likely boundary of the proposed Ramsar is shown in Figure 4 to the RAA.
- 3.2.2 It is concluded from the evidence submitted in respect of the two planning applications that the impacts on the proposed Ramsar arising as a result of the two planning applications would be similar to those predicted for the ornithological aspects of the SSSI (which is concluded not to be adverse).
- 3.2.3 Accordingly, the integrity of the proposed Ramsar (as it is currently understood) would be unaffected by aircraft noise, cumulative impacts of aircraft noise and visual disturbance by aircraft, and bird control.

## 4. **OVERALL CONCLUSION**

- 4.1 Based on the information supplied it is concluded that at both the 300,000 or 500,000ppa scenarios, the noise and visual impacts of the proposals and the controlled implementation of the BCMP would not have an adverse effect upon the integrity of the SPA.
- 4.2 In the case of the pSPA, any increase in the extent of the impacts as a result of the boundary of the SPA being closer to the Airport site would not be significant so as to

have an adverse affect on the integrity of the SPA should the pSPA become a formally proposed pSPA and subsequently a designated SPA.

- 4.3 Regarding the proposed Ramsar, it is concluded that the impacts would be similar to those predicted for the ornithological aspects of the SSSI (which is concluded not to be adverse), which would not adversely affect the integrity of the proposed Ramsar site.
- 4.4 As the proposed SPA is not a formally proposed "pSPA" and as the Ramsar is currently not listed, these two sites are afforded no legal or policy protection and hence there is no legal requirement for the Appropriate Assessment to assess these sites, as indeed the RAA points out. Accordingly, any weight to be attached to the proposed SPA and the non-listed Ramsar is considerably less than the weight that should be attached to the designated SPA and SAC.
- 4.5 Sections 1 to 4 of this paper should be taken as superseding those parts of the RAA that assess the affect of the two planning applications on the Dungeness to Pett Levels SPA, the Dungeness to Pett Levels pSPA and pRamsar.

## Appendix 1

### Response to the February 2010 Revised Appropriate Assessment Report

The first recommendation in the 'Amended Recommendations' section in the officer's supplementary report reads as follows.

*"That the Bureau Veritas Revised Appropriate Assessment report in Appendix 2 be agreed and adopted by the Council, as the competent authority, having regard to the Wildlife and Countryside Act 1981 (as amended) and Regulation 48 of the Conservation (Natural Habitats and c) Regulations 1994. This concludes:*

*a) The proposals for a runway extension and new terminal and car park are considered not to have any adverse effects on the integrity of the Dungeness Special Area of Conservation (SAC), subject to mitigation.*

*b) The applicant has not demonstrated the proposals will not have an adverse effect on the integrity of the Dungeness to Pett Level Special Protection Area (SPA), and by applying the 'precautionary principle' the proposals should not be allowed."*

