

LONDON ASHFORD AIRPORT - SUPPLEMENTARY REPORT

Location of Site: London Ashford Airport (LAA), Lydd, Romney Marsh, Kent, TN29 9QL

Description of Development and Planning Application Numbers:

Construction of a 294 metre runway extension together with an additional 150 metre starter extension (Y06/1648/SH)

Erection of a terminal building, capable of processing 500,000 passengers per annum, and 639 car parking spaces (Y06/1647/SH)

Applicant: London Ashford Airport Ltd

Agent: Indigo Planning Ltd
Swan Court,
Worple Road,
London, SW19 4JS

Date Received: 22.12.06

Further Information and Revisions Received:

October 07, August – September 08,
March 09, 11 December 09

Date of Council Meeting: 03.03.10

NG REF: 606151 121282

Officer Contact: Terry Ellames

AMENDED RECOMMENDATION: That the Council agree the recommendations:

- i) To adopt the Revised Appropriate Assessment under the Habitat Regulations as set out in detail at the end of this supplementary report;
- ii) To refuse planning permission for application Y06/1648/SH for the amended reasons as set out in detail at the end of this supplementary report;
- iii) To refuse planning permission for application Y06/1647/SH for the amended reasons as set out in detail at the end of this supplementary report.

1. BACKGROUND

- 1.1 A planning applications report regarding proposals to expand London Ashford Airport (LAA) and associated Appropriate Assessment under the Habitat Regulations was prepared for a council meeting scheduled for September 2009. This is report A/09/05, which is first in the list of documents on this agenda item and forms the basis of this supplementary report.
- 1.2 The September 2009 council report recommends adoption of an appended Appropriate Assessment report from the council's environmental consultant Bureau Veritas (BV). The report concludes that proposals for a runway extension and a new terminal and car park will have significant adverse effects, including uncertainty about some of the effects, on the integrity of European sites having regard to the Wildlife and Countryside Act and Regulation 48 of the Habitat Regulations. The European sites considered to be affected are the Dungeness Special Area of Conservation (SAC) and Dungeness to Pett Level Special Protection Area (SPA).
- 1.3 In addition, planning permission is recommended for refusal for both planning applications on five grounds: a) Significant adverse effects on the integrity of the Dungeness Special Area of Conservation (SAC) and Dungeness to Pett Level Special Protection Area (SPA), including uncertainty about some of the effects; b) significant adverse effects on the Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (SSSI) and Dungeness National Nature Reserve; c) insufficient information regarding the effects on a proposed extension to the SPA and intended RAMSAR designation, which are considered likely to result in significant adverse effects; d) adverse noise effects on the local community, especially near the airport, and other limited adverse effects in the area, including the enjoyment of the Romney Marsh and Dungeness area and the Kent Downs Area of Outstanding Natural Beauty (AONB); e) that given these adverse effects there is no overriding strategic justification to allow the proposals, making them unsustainable in the planning policy context. This is especially given the importance of the international and national ecology designations and alternatives at Manston Airport.
- 1.4 In addition to the reasons above, the planning application for a new terminal and car park is recommended for refusal on the grounds that protected species surveys should be undertaken associated with highway improvements at Hammonds Corner. This is given the increase in airport capacity, additional traffic and associated works that would result.
- 1.5 Following the publication of the council report on 1 July 2009, on 27 August 2009 the council received from LAA (the applicant) an 'initial response to the council report', which consists of a 29 page rebuttal statement, plus a 26 page appendix of proposed draft planning conditions and heads of terms for a S106 legal agreement. A supplementary council report and meeting between LAA and council officers was requested by LAA before the council determined the applications. After considering a request from

LAA for a further deferment, the council agreed to reschedule the meeting date to 3 March 2010 which enabled a response and further discussions to take place. The council responded to LAA's rebuttal statement on 15 October 2009, incorporating comments from BV and Natural England. There was a further exchange of emails and correspondence following a meeting with LAA on 21 October 2009.

