

**STATEMENT OF CASE
THE ROYAL SOCIETY
FOR THE PROTECTION OF BIRDS**

24 September 2010

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

In the matter of:

Planning Applications

Re: London Ashford Airport, Lydd, Romney Marsh, Kent

**Planning Inspectorate Refs: APP/L2250/V/10/2131934
 APP/L2250/V/10/2131936**



A. Overview of the RSPB's case

The site

- i. The area immediately around Lydd Airport has exceptionally high ecological value.
- ii. It has correspondingly high levels of legal (e.g. SPA/SAC) and policy protection.

Planning policy

- iii. The applicable planning policy framework both local (in the Local Plan) and national (in PPS9, PPS1 and - so far as relevant – the Aviation Transport White Paper) is strongly against development which will have any significant impact on the ecological value of the area surrounding the Airport.
- iv. The applications will by reasons of facilitating a major growth in flights, which in turn will require substantial bird scaring measures, will cause a significant impact on the ecological value of the surrounding European Sites.
- v. Even in circumstances where an overriding economic or social need is demonstrated, the Local Plan requires that negative impacts are minimised and that measures are taken to ensure that there is no net environmental loss:
 - a. it is not accepted that there is an overriding economic or social need for this development. Whilst the RSPB recognises that there would be some employment benefits, it does not accept that there is a need for aviation development here or that any such need should be accorded significant weight;
 - b. even if the Secretary of State were to form the view that there was an overriding economic or social need, at this stage the applications do not provide sufficient information on the impacts of increased flights and associated bird scaring and have not demonstrated that negative impacts have been minimised; and
 - c. further, there is no scope for adequate mitigation here so as to ensure no net environmental loss.
- vi. Thus even if the Secretary of State forms the view that there is an overriding economic or social need, the applications do not comply with the development plan and for similar reasons are in breach of national policy.

Other material considerations

- vii. The applications will have a significant adverse impact on the adjoining RSPB reserve which impacts cannot be mitigated.
- viii. Further, the airport safeguarding which will arise from the implementation of the applications will result in future plans to enhance the ecological value of the European Sites in the locality being frustrated or undermined.
- ix. Climate change considerations also count against the applications. The effect of the applications is in effect to create a new commercial airport generating a very substantial

percentage increase in flights. Such growth should not be permitted in the context of the Climate Change Act 2008 and the policy target to reduce aviation emissions back to 2005 levels by 2050.

European Sites (and extensions to them)

- x. The RSPB will set out the relevant existing and proposed/emerging designations relevant to this area.
- xi. In respect of the European Sites (both existing and emerging):
 - a. the impacts have not been properly assessed. In particular there is inadequate assessment of the necessary bird scaring, the impact of aircraft noise on birds and the extent to which birds will be disturbed as a result of the applications;
 - b. the applications are premised on the assumption that there is no or very limited such disturbance. That assumption will be shown to be wrong;
 - c. the surrounding bird populations may, depending on the ambit of the bird scaring requirements, be seriously affected by the disturbance from such scaring in addition to the disturbance occasioned by the additional flights;
 - d. such disturbance is likely to have a significant effect on, for example, the SPA by reducing the area used by birds;
 - e. nitrogen disposition may also impact on the biodiversity of the SAC;
 - f. on current information, it cannot be ascertained that these applications will not have an adverse effect on the integrity of the European Sites. The RSPB will refer to case law to demonstrate that, on current information, there is a legal obligation to refuse the applications; and
 - g. the developers do not seek to satisfy the imperative reasons of overriding public interest test and so the RSPB will not address that issue, alternative solutions or compensation.

1 The RSPB

- 1.1 The RSPB was set up in 1889. It is Europe's largest wildlife conservation organisation, with a membership of over 1 million. In Kent, there are over 32,900 RSPB members. The RSPB manages 203 nature reserves in the UK covering an area of 140,441 hectares.
- 1.2 The RSPB owns land adjacent to Lydd Airport (the Airport) and manages it as the RSPB Dungeness Nature Reserve (the Reserve). The area of RSPB ownership is shown on the attached map at Appendix 1.