5. Whilst the Revised Appropriate Assessment (RAA) is correct in its conclusions for the Dungeness Special Area of Conservation (SAC), the RAA is incorrect in its conclusions for the Dungeness to Pett Level Special Protection Area (SPA) as it contains a major error in one of its two conclusions.
6. LAA has previously advised that the issues in respect of the SPA require an advanced understanding of aircraft noise and aerodrome bird control and their environmental impacts on birds. Given the errors and misunderstandings on the issue of bird control impacts contained within the RAA, it would appear that the RAA has not been written with the requisite experience and expertise in these matters.
7. Table 1 below sets out the key paragraphs in the RAA which contain errors and misunderstandings. However, the two central misunderstandings, as summarised by BV in the General Conclusion to the RAA, are:
  - 7.1 BV has inspected LAA's short studies on the impacts of on-airport bird control activities at LAA on bird communities at adjacent bird reserves, and in some measure disagree with the conclusions. BV appears to concentrate on one part of the study that shows that birds could be disturbed when worse case bird dispersal methods were deployed. However, these worse case methods were deployed to assess the acceptable thresholds for LAA's Bird Control Management Plan (BCMP). BV has not taken into account the proposals to limit and control bird dispersal activities to levels that **were shown not to cause disturbance to the SPA**. The BCMP, which would contain these acceptable levels, would be secured by an appropriately wording planning condition agreed with Shepway District Council. Other inaccuracies in BV's analysis of these studies are set out in Table 1 below.
  - 7.2 BV states that *"there is considerable uncertainty within the BHCP [i.e. the BCMP which BV calls the Bird Hazard Control Programme (BHCP)] which suggests that bird scaring activities would have to be adjusted to ensure the safety of aircraft."* This conclusion demonstrates the lack of credentials that BV has for this section of the RAA. As has been repeatedly confirmed, the BCMP submitted by LAA is by necessity a flexible document (which would be finalised in consultation with stakeholders post-planning). However, **there is no uncertainty that the BCMP would safeguard aircraft safety AND protect the SPA**, as the proposals to limit and control bird dispersal activities were shown not to cause disturbance to the SPA whilst being sufficient to safeguard aircraft. If any doubt on this issue remains, we



refer you to the recent letters from Dr. Nigel Deacon and Professor Callum Thomas, who are noted experts in this field.

8. The sections of the RAA forming conclusions on the SPA are poorly set out, so that in many cases, the conclusions and supporting arguments are not clear. For example, one main conclusion appears to be that that the research on disturbance from aircraft noise is “contradictory.” Research in many fields of scientific endeavor is often “contradictory”. However, there was a useful dialogue with BV and SDC on this topic at a meeting in September 2009, when it was resolved that the impacts from aircraft noise of the SPA were not an issue, but visual effects were. The issue of possible visual disturbance was subsequently addressed in LAA’s December 2009 submission.
9. It is our opinion, along with the rest of LAA's world renown ornithology team, that the RAA dealing with the SPA is not correct and instead the correct conclusion can only be "*Based on the information supplied it is concluded that at both the 300,000 or 500,000ppa scenarios, the noise and visual impacts of the proposals and the controlled implementation of the BCMP would not have an adverse effect upon the integrity of the SPA.*"
10. The corrections required are set out in Table 1 below.

**Table 1 Key paragraphs in the RAA which contain errors and misunderstandings**

	Paragraph Number	Text from the Revised Appropriate Assessment of the Proposed Development at London Ashford Airport on Sites of European Importance dated February 2010	Response
	<b>4.3</b>	<b>Dungeness to Pett Levels SPA – Indirect Impacts</b>	
10.1	4.3.4	<i>Information presented under Section 3 of AN1 suggests there are no studies that have investigated the effect of aircraft noise on Bewick's Swan, Shoveler, Common Tern, Little Tern or Mediterranean Gull, but that work on other waterbird species suggests that noise levels of &gt;80dB(A) may cause disturbance.</i>	No justification is offered for the statement that 80dB(A) is not an acceptable threshold.  LAA's proposal of 80dB(A) as a threshold for disturbance to birds, such as the species listed in paragraph 4.3.4, is acceptable and based on scientific literature.
10.2	4.3.8	<i>The proposals also allow for up to 2000 helicopter movements per year and the hosting of air shows and unspecified training activity which do not appear to have been considered in the assessments of aircraft noise or visual disturbance.</i>	The noise assessment takes account of helicopters.  At the time of submission in 2006, the Airport ran an annual air show for the local community. This air show and training activities are not affected by the two planning applications