- 1.6 On 11 December 2009 LAA submitted further information to address what is argued by LAA to be the remaining residual matters required by SDC to help determine the applications favourably. On 14 December 2009 statutory and public consultations were carried out for a period of 28 days, and there have been discussions with the government's statutory advisor for the natural environment, Natural England. On 8 January 2010 LAA submitted a new version of proposed draft planning conditions and heads of terms for a S106 legal agreement, requesting these be considered by officers and BV to inform the Appropriate Assessment and planning applications. There have been further meetings and discussions with LAA and Natural England since the submission, as well as further representations from LAA.
- 1.7 This report supplements the council report of September 2009 with comments and additional information from LAA, consultation responses, a supplementary appraisal, updated summary and conclusion and amended recommendation. Full details of some of the consultation responses, a revised Appropriate Assessment from BV, a letter from LAA's planning consultant and LAA's proposed draft conditions and heads of terms for a Section 106 agreement form Appendices 1-4 to this supplementary report.

2. LAA RESPONSE TO THE COUNCIL'S SEPTEMBER 2009 REPORT

- 2.1 The LAA 'initial response' sets out the LAA position on the reasons for refusal and other details of the council's September 2009 report. LAA's 29 page statement is summarised by officers from the LAA perspective under six headings below.
 - i) SAC, SPA and Appropriate Assessment
- 2.2 LAA consider the reasons given for determining that the integrity of the SAC would be adversely affected (in essence, land use change and nitrogen deposition) are not robust. Circular 06/2005 provides guidance on the integrity of a European site which states that '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'.
- 2.3 In terms of land use change, the only change in respect of the runway extension is 0.23 hectares (ha) or 0.007% of the total SAC, i.e. the whole area referred to in the Circular 06/2005. Furthermore the SAC area affected is of limited ecological value. It cannot be credibly claimed that the SAC's integrity across its whole area will be affected by a land use change

of 0.007% when proper regard is had to the Circular guidance on how to assess a site's integrity.

- 2.4 The precautionary principle is not applied as a matter of law in the Habitats Regulations. The principle is not directly referred to in the Habitats Regulations. It is referred to in Natural England guidance entitled Habitats Regulations Guidance Note which states that the form of words used in Regulation 48(5) implies that a precautionary principle should be taken into account in considering effects on integrity. This test has been over-applied as a legal test rather than as Natural England "implied" guidance.
 - 2.5 Measures have been proposed by LAA which would actually result overall in the SAC being improved in habitat value. These measures include new areas of exposed shingle being created on the airfield, new ditches being created and existing water bodies improved. An Airport Biodiversity Action Plan (ABAP) sets out improvement for key habitats and species, which needs to be properly taken into account when assessing the applications.
 - 2.6 The methodology used to show the impacts of nitrogen deposition on shingle vegetation in the SAC requires clarification and further explanation to avoid any misunderstandings.
 - 2.7 The reasons given for determining that the integrity of the SPA would be adversely affected are not considered robust. LAA has presented a clear case that birds of conservation interest would habituate to increased aircraft noise. Evidence is drawn from analysis of the scientific literature and from information at other airports. LAA has presented a draft Bird Control Plan which it is considered would result in minimal disturbance to the nearby Bird Reserve. Reservations about off-site land management, safeguarding and bird scaring are not well founded given experience of implementing Bird Control Plans at other airports. The draft Bird Control Plan provides a firm basis for ensuing there would be minimal impact on the SPA. Further discussion on these points was requested to avoid any misunderstandings.
 - 2.8 Given 2.2-2.7 LAA request the Appropriate Assessment be reviewed and concluded that there is no adverse effect on the integrity of the SAC and SPA.
- ii) Significant adverse effects on the SSSI
- 2.9 The SSSI issue of loss of geomorphology is not considered a significant adverse effect on the SSSI. The main topics of concern in relation to the SSSI are focused on the same areas as for the SAC and SPA - nitrogen deposition and the Bird Control Plan. In relation to these, LAA maintains the impacts are minimal and do not result in a significant adverse effect on the SSSI. The additional comments regarding impact on medicinal leech in the SSSI context are based on a misunderstanding. Medicinal leech are not present in the existing ditch length to be affected by the runway extension. In addition, the new mitigation ditch is unlikely to be netted (as

preferred by the Environment Agency), allowing medicinal leech habitat to be created. Concerns in this respect are therefore not well founded.