2 Nature conservation importance of the area

- 2.1 The Dungeness peninsula is the UK's largest shingle landscape of its type in Europe and is internationally important for its invertebrate and shingle plant communities and for its geomorphology. The Dungeness peninsula has a wide range of habitats which are of

importance for breeding, passage and wintering birds, in particular waterbirds. The immediate hinterland of the shingle ridges is an extensive area of low lying, wet farmed land with an extensive network of drainage ditches; here many gulls, plovers, ducks, geese and swans feed. The natural wet areas in the shingle and the many excavations, with many small islands and fringing reedbeds and marginal vegetation also attract large numbers of waterbirds, including breeding terns and gulls. In addition, the intertidal Lade Sands and the shallow inshore waters support large numbers of waders, great crested grebe and seabirds respectively.

2.2 The Dungeness peninsula lies where the English Channel narrows and extends out several kilometres from the sweep of the coast. This means it is of outstanding importance for migrating birds many of which follow the coastline. Combined with the wide variety of habitats in this area, large numbers of birds pause to rest and feed before resuming their migrations to areas as far afield as Southern Africa and the Arctic. Inevitably, this area also attracts a wide range of important raptors.

2.3 In recognition of its high value for biodiversity and geomorphology, the area is protected under policy and national, European legislation and international conventions. Conservation designations are listed below:

2.3.1 Dungeness to Pett Level Special Protection Area (SPA).

2.3.2 Dungeness, Romney Marsh and Rye Bay Potential Special Protection Area (pSPA) - this proposed designation was sent out for consultation on 16th September 2010 (please see Natural England's statement of case for more information).

2.3.3 Dungeness, Romney Marsh and Rye Bay proposed Ramsar (pRamsar) this proposed designation was sent out for consultation on 16th September 2010 (please see Natural England's statement of case for more information).

2.3.4 Dungeness Special Area of Conservation (SAC).

2.3.5 Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (SSSI).

2.3.6 Dungeness National Nature Reserve (NNR).

3 The RSPB's involvement at the Dungeness RSPB Reserve

3.1 In recognition of the area's historic importance for birds, the Reserve was the first RSPB reserve and some areas have been in the RSPB's ownership since 1931. The Reserve covers almost 1,000 hectares and is designated as an SPA, pSPA, pRamsar, SAC and SSSI. In addition, the Reserve forms a large part of the Dungeness NNR. The Reserve contains large areas of fragile and unique habitat, which the RSPB is managing for the benefit of its special wildlife.

3.2 The Reserve contains some of the best examples of undamaged shingle ridge formations on the Dungeness peninsula. There are also a number of flooded gravel pits resulting from gravel extraction in the area going back to the 1880s. The pits on the Reserve have been restored for conservation and now are important winter and breeding sites for waterfowl and other wetland birds. There are also a number of natural wet hollows on the Reserve that are important examples of natural succession on shingle, together with important lichen communities associated with blackthorn scrub.

- 3.3 Over the last ten years, the RSPB has secured around £1 million funding for the Reserve including from public sources. This has helped us to preserve the unique character and biodiversity of the Reserve, as well as to undertake habitat creation work, expand our education activities for children and improve access and interpretation for visitors from all age groups and backgrounds.
- 3.4 The Reserve receives over 29,000 visitors per year and is also one of the RSPB's network of environmental education centres. The RSPB will show that the Reserve brings economic benefits to the area.

4 The RSPB's plans for the Reserve

- 4.1 Over many years the RSPB has managed and improved the Reserve. It has plans to further improve the Reserve in the future and to increase its use by migratory and breeding birds.
- 4.2 The RSPB's overall vision is to manage the habitats across the whole Reserve, including the creation and enhancement of wetlands, to support sustainable populations of birds and other biodiversity. This vision, conservation objectives and management prescriptions (as set out in the Reserve Management Plan) have been agreed by Natural England and it has provided the required consent for the RSPB's operations (as required by section 28E Wildlife and Countryside Act 1981 (as amended)). The RSPB plans to increase the number of gravel pits in conservation management. It will maintain the shingle habitat in favourable condition to support the unique assemblages of plants and invertebrates found at Dungeness. In addition, the RSPB will continue to manage and enhance the islands within the gravel pits to provide suitable habitats for breeding seabirds and waterfowl.