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			(they can continue without the expansion plans) and are therefore not part of the proposals before the Council.
10.3	4.3.10	<i>From an extensive review of the literature relating to the impacts of aircraft activity upon birds (breeding and wintering) it cannot be concluded with any certainty that 80db is indeed a suitable threshold below which impacts to bird species and assemblages are unlikely. The level of noise which will produce a startle response is clearly going to be related to a number of additional factors including visual impact, species proximity and flock assemblage.</i>	<p>This comment is at odds with the comments made to LAA and its consultants during a meeting held in September 2009.</p> <p>As stated above, no justification is offered for the statement that 80dB(A) is not an acceptable threshold. LAA's proposal of 80dB(A) as a threshold for disturbance to birds, such as the species listed in paragraph 4.3.4, is acceptable and based on scientific literature.</p>
10.4	4.3.12	<i>The applicant has supplied details of a number of sites where an SPA lies adjacent to the boundary of an existing airport and the assumption is that each of these sites has not had an adverse effect upon site integrity. This is a simplistic assumption and it is not possible to compare each airport without the availability of direct survey data which supports or refutes these claims. RAF Lakenheath is not comparable to LAA as it is an inland site supporting breeding stone curlew and nightjar rather than large assemblages of wintering wildfowl. City of Derry Airport is similar in some respects to LAA with Lough Foyle supporting large numbers of wintering waders and wildfowl. Lough Foyle is however a more homogenous site with one large expanse of water and associated shoreline. There is no evidence that birds don't simply avoid the area of the SPA lying close to the airport and there is no evidence that patterns of bird use in the vicinity of the airport have not changed over time as the airport has increased its number of flights. Each case should be judged on its merits rather than by assuming a lack of effect based upon superficially similar sites cited from elsewhere where a lack of robust</i>	<p>A number of examples of other aerodromes which lie next to bird reserves have been submitted to Shepway District Council.</p> <p>Whilst it is obvious that none of them are not directly comparable to LAA, the general point is made that birds are able to habituate to aircraft noise, and that aerodromes and SPAs are compatible neighbouring land uses.</p> <p>Whilst we agree that each case should be judged on its merits, the other aerodrome examples are a material consideration, and give weight to the arguments presented by LAA. . BV seems to suggest that aerodromes and bird</p>

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		<i>survey information supports this assumption.</i>	reserves are not compatible, but present no evidence to support this assertion whilst LAA's extensive survey work at LAA and the examples of other aerodromes add credible weight, to beyond reasonable scientific certainty, LAA's case that airports and birds can live side by side.
10.5	4.3.13	<i>The site is important in supporting migratory and winter birds whose winter distribution may be transitory based upon the time of year and weather conditions and therefore the assemblage of birds may vary over time. It is unlikely that all birds using the site will be habituated during the winter and migratory periods to this disturbance and will therefore respond differently. Birds can often arrive in large numbers during prolonged cold weather and these birds would also not be habituated to conditions at the airport.</i>	This comment appears to suggest that migratory and winter birds do not habituate to aircraft noise.  However, the comment is not supported by the scientific literature, or by experience at other aerodromes.  Accordingly, the comment is speculative, without evidence and quite simply not correct.
11.	4.3	<b>Dungeness to Pett Levels SPA – Bird Hazard Control Programme</b>	
11.1	4.3.17 & 4.3.18	<i>With regard to bird-scaring, under section 3.2.6 of <b>BHCP1</b> it is stated that this will certainly not affect birds &gt;200 m from the airfield, which is based upon experience with current activities and survey work undertaken on two days in the summer of 2008 (<b>SIV6</b>). Further survey work was undertaken during the winter (<b>L5</b>) which investigated the effects of pyrotechnics and distress calls of various target species.  <i>The form and spatial scale of the activities will remain unchanged and only their frequency will increase (as stated under section 3.2.6 of <b>BHCP1</b>) so it could be argued that the impact would still be only within 200m of the airfield. The results of the survey work in 2008 suggest that birds were startled but did not take flight as a result of the activity but work was only undertaken</i></i>	These paragraphs quote from BHP1, which was submitted in October 2007 and which has been supplemented by the draft BCMP submitted in December 2009.  BV appears to concentrate on one part of the study that shows that birds could be disturbed when worse case bird dispersal methods were deployed.  However, these worse case methods were deployed to assess the