- iii) Effects on proposed extension to the SPA and RAMSAR designation
- 2.10 It is claimed that the applications have not considered sufficiently the effects on the pSPA and pRAMSAR. In response LAA comment no legal protection is conferred on either site and the analysis of impacts is provided only to inform rather than as a basis for decision-making. Yet the information and effects associated with these proposed designations is being cited a reason for refusal. As such, inappropriate weight has been given to this issue.
- 2.11 Notwithstanding the sites are not formally designated as an SPA extension and RAMSAR at the current time, LAA has in any event carried out impact assessments based on the available understanding of the proposed designations of these sites. The conclusion is that impacts would be no worse than those impacts on the existing SPA and SSSI (i.e. no significant adverse impact on the integrity of the sites if they were formally designated).
- iv) Protected Species and Hammond's Corner
- 2.12 The assertion that protected species surveys should have been carried out at this stage for Hammond's Corner is not considered a sound reason for refusal, because ecological surveys have been carried out in order to determine the impact of the proposed upgrade works. The conclusion is that the protected species and SSSI would not be significantly adversely affected, provided detailed design and construction takes account of the recommendations made. This includes water vole and breeding bird surveys taking place prior to works commencing to ensure these species would not be affected during construction.
- v) Adverse noise effects on the local community and wider area
- 2.13 LAA has always accepted that there would be a moderate adverse noise impact to some properties in the local community. However, there appears to be some contradiction in the report about the significance of these impacts, and in any event these are not significant enough grounds as a reason to refuse the applications.
- 2.14 It is vague as to what are the claimed adverse noise effects on the local community. It is stated these are considered materially worse for some residents, but does not specify which residents. It says some of these effects can be partially mitigated but not all of them can, but does not specify. It refers to some other minor adverse effects in the wider area, but does not specify what is near the airport and what is the wider area. It states, without explanation, that although noise would not be a reason for refusal by itself, this could be a reason for refusal alongside others if the benefits of the proposals do not outweigh the adverse effects when taken together. This lack of detail is considered inadequate and the reason for refusal is considered imprecise and vague. There is also no explanation as

to how the development proposals are contrary to policies SD1(k), (c) and (d) given the extent of the noise impacts.

vi) Other comments

- 2.15 Some of the Shepway District Council (SDC) Economic Development officer's comments on economic benefits have not been properly considered in the report. Overall the report does not give a balanced assessment of the effects and is unduly negative. In particular, sufficient weight has not been given to the Local Plan policy support for expansion of the airport. Further consideration to the restrictions and mitigation measures to be imposed through any conditions and heads of terms for the S106 needs to be properly taken in to account.
- 2.16 The reasons for refusal will not withstand scrutiny in any appeal, with costs consequences for SDC, particularly given the lack of engagement. There is the potential for independent third party mediation to assist in relation to resolving technical differences of view if an agreement cannot be reached through usual dialogue.

3. OTHER RESPONSES TO THE COUNCIL'S SEPTEMBER 2009 REPORT

- 3.1 Ninety letters have been received confirming objections to the applications, including Lydd Airport Action Group (LAAG) and a letter from the Kent Federation of Amenity Societies. Grounds of objection are similar to those already identified in the September 2009 council report.
- 3.2 Eight letters have been received confirming support for the applications, including Kent Invicta Chamber of Commerce, Friends of Lydd Airport Group (FLAG) and Lydd Airport First. Grounds of support are similar to those already identified in the September 2009 council report.
- 3.3 A letter has also been received from Green Issues Communications who were asked by LAA to undertake a sample survey of local residents in seven wards across Shepway. They state this shows the majority of people surveyed were in support of the proposals mainly because of new jobs. Also that a recent survey by the Chamber of Commerce showed 57% of local business leaders believed expansion would be good for their own business, and nearly 73% stating it would be good for other businesses.

4. OFFICER, BV AND NATURAL ENGLAND RESPONSE TO LAA

- 4.1 LAA's response to the council report and Appropriate Assessment is detailed and raised a variety of issues that required discussions with key officers, responses from the council's consultant BV and Natural England. Following consideration, the key issues identified for further discussion were: Habitat loss from the SAC, including habitat creation methodology; nitrogen deposition effects on the SAC and SSSI; noise and visual impacts upon SPA bird species through aircraft movements and Bird Control Plan

implementation; effects upon SSSI features; protected species and Hammonds Corner; proposed ecology conditions and heads of terms for a S106; applying the 'precautionary principle'; proposed SPA and RAMSAR issues.