5 The RSPB's involvement in London Ashford Airport's applications

- 5.1 The RSPB lodged formal objections to London Ashford Airport's (the Applicant) proposals for an extension to the runway and a new terminal building (the Applications) in March 2007, and following provision of further information by the Applicant, maintained these objections in November 2007, October 2008, April 2009 and January 2010.

6 Reasons for the RSPB's objection

- 6.1 The RSPB will call evidence and make submissions on the following issues:
- 6.1.1 the effects of disturbance on birds species from the Applications;
 - 6.1.2 the lack of adequate surveys to assess bird strike risk and the resulting lack of a properly formulated Bird Control Management Plan¹ (BCMP) to mitigate such risk;
 - 6.1.3 the impacts of bird scaring on the SPA, pSPA, pRamsar, SSSI populations;
 - 6.1.4 the impacts of airfield management policies on the SPA, pSPA, pRamsar, SSSI populations;
 - 6.1.5 the impacts of the proposal on plans to enhance the SPA, pSPA, pRamsar and SSSI through airport safeguarding;
 - 6.1.6 the noise and vision impacts from aircraft and the lack of adequate mitigation for them;
 - 6.1.7 impacts on Reserve amenity;
 - 6.1.8 the impacts on the SAC;

¹ December 2009 Supplementary Environmental Information, Appendix 6.

- 6.1.9 legal reasons including:
- a. inadequacy of the Environmental Statement;
 - b. the implications of the SPA, pSPA and pRamsar designations for the applications including the consideration of the adverse effect, the inadequacy of the provided information and the failure to demonstrate any imperative reasons of overriding public interest or to consider alternative solutions;
 - c. the damage to the SSSI; and
 - d. the public duty to conserve SSSI and biodiversity generally;
- 6.1.10 national and local planning policies; and
- 6.1.11 climate change.

The effects of disturbance on birds species from the Applications

- 6.2 Elements of the breeding and wintering bird interests of the SPA, pSPA, pRamsar and SSSI are vulnerable to impacts from the Applications that include increased disturbance from the change in type of fleet mix and other increased activity, in particular from activities to manage the birdstrike risk. Disturbance of breeding birds can have a range of population effects including, but not restricted to, loss of productivity, reduced breeding success, reduced survival, reduced feeding, increased predation. Disturbance of wintering waterbirds has been widely studied and results in lost feeding time and increased energy expenditure. This can result in mortality or a reduction in the carrying capacity of sites.

Lack of assessment of birdstrike risk

- 6.3 Whilst a Bird Hazard Risk Assessment (BHRA) has been provided², the RSPB considers that the lack of information on bird movements and a lack of understanding of hazardous species means that the birdstrike risk is likely to have been significantly underestimated. The RSPB therefore considers the BHRA cannot be relied upon to provide an accurate assessment of the birdstrike risk at the Airport or design an appropriate BCMP.
- 6.4 As a consequence of potentially underestimating the birdstrike risk, the RSPB considers that it is likely that the Applicant will need to resort to bird scaring above and beyond that set out in the BCMP which will result in greater impacts on the SPA, pSPA, pRamsar and SSSI than predicted by the Applicant.