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		<p>during the summer and not when the majority of birds (and therefore a different assemblage which would be likely to react differently to disturbance events) are using the site during the winter months. The survey work undertaken over two days (November 30th and December 1st 2009) showed that the use of pyrotechnics disturbed curlews and oystercatcher foraging in fields close to Lade Pit approximately 600m (assumed from interpretation of the L5 report and aerial photography) from the SPA on both days. Sound levels recorded at both Lade Pit and Arc Pit were similar (70-73dB and 71-79dB respectively) during the use of bird scaring cartridges although birds at the Arc Pit (which is much closer to the airport) were not visibly affected by the pyrotechnics. Presumably wind direction and speed have a significant effect upon the loudness of the pyrotechnics based upon this data and it is difficult to predict effects on birds under different climatic conditions. This is probably explained by the very different bird assemblage present at the time of survey. Curlew and oystercatcher exhibit startle responses to different stimuli than wildfowl which are often more accustomed to disturbance and human activity.</p>	<p>acceptable thresholds for LAA's BCMP. BV has not taken into account the proposals to limit and control bird dispersal activities to levels that <b>were shown not to cause disturbance to the SPA</b>. The BCMP which, would contain these acceptable levels, would be secured by an appropriately wording planning condition agreed with Shepway District Council.</p>
11.2	4.3.19	<p>The survey work also showed that herring gulls were disturbed by the use of distress calls and moved from their resting or foraging locations in response to the calls being played. This occurred as far away as Greatstone village suggesting that the effects can be far reaching. When gulls are disturbed it is reasonable to assume that other species in the vicinity (particularly those prone to avian predators) will alter their behavior at the very least to be more vigilant.</p>	<p>This occurred at <u>worse case</u> use of distress calls.</p> <p>Please see refer to comments in respect of paragraph 4.3.17 &amp; 4.3.18.</p>
11.3	4.3.21	<p>Based upon the data supplied proving that birds as far away as 600m from the airfield may be affected by bird scaring cartridges combined with the effects of noise and visual effect from aircraft movements it cannot be concluded that the project would not have an adverse effect upon the integrity of the SPA.</p>	<p>This comment is made purely on supposition.</p> <p>There is no scientific evidence that birds would suffer intolerable disturbance from aircraft noise or visual effects, and it has been shown that if the use of bird scaring cartridges is controlled, as is</p>

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			proposed by LAA through an appropriately wording planning condition, then no effect at the SPA results either.
12.	4.4	<b>Dungeness to Pett Levels pSPA and pRamsar – Indirect Impacts</b>	
12.1	4.4.4 (PART)	<p><i>The severity of the impacts of the development will be increased for the following main reasons:</i></p> <ul style="list-style-type: none"> <li>• <i>The pSPA and pRamsar boundary would be significantly closer to the LAA than at present (Figure 3) and hence impacts in terms of noise (from aircraft and the BHCP) and visual would be greater;</i></li> <li>• <i>Designation of the pRamsar site requires consideration of the impact on the assemblage of bird species rather than individual species for which the SPA is designated. It would be difficult to conclude that the development (particularly the BHCP which has been proven to have an impact upon birds) would not have an impact therefore upon the integrity of the pRamsar site.</i></li> </ul>	<p>In the case of the pSPA, any increase is not considered to be significant so as to have an adverse affect on the integrity of the extended boundary should the pSPA become a formally proposed pSPA and subsequently a designated SPA.</p> <p>Regarding the non-listed Ramsar, it is concluded that the impacts would be similar to those predicted for the ornithological aspects of the SSSI (which is concluded not to be adverse).</p> <p>As the proposed SPA is not a formally proposed "pSPA" and as the Ramsar is currently not listed, these two sites are afforded no legal or policy protection and hence there is no legal requirement for the Appropriate Assessment to assess these sites, as indeed the RAA points out. Accordingly, any weight to be attached to the proposed SPA and the non-listed Ramsar is considerably less than the weight that should be attached to the designated SPA and SAC.</p> <p>Given that it can be</p>