- 4.2 In addition to a report from BV and letter from Natural England focusing on the key ecology issues, officers provided a more comprehensive response to the LAA representations. This included comments on community noise effects, socio-economic issues, Local Plan policy SD1, Kent Highways comments and Hammonds Corner, car parking, Local Plan policy, 'balanced' report and the assertion of inadequate engagement with LAA.
- 4.3 LAA wrote to the council on 28 October 2009 stating their intention to submit further information on the principal ecology issues identified in paragraph 4.1 above. In advance of this LAA confirmed that the 'clear and graded area' of the runway extension area will not be disturbed as it is already flat and clear of obstacles. That it is intended to remain as semi-improved grassland under the airport's licensing regime, in accordance with CAA publication CAP168 (copied to SDC).

5. LAA DECEMBER 2009 SUBMISSION AND RELATED CORRESPONDENCE

- 5.1 LAA's 11 December 2009 submission is in two volumes. Volume 1 is a 32 page statement that seeks to address the key ecology issues. This includes: Clarification of certain aspects of the Habitat Regulations in relation to LAA proposals; the LAA position regarding habitat loss from the SAC and habitat creation methodology; a response to nitrogen deposition queries; additional information and clarification regarding noise and visual impacts upon SPA bird species through aircraft movements and Bird Control Plan implementation; further consideration of the effects on the SSSI; ecological surveys and protected species at Hammonds Corner.
- 5.2 Volume 2 comprises technical appendices including: A legal note on the Conservation (Natural Habitats & c.) Regulations 1994; plan of the runway extension area and SAC; updated Airfield Biodiversity Action Plan; Nitrogen Deposition report and updated response to the RSPB/ Kent Wildlife 'Cresswell Report' on Air Quality; a short study of the impact of on-airport bird control activities; updated draft Bird Control Plan; water vole survey at Hammonds Corner.
- 5.3 On 8 January 2010 LAA submitted a new version of proposed draft planning conditions and heads of terms for a S106 legal agreement, which has subsequently been discussed with LAA, BV and Natural England. Officers have also received other correspondence from LAA, including a letter from their consultants (Indigo Planning) dated 7 February 2010, and which LAA requested be made available to Members (Appendix 3). The enclosures to this letter have not been attached as they contain in excess of 100 pages.

6. SUPPLEMENTARY CONSULTATION RESPONSES

- 6.1 Extensive responses have been received from Kent County Council (KCC), Natural England, the Royal Society for the Protection of Birds (RSPB), Kent Wildlife Trust, Protect Kent (CPRE), Lydd Airport Action Group (LAAG), and to a lesser extent Buglife (the Invertebrate Conservation Trust). Full details of these representations are contained in Appendix 1 to this supplementary report. All these comments are objections, which are summarised below. Comments from other organisations and individuals have also been received, as well from the Council's Economic Development Officer, Environmental Health and Kent Highways. All these comments are a supplement (not replacement) of those contained in section 5 and Appendices 1-6 of the council report September 2009.

Kent County Council

- 6.2 KCC does not consider that planning permission should be granted unless and until the concerns regarding potential adverse impacts on the internationally designated areas are removed, taking into account the advice of Natural England, as well as the outcome of the Appropriate Assessment of the applications being undertaken by SDC. At the time of writing KCC was not fully aware of Natural England's position as a result of the latest further additional information, but If Natural England were to depart from what is understood to be their position previously, then KCC would wish to revisit the issue.
- 6.3 Notwithstanding the above, KCC's comments relate to: Habitat loss from the SAC, impact on Great Crested Newts and piecemeal loss of the SAC; nitrogen deposition levels and potential impact on the SAC; noise and visual impacts on the SPA, especially due to bird scaring and implementation of the Bird Control Plan; adverse effects on the SSSI, including no compensation for direct loss of the SSSI, impacts due to nitrogen deposition, lighting impacts on invertebrates and lack of survey work associated with other potential effects on protected species (Great Crested Newts, birds, water voles, medicinal leech); the need to carry out more detailed protected species surveys associated with proposals to improve Hammonds Corner and other outstanding issues not adequately addressed (e.g. ditch removal and Great Crested Newt surveys, potential impacts of airport safeguarding and designated areas, impact of construction on ecology, landscaping, lighting and Climate Change impacts).
- 6.4 KCC welcome the updated Airport Biodiversity Action Plan, though this would require adequate monitoring and reporting.