Impacts of bird scaring on the SPA, pSPA, pRamsar and SSSI

- 6.5 The Applicant has failed to undertake adequate survey work and/or provide sufficient information to assess and quantify the likely impact of the bird scaring on the SPA, pSPA, pRamsar and SSSI.
- 6.6 The BCMP is presented as a draft document for discussion and iteration; the Applicant has stated that bird control measures would need to be adjusted and refined as necessary to control risks to both aircraft safety and wildlife habitat disturbance. This gives no certainty as to precise requirements of the BCMP and thus a full assessment of potential impacts of the BCMP on the SPA, pSPA, pRamsar and SSSI is not possible.
- 6.7 The RSPB is also concerned that the BCMP relies on agreements with nearby landowners (including the RSPB) for off-site habitat management to reduce bird hazard. However, the RSPB has not been approached for discussions and certainly has not agreed to or has in place

² August 2008 Supplementary Environmental Information, Volume 6, Appendix 4.

any such agreement. Consequently, we are concerned that there can be no certainty as to the efficacy of the current draft BCMP, and also whether further actions to control bird strike risk, that could in themselves have an adverse effect on the SPA, pSPA, pRamsar and SSSI, would need to be instigated by the Applicant to maintain aircraft safety.

Impacts of on airfield management on the SPA, pSPA, pRamsar and SSSI

- 6.8 We are concerned that airfield habitat management, as proposed in the BCMP, may result in an adverse effect on some bird species. For example the long-grass policy and necessary airfield management is likely to make the site more attractive to a number of important species, e.g. hen harrier, marsh harrier, and short-eared owl, thus enhancing their risk level from birdstrike and increasing the need for bird scaring or related activities.

Impacts of safeguarding on the SPA, pSPA, pRamsar and SSSI

- 6.9 The BCMP details a 13km bird-safeguarding zone, with a locally negotiated 'no objections expected' zone. This zone has not currently been defined or agreed. It is therefore possible (and in our view probable) that such safety zones either now or in the future could seriously compromise the management of the SPA, pSPA, pRamsar and SSSI or the ability to realise their full conservation potential.

Potential impacts of airports on birds (noise and visual disturbance from aircraft and helicopters)

- 6.10 Although the Applicant acknowledges that increased aircraft noise would impact to some extent on bird reserves in and around the SPA³, the RSPB is concerned that the Applicants' noise modelling has failed to represent or quantify the potential impact on the SPA, pSPA pRamsar and SSSI. The Applicant proposes to mitigate for impacts on the SPA by setting noise performance standards and reviewing departure procedure and routes⁴, however there is no explanation as to how these measures to mitigate noise impacts will be effective or enforceable.
- 6.11 The RSPB therefore considers that inadequate information is available to assess the full effects of noise on bird species and assemblages. With no information on the effectiveness of any suggested mitigation measures either, it cannot be certain that noise increases from aircraft movements will not have an adverse effect on SPA, pSPA, pRamsar and SSSI.

The Reserve amenity

- 6.12 The Dungeness landscape is unique and, despite existing infrastructure, evokes a sense of remoteness, wildness and tranquillity. The strong sense of place and distinctiveness at Dungeness is reflected in the array of landscape designations afforded to the area, such as its inclusion within the Special Landscape Area and the Kent Downs Area of Natural Beauty.
- 6.13 The exhilaration created by the vast scale, exposure, openness, colours, textures and views and the powerful relationships between sweeping land form, land cover, sea and sky, heightened by the ever changing and sometimes extreme weather conditions, makes Dungeness a special place. The uniqueness of Dungeness is an integral part of any visit to the Reserve and adds considerably to the enjoyment of the place and its wildlife.

³ March 2009 Supplementary Environmental Information, Volume 1, Section 5.103.

⁴ March 2009 Supplementary Environmental Information, Volume 1, Section 5.104.

- 6.14 The intensive nature of a new commercial scale airport at Lydd would in our view detract from the peaceful enjoyment and provision of the wildlife experience and educational resource in this unique landscape. We believe that the frequency of peak noise and visually intrusive events arising from increased and larger aircraft movements is likely to erode the tranquil nature of our reserve.
- 6.15 Many of the terrestrial invertebrates on the reserve are associated with rare and scarce plants that occur on the relatively nutrient poor shingle ridges and may be effected by increased levels of nitrogen deposition and other pollutants. These invertebrates, if not directly affected by pollution, could be adversely effected by changes in the plant community and the host plants on which they are dependent. This could reduce the overall biodiversity of the Reserve.
- 6.16 The RSPB is therefore concerned that the Applications will harm the biodiversity and damage the amenity of the Reserve, directly harming its visitor and educational experience and could result in a decline in visitor numbers.