	Paragraph Number	Text from the Revised Appropriate Assessment of the Proposed Development at London Ashford Airport on Sites of European Importance dated February 2010	Response
			concluded with certainty that the proposals would not have an adverse affect on the integrity of the SPA (and BV has accepted that there would be no adverse affect on the integrity of the SAC) these conclusions should be given significant weight.
12.2	4.4.5 (PART)	<i>Based upon the data supplied by the applicant which clearly shows that birds as far as 600m away from the airport boundary (L5) will be affected by the use of pyrotechnics combined with the effects of noise and visual disturbance form aircraft movements it cannot be concluded that the project would not adversely affect the integrity of the pSPA and pRamsar.</i>	Again, this is based on worse case use of pyrotechnics, and is a misunderstanding of the outcome of the short study.  BV has not taken into account the proposals to limit and control bird dispersal activities to levels that <b>were shown not to cause disturbance to the SPA</b> . The BCMP which would contain these acceptable levels, would be secured by an appropriately wording planning condition agreed with Shepway District Council.
13.	5.1	<b>In-Combination Effects</b>	
13.1	5.1.6 (PART)	<i>With regard to the two developments scenarios considered (runway only and increase of passenger movement to 300,000ppa and runway and terminal and increase of passenger numbers to 500,000ppa) both alone and in combination with each other it cannot be concluded that the integrity of the SPA would not be adversely affected.</i>	Incorrect. LAA's extensive surveys for the terminal building (with the runway extension constructed and in operation) has concluded that there would be no adverse affect on the integrity of the SPA (as is stated in the whole of this table).

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14.	7	<b>Extension of Dungeness to Pett Levels pSPA and Designation of New pRamsar Site</b>	
14.1	7.1.2 (PART)	<i>Effects would be greater considering the wider range of designations proposed including protection for the wintering assemblage of waterfowl and waders of more than 20,000 and inclusion of 12 individual species of waterfowl and waders on the citation. The effects would be further exacerbated by the closer proximity of the proposed boundary to the potentially disturbing events described above.</i>	Please see comments above for paragraph 4.4.4.
14.2	7.1.3 (PART)	<i>Effects upon the pRamsar site are more difficult to assess without confirmation of designated features. The pRamsar would however be designated for all of its habitat features (rather than those listed for the SAC) and as such research regarding sensitivity to critical loads for different plant species would need to be taken into account before a decision on effects could be reached. In view of the considerable questions raised about critical loads at present it seems likely that critical loads for some of these plant species (which are more sensitive to nutrification) would be lower than the currently assigned 10kgN/ha/yr for perennial vegetation of stony banks</i>	There is no evidence that plant species would be included in the Ramsar designation.
15.	8	<b>General Conclusion</b>	
15.1	8.1.9 (PART)	<i>It is difficult to quantify the impact upon breeding and wintering birds for which the SPA is designated because the body of scientific literature surrounding impacts of aircraft movements upon birds is extensive and in part contradicting with research finding various levels of impact depending upon species, assemblage and proximity. Research also suggests that small aircraft (including helicopters of which up to 2000 movements per year are predicted) may be more disturbing than larger aircraft.</i>	We disagree with the statement that “it is difficult to quantify the impact” of aircraft noise on birds. Based on scientific literature and experience at other aerodromes, we have provided a reasonable scientific assessment of the impact on birds due to noise.  The available scientific literature does not support the second statement in paragraph 8.1.8.