Natural England

- 6.5 Natural England is the appropriate nature conservation body, as defined by Regulation 4 of the Conservation (Natural Habitats, & c) Regulations 1994. Under Regulation 48, the competent authority (in this case Shepway District Council) shall have regard to the representations made by Natural England.
- 6.6 Natural England maintains its objections to the applications for the following reasons: The applicant has not demonstrated the proposals will not have an adverse effect on the integrity of the Dungeness SAC; the applicant has not demonstrated the proposals will not have an adverse effect on the integrity of the Dungeness to Pett Level SPA; the proposals as presented are likely to have an adverse impact on the Dungeness, Romney Marsh & Rye Bay SSSI; the applicant has not proposed sufficient mitigation to demonstrate that the proposals will not adversely effect populations of Great Crested Newts protected under the 1981 Wildlife and Countryside Act and the 1994 Conservation (Natural Habitats, &c) Regulations or other species provided statutory protection; the applicant has not demonstrated the proposals will not have an adverse effect on the integrity of the proposed RAMSAR site and proposed extension and additions to the SPA at Dungeness; the environmental statements do not meet the requirements of the EIA Regulations both in terms of the description of the requirements for the development, assessment of impacts and mitigation measures; the applicant has failed to address many of the additional information requirements identified by Natural England in responses of 20 November 2007 and 9 March 2008 respectively.
- 6.7 Natural England's conclusions are based on concerns about bird hazard management and the draft Bird Control Plan, disturbance to birds from air traffic, airport Site Safeguarding Policy, Great Crested Newts, air quality, disturbance to bird species, loss of habitat, buried geomorphology, impacts on protected species and impacts on the proposed SPA extension and RAMSAR site. Natural England has considered further late representations from LAA and points of clarification requested from SDC. Therefore further comments are made by them with regard to air quality impacts, the current position regarding the proposed SPA extension and RAMSAR, potentially comparable airports, LAA proposed draft conditions and S106. In conclusion, Natural England maintains its objections to the applications.
- 6.8 Natural England also comment that the proposals do not support the principles of sustainable development or contribute positively to the need to address the issues of Climate Change.

RSPB

- 6.9 The RSPB comment that the further information fails to demonstrate there will not be an adverse effect on the integrity of the SPA, pSPA, pRAMSAR or the SAC. There are numerous measures in the Bird Control Plan, which are not sufficiently detailed to allow for the necessary assessment of the

full impacts of those measures on site integrity. In addition, there are some mitigation measures suggested, but without the detail of those measures and how they will work in practice the competent authority (SDC) is left with uncertainty as to their effects.

- 6.10 Deferring finalisation of the details of the draft Bird Control Plan (for example off-site habitat management) that may impact on designated sites is not acceptable. 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 and pSPA. This is because the Habitat Regulations require certainty that there will not be an adverse effect on site integrity before permission can be granted.
- 6.11 As the applicant has not been able to provide sufficient information for the competent authority to ascertain that there will not be an adverse effect, the further tests in Regulations 49 and 53 (alternative solutions, imperative reasons of overriding public interest and compensation) of 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 airport expansion at Lydd. Therefore there are no imperative reasons of overriding public interest that would override the impacts on internationally designated sites.
- 6.12 The RSPB believes that Shepway District Council's previous Appropriate Assessment is still correct, and that there is no option but to refuse permission for the applications.

Kent Wildlife Trust

- 6.13 The additional information provided by LAA appears to show that nitrogen deposition would be slightly below the APIS critical load for the Dungeness SAC. Assuming that the modelling is robust and sufficient controls can be placed on the airport's operation to ensure that modelled nitrogen levels are not exceeded (and effectively enforced), it is still not clear that these levels of deposition would not negatively impact upon the features of the SAC.
- 6.14 LAA's recent submission shows much lower levels of nitrogen deposition predicted by the most recent modelling, compared to earlier modelling by LAA. LAA insist that the APIS Critical Load figures be seen as the standard against which potential impacts should be assessed, whereas there is other evidence to suggest that it should be lower. The conclusions of the recent modelling rely on a steady, long-term decrease in background nitrogen deposition which may not be the case. The council will need to satisfy itself that the predicted levels of nitrogen deposition represent the worse case scenario, and could be secured through the imposition of appropriate planning conditions. It may also be necessary to apply planning conditions regulating the aircraft able to use the airport, as well as the frequency of flights by each aircraft type.