The impacts of the Applications on the RSPB plans to enhance the Reserve

- 6.17 As set out above (para 3.3) this could undermine public funds invested in the Reserve. The Applications could place at risk future plans for conservation, habitat creation and expansion of visitor and educational facilities on the Reserve.

Potential impacts on the SAC

- 6.18 The RSPB is concerned that the Applicant has failed to demonstrate, beyond reasonable scientific doubt, that there will not be an adverse effect on the integrity of the SAC due to nitrogen deposition. The RSPB does not intend to submit evidence regarding this matter, however it supports the position of Natural England on this issue.

7 Legal and policy reasons for objection

Environmental Impact Assessment

- 7.1 As more clearly set out above (paras 6.3-6.11) it is the RSPB's opinion that there is insufficient information in the Environmental Statement (and further information) for a complete environmental impact assessment to be carried out as required under the Town & Country (Environment Impact Assessment) Regulations 1999 (as amended).

The Conservation of Habitats and Species Regulations 2010

- 7.2 The RSPB's opinion, as detailed above in our ecological reasons for objection (paras 6.2-6.18), is that the Applications are likely to have a significant effect on the SPA, pSPA and SAC. These effects could significantly affect the coherence of the sites' ecological structure and function, across their whole areas, that enable them to sustain the habitats, complex of habitats and/or the levels of populations of the species for which they were classified⁵. Therefore, Regulation 61 requires that the competent authority carry out an appropriate assessment (AA) of the implications for the SPA, pSPA, and SAC in view of their conservation objectives. Regulation 61(2) states that a person applying for any consent, permission or other authorisation shall provide such information as the competent authority (in this case the Secretary of State) may

⁵ ODPM Circular 06/2005.

reasonably require for the purposes of the assessment. The RSPB believes that the Applicant has failed to provide the necessary information to enable the competent authority to undertake an AA.

- 7.3 PPS9⁶ and ODPM Circular 06/2005 states that, as a matter of policy, Ramsar sites should receive the same protection as designated SPAs. The RSPB's opinion is that there is a likely significant effect of the Applications on the pRamsar as well, so an assessment of these effects should be included in an AA, particularly since the pRamsar is likely to be formally designated before the end of the inquiry process.
- 7.4 Given the RSPB's concern that there is, at present, insufficient information to carry out an AA, it should be noted that Regulation 61(5) states that the competent authority "*...shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site.*" Clearly without the necessary information to inform an AA the competent authority cannot agree to the Applications as it will be unable to ascertain no adverse effect on the Natura 2000 Sites⁷.
- 7.5 In addition without the final details of some aspects of the Applications, e.g. a finalised and adequate BCMP, it is entirely appropriate for the competent authority to use the worse case scenario level of impacts, unless and until the Applicant provides the required level of detail for the AA.
- 7.6 The Applicant is not attempting to demonstrate that it meets the imperative reasons of overriding public interest test and therefore the RSPB will not address it, alternative solutions or compensation.

The Wildlife and Countryside Act 1981 (as amended)

- 7.7 Under section 28I Wildlife and Countryside Act 1981 (as amended)(the WCA) permission cannot be granted for development that is likely to damage a SSSI feature unless Natural England's advice is sought and taken into account when considering the application.
- 7.8 It is the RSPB's view that the Applications will damage the SSSI features and it supports Natural England's advice in this respect.
- 7.9 In addition under section 28G of the WCA, public bodies must "*...take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest*".
- 7.10 It is the RSPB's opinion that permission cannot be granted for the Applications and this duty complied with.