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15.2	8.1.10	<p><i>Having reviewed this information and based upon a review of the literature it is not possible to agree with the conclusion of the applicant that the implementation of this BHCP will not lead to a detrimental impact upon the features of the SPA. There is considerable uncertainty within the BHCP which suggests that bird scaring activities would have to be adjusted to ensure the safety of aircraft. The applicant states that bird scaring methods would only be effective within the proximity of the airport and as such would not impact birds within the SPA. This view was not supported by limited research on four dates which demonstrated that birds up to 600m away from the airfield boundary were disturbed by the use of pyrotechnic cartridges at a level of below 80dB.</i></p>	<p>BV appears to concentrate on one part of the study that shows that birds could be disturbed when worse case bird dispersal methods were deployed.</p> <p>However, these worse case methods were deployed to assess the acceptable thresholds for LAA's BCMP. BV has not taken into account the proposals to limit and control bird dispersal activities to levels that <b>were shown not to cause disturbance to the SPA</b>. The BCMP which, would contain these acceptable levels, would be secured by an appropriately wording planning condition agreed with Shepway District Council.</p>
15.3	8.1.11	<p><i>In summary the methods to be employed within the BHCP are not clearly enough defined in terms of frequency and location of use to be able to reach the conclusion that it would not have an impact upon the features of the SPA. Based on the information supplied it is not possible therefore to conclude that at either the 300,000 or 500,000ppa scenarios that the implementation of the BHCP would not have an adverse effect upon the integrity of the SPA.</i></p>	<p>Please see comments to paragraph 8.1.10 above. The correct conclusion that can only be drawn from the scientific evidence before Shepway District Council is that:</p> <p><i>Based on the information supplied it is concluded that at both the 300,000 or 500,000ppa scenarios, the noise and visual impacts of the proposals and the controlled implementation of the BCMP would not have an adverse effect upon the integrity of the SPA</i></p>
15.4	8.1.12	<p><i>The proposals as presented for runway extension only and runway extension with new terminal building will lead to indirect</i></p>	<p>Again, the correct conclusion that can only be drawn from the</p>



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		<i>impacts upon the SPA. In light of the wording and implementation of the Habitat Regulations it cannot be concluded that either project would not have an adverse effect upon the integrity of the SPA.</i>	scientific evidence before Shepway District Council is that:  <i>Based on the information supplied it is concluded that at both the 300,000 or 500,000ppa scenarios, the noise and visual impacts of the proposals and the controlled implementation of the BCMP would not have an adverse effect upon the integrity of the SPA</i>
15.5	8.1.13	<i>The proposals as presented for runway extension only and runway extension and new terminal building will lead to indirect impacts upon the pSPA and pRamsar should they be designated prior to determination of the planning application and/or completion of the development. In light of the wording and implementation of the Habitat Regulations it cannot be concluded that either project would not have an adverse effect upon the integrity of the pSPA and pRamsar.</i>	Please see our comments to paragraph 4.4.4.
16.	-	<b>Table 1 – Effects of the Development Proposals on the Conservation Objectives of the European Sites</b>	
16.1	-	Conclusions as to the effect on the integrity of the SPA, pSPA and pRamsar with mitigation currently state " <i>Cannot be excluded.</i> "	In light of the errors and inaccuracies identified in this table, it can be said with scientific certainty that the conclusions as to the effect on the integrity of the SPA, pSPA and pRamsar with mitigation should read "No".
17.	-	<b>General Minor Observations</b>	
17.1	1.2.5	The aim of this document is to report the potential for the project (in this case the CERC) to have an adverse effect on Natura 2000 Sites.	<b>Incorrect</b> reference to CERC? Delete " <i>(in this case the CERC)</i> "
17.2	3.4.1	The conservation objectives of the SAC, SPA pSPA and pRamsar, as produced by Natural England, are detailed in Appendix 1.	<b>Incorrect</b> cross referencing. Appendix 1 sets out the

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			Conservation Objectives for Dungeness to Pett Levels and Dungeness SAC; Appendix 2 sets out the Provisional Interest Features of the Intended Revision of Dungeness to Pett Levels SPA (including intended boundary extensions).