- 6.15 It is also clear that it is not possible to conclude that the planning proposals would not have a negative impact upon the SPA, at least without a substantial amount of additional information, and probably a considerable period of further survey. Kent Wildlife Trust note that there have been a number of iterations of the Bird Control Plan and a lack of fully detailed information has been a significant issue at every stage, despite the time that has been available for survey.
- 6.16 Kent Wildlife Trust reminds the council of the need to exercise the very greatest care in determining these applications. Dungeness and its plant and animal communities are unique in Europe and possibly the world, and include species found nowhere else on the planet. For this reason, any damage to the site would be of international significance and could not be compensated by habitat restoration elsewhere.

Buglife (the Invertebrate Conservation Trust)

- 6.17 Buglife continues to object to these planning applications on the grounds they believe it will lead to a significant residual adverse impact on the fragile ecology of this internationally designated wildlife area. This is with specific impacts on a number of rare and protected terrestrial and aquatic invertebrates, including species protected under European legislation. In response to the recent round of consultation further comments are summarised as follows:

- A comprehensive invertebrate survey should be carried out to determine the impact of extending the runway and greatly increasing the passenger capacity of the airport. This should include many more taxonomic groups of invertebrates and all habitats important for these. This should be over a much larger physical area as well as during the correct time periods of the year.

- As many invertebrates are more sensitive to pollution than humans, we continue to believe that approval of this planning application will clearly result in nitrogen deposition on at least part of the SAC, being at a level where damage would be likely to occur to the internationally significant vegetated shingle habitats.

- The submission acknowledges the need to limit the adverse effects of artificial lighting on invertebrates, particularly moths, and suggests measures to reduce the impact. However Buglife are concerned that none of these measures have been proven and have significant concerns around the increases in light pollution affecting breeding success and susceptibility to predators. With so many nationally scarce species nearby on Dungeness, any increase in light pollution in the general area should be opposed on precautionary grounds.

Protect Kent (CPRE)

6.18 Protect Kent request that SDC continue to maintain the recommendation that the applications should be refused. LAA's response to the council's September 2009 report is considered inappropriate in a number of regards, and in response to the recent consultation a number of additional points are also made:

- The expanding amount of research shows that noise, especially from aircraft, which is tonal and more disturbing than noise from other sources, causes significant health problems. With regard to adverse noise effects on the local community, PPS4 requires protection of the countryside for itself and this includes tranquillity.

- Total actual aviation emissions for the UK must be no more in 2050 than they were in 2005. As UK aviation emissions have grown since 2005, this means that aviation cannot grow unless new aircraft with much lower emissions are introduced, and these are still on the drawing board.

- Regional airports and the claimed economic benefits are not proven. Ashford Borough Council are not convinced of the economic benefits and other evidence (such as from Bristol Airport) shows there can be local economic disbenefits.

- The proposals are contrary to recent government policy regarding Sustainable Development, Climate Change and also policies to protect the countryside.

Lydd Airport Action Group (LAAG)

6.19 LAAG maintains its earlier objections to the planning applications and has responded to the latest submission based on the following issues:

- LAA has not overcome Habitat Regulations objections. Misleading information has been submitted about aircraft use and wrong claims have been made about visual and noise impact on birds in the SPA. The assumptions in the nitrogen deposition assessment are not conservative. There are questions about the flight path assumptions on which it is based and controversy from experts over critical load factors. Flight safety (human) is paramount and overrides all issues of bird welfare. Although lethal means are not advocated, birds will be shot if there is the risk of an accident. This means the Bird Control Plan could adversely affect qualifying species of the SPA such as the Bewick Swan. The increase in bird control management activity will be substantial under both passenger scenarios (300,000ppa and 500,000ppa) when compared to the existing low level of activity. LAA has repeatedly endeavoured to inflate the base level of activity and the size of aircraft operating from the airport in an attempt to diminish the impact of the proposed development.

- LAAG believes the Appropriate Assessment under the Habitats Regulations ought to have been determined on the basis of 2m passengers per annum (ppa), as opposed to 500,000ppa, in accordance with the Airport's Master Plan. All evidence submitted by LAA in defence of its proposed application underestimates potential impacts.

- Whilst the Airport Biodiversity Action Plan is an improvement on previous work, LAAG has made previous requests for other information that have not been submitted.