The Natural Environment and Rural Communities Act 2006

- 7.11 In addition to the section 28G WCA duty set out above, section 40 of the Natural Environment and Rural Communities Act sets out a public authority duty to conserve biodiversity. It states that "*Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.*"

⁶ Planning Policy Statement 9: Biodiversity and Geological Conservation.

⁷ The Natura 2000 network is the European Union-wide network of protected areas (i.e. SPAs and SACs).

- 7.12 It is the RSPB's opinion that permission cannot be granted for the Applications and this duty complied with.

National and local planning policy

- 7.13 The RSPB will refer to the legal status of the area and the national and local policies applicable to it including but not limited to PPS1, PPS9, PPS17, the Shepway District Local Plan (2006) including policies SD1, TR15, CO4, CO8, CO9, CO11 and CO14. The RSPB will demonstrate that the Applications are significantly in conflict with key development plan policies.

Climate change and aviation policy

- 7.14 The Government's aviation policy - Aviation Transport White Paper 2003 (ATWP) (which makes only passing mention of Lydd) and updating Progress Report 2006 - was examined this year in R (London Borough of Hillingdon and others) and the Secretary of State for Transport (SoS) [2010] EWHC 626 (Admin).
- 7.15 It was recognised in the judgment that since the Government's aviation policy was created important changes and developments such as the White Paper *Planning for Sustainable Communities* 2007 (which recognised the increasing importance of climate change in planning policy and the need for a more efficient procedure for national planning policy to be applied in "major projects" decisions), the Planning Act 2008, the Climate Change Act 2008 and climate change policy have occurred and it was not possible for the Secretary of State to continue to follow his pre-existing policy without consideration of all those changes. The Secretary of State, himself acknowledged that advice needed to be sought from the Climate Change Committee (CCC) when announcing the 2050 Target⁸ (15th January 2009).
- 7.16 The RSPB is deeply concerned that the Applications would be accompanied by a significant increase in CO₂ emissions contributing to climate change. This increase would contradict national, regional and local policies on climate change and sustainable development.
- 7.17 The Applicant states (in the operational impacts mitigation strategy (in the revised updated schedule of mitigation measures⁹)) that a carbon management plan will be implemented, which will examine airfield buildings, ground operations, aircraft fleet, flight paths and landing/take off operations. Whilst this is a worthwhile action, it is difficult to see how this will have a significant impact on reducing carbon emissions, if numbers of flights themselves are not reduced.
- 7.18 The RSPB is concerned that the Applicant is relying on the Government to address the impact of aviation on climate change. We recognise the Government's target to restore aviation emissions to 2005 levels by 2050, but unless and until there is a credible plan as to how this may be achieved further aviation expansion is not appropriate. The 80% emissions reduction target set out in the Climate Change Act 2008, and the more immediate carbon budgets agreed by Government until 2022, reflects the urgency and scale of the task to reduce greenhouse gas emissions. The CCC has issued advice to Government, stating that aviation emissions should be taken into account in the UK's strategy for meeting its long-term climate change goal (an 80% reduction in emissions by 2050)¹⁰. It is clear from its and others' analyses that it will be almost impossible to achieve this goal if aviation emissions are not constrained.

⁸ The 2050 target is to limit aviation emissions in the UK to below 2005 levels by 2050.

⁹ Section 6 Volume 1, Supplementary Environmental Information, March 2009.

¹⁰ Committee on Climate Change (2008) *Building a low-carbon economy – the UK's contribution to tackling climate change*.

Therefore, the RSPB considers that the Applications should be refused on climate change grounds.

- 7.19 In conclusion, the RSPB believes that the Applications will contribute unacceptably to climate change and are not sustainable.