- LAA has been granted approval by the CAA (27 August 2009) for new RNAV (GNSS) Area Navigation (Global Navigation Satellite System) instrument approach procedures (flight paths) to both runway 21 and runway 03. These flight paths will have a direct impact on local residents and the environment and have implications for nuclear safety. No analysis of the impact of these flight paths has been submitted by LAA. LAAG believes the new flight paths necessitate a reassessment of most of the key issues relevant to this planning application (noise, pollution, nuclear safety and the economic benefits).

- LAAG continues to vigorously challenge the Nuclear Installations Inspectorate's decision not to oppose LAA's planning applications through the Department of Energy and Climate Change (DECC). The new flight paths increase crash damage risk and have not been modelled.

Other Statutory, External and Neighbour Comments

6.20 New Romney Town Council restate their previous recommendation that the applications should be 'called in' for consideration by the Secretary of State, as it is considered SDC has a prejudicial interest.

6.21 The Environment Agency comment that no information has been provided on the likely alterations to Hammonds Corner, or how this would impact on the watercourses. The Environment Agency therefore cannot comment any further at this stage on this aspect of the proposal. However, the recent water vole survey was conducted at a sub-optimal time of year, and would therefore need to be redone when specific proposal for Hammonds Corner are determined. This is especially important because there is evidence that water voles may use the site when water levels allow. The Environment Agency look forward to seeing the proposals for Hammonds Corner, specifically details of road alterations and a new water vole survey at an appropriate time of year (if any watercourse is impacted by the proposal). The Biodiversity Action Plan will require the agreement of Natural England for the wetland features that are proposed, as well as general management of the site.

6.22 The Romney Marsh Area Internal Drainage Board note the comment in the recent submission which states that watercourses on the site would be netted to avoid bird strikes. The Board has agreed in principal to the re-routing of Board maintained watercourses serving the area, but will not be

able to commit to this if these watercourses are to be covered in netting, which will interfere with maintenance activities. Further clarification is requested as to which watercourses are intended to be covered in netting by the adoption process.

- 6.23 Southern Water comment that should permission be granted, conditions should be imposed regarding waste water treatment facilities, surface water disposal and soakaways.
- 6.24 Ken Dixon (on behalf of the Jaques Court & Belger Partridge Shoot) comments that LAA have made it clear that the local shoot immediately adjoining LAA and the expanded airport cannot co-exist. The shoot almost completely surrounds the airport and according to LAA there is a danger from the act of shooting and the risk of bird strike from the release of the shoot's partridges. A similar situation also exists regarding the bird strike from wild birds. LAA have tried to stop the shoot, and any expansion would require the co-operation of the surrounding landowner (a member of the shoot) to sell the required land. This could potentially result in the loss of the shoot (including the loss of jobs) or its relocation if possible.
- 6.25 Four comments have been received from individuals who object to the applications for similar reasons to other objectors already identified in the September 2009 council report.
- 6.26 The Health and Safety Executive (Nuclear Installations Inspectorate), South East England Partnership Board, SEEDA, CABE, English Heritage, Civil Aviation Authority, National Air Traffic Safeguarding and Highways Agency have all confirmed they have nothing further to add to previous comments made regarding these applications.

Economic Development Officer

- 6.27 The Council's Economic Development officer has provided the following supplementary comments in response to both LAA's initial response to the council report, the December 2009 submission and LAA proposed draft conditions and S106:

- Whilst an expanded airport will generate positive economic benefits, the overview presented in the September 2009 council report regarding tranquillity and tourism has incorporated the views of a number of consultees, not solely those put forward by the Council's Economic Development Officer. As such, it is considered to represent a fair assessment of the overall socio-economic effects.

- The report produced by the 'Stop Bristol Airport Expansion' group referred to in the letter received from Protect Kent is noted. However, it is considered that the overall expansion of LAA will bring economic benefits, and the case put forward in the report is not necessarily comparing like with like. In the case of Bristol International Airport (BIA), it is already a regional airport (the 9th busiest airport in the UK) and generates a lot of economic

activity. However, LAA currently has only very small passenger numbers travelling to a very small number of destinations. As such, the economic impact of an expansion at BIA would be less than LAA, which is effectively starting from a very low base.

- It should be noted that the Department for Energy and Climate Change (DECC) is currently consulting on two National Policy Statements, one an overarching NPS on energy and another specifically on nuclear. As part of this consultation, Dungeness has been omitted from the programme of proposed sites for new build nuclear power stations to the period up until 2025. If this position were confirmed following the consultation period then this would represent a lost opportunity for job creation. Dungeness B currently employs circa 500 people directly, and a Dungeness C would be similar, hence a boost to the local economy. SDC is challenging this position and is responding to the consultation stating that it is keen for Dungeness to be included on the list of sites.