8 Witnesses

8.1 Bird hazard assessment and control witness.

8.2 Ornithology witness.

8.3 RSPB Reserve witness.

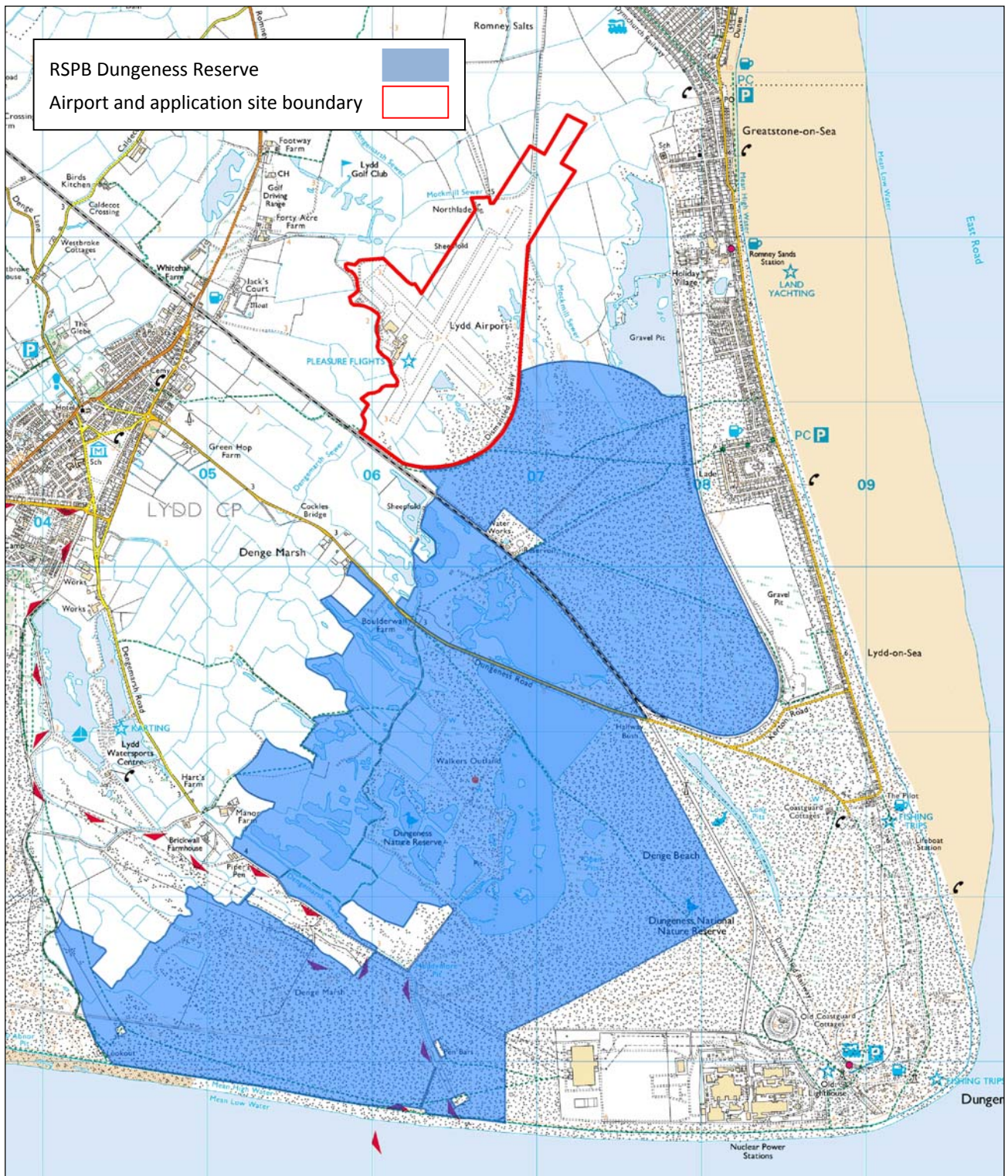
8.4 The RSPB reserves the right to amend or add to the evidence it will be presenting and the submissions it will be making at the Inquiry in the light of any additional information supplied.

9 Document list

9.1 The RSPB welcomes the Applicant's suggestion to agree a core document list and will add any central documentation it requires to that list.

Appendix 1

The RSPB Dungeness Reserve boundary



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