- As a result of the runway extension, if LAA did turn to freight as opposed to passengers to improve its business then this would alter the economic impact of the airport. In general terms, freight tends to deliver less intensive job creation and different kinds of jobs (more warehousing and less customer services).

- Regarding the LAA's proposed draft heads of terms for a S106 agreement. Section 12, Employment and Training, states that the owner and SDC will work together to set out a Phase 1 and Phase 2 strategy to agree initiatives that will encourage local skills development and access to employment opportunities, which will be reviewed on a regular basis. This is welcome, but would require further discussion in the context of best practice for such initiatives.

Environmental Health Officer

6.28 Environmental Health concurs with the comments made by SDC Planning Officers in October 2009 in reply to LAA's response to the September 2009 council report. Environmental Health is of the opinion that there are no contradictory comments between SDC officers and BV regarding the noise. Regarding the latest submission and LAA's proposed draft conditions and S106 the following comments are made:

- Environmental Health concurs with the proposal for a Construction Environmental Management Plan to be submitted to and approved by the council prior to the commencement of any development. However, recommended hours of working for construction sites are 0800 to 1800 Monday to Friday, 0800 to 1300 Saturday, with no working on Sundays and Bank Holidays. This varies slightly with those proposed by LAA. Should LAA seek to vary these hours, then they can submit a S61 application as per The Control of Pollution Act 1974, which will be considered by Environmental Health.

- Sewage/ Foul Water Disposal. Concerns remain regarding the current provisions being applied to cater for up to 300,000ppa. However, it is acknowledged that any changes to be introduced to the current methods being used can only be conditioned in respect of the new terminal building. We welcome any proposal that may be put forward for the agreement of the council, upon passenger numbers exceeding 300,000pa. It is recommended that any such proposals should also meet with the requirements of the Environment Agency and Southern Water.

- Environmental Health concur with the proposed conditions for each application in respect of the lighting schemes to be submitted to the council for approval prior to the commencement of any operations or development.

- The air quality conditions proposed are the same in respect of both applications. Environmental Health recommend that monitoring be undertaken outside the perimeter of the airport, at locations to be agreed in order to assess the impact of the development on the air quality to the area in general. Such monitoring has not been proposed in the current draft conditions.

- Environmental Health concur with the condition proposed that no flight movements shall occur between the hours of 2300 to 0700. However, further clarification and discussion needs to take place regarding the exact wording and exemptions that have been proposed by the applicant. Also accepted is the proposed condition regarding the maximum annual number of passengers. However, a clear definition and understanding of the term 'first public transport flight' needs to be established. The conditions have not stipulated that passenger numbers will not exceed 300,000ppa for the runway extension. A condition has been proposed in respect of the terminal building to restrict the throughput of passenger numbers to 500,000ppa. In respect of both applications a condition has also been proposed that the total number of aircraft movements is restricted to 40,000 per annum, with 2,000 helicopter movements.

- Further conditions in respect of noise are included in the September 2009 council report (paragraphs 7.52 – 7.56). These have not been included in the conditions recommended by LAA. Further discussion is required regarding these proposed planning conditions.

- The S106 refers to an 'Air Quality Monitoring Study' for the monitoring of the 'Air Quality Management Strategy', which is the term used in the planning conditions. Clarification and understanding of the relationship between these two terms is required, along with any proposed long term monitoring should the development be granted permission.

- The S106 refers to a 'Noise Management Plan' and a 'Noise Budget'. Further clarification and understanding of the meaning and implications of these terms is required, especially how they will relate to any planning conditions that may be applied to the applications. Any Noise Management

Plans submitted to the council will need to comply with Directive EC/2002/30.

- It is noted that the S106 provides for secondary glazing to be installed at Greatstone Primary School once passenger numbers exceed 300,000 p.a. If the council approves the planning applications Environmental Health concur with the principal of secondary glazing, subject to further discussions about requirements.

- It is noted that a number of operational procedures are proposed by LAA. It is recommended further negotiation and clarification for what is proposed is undertaken with LAA should permission be granted. Environmental Health are particularly concerned to ensure the aircraft movements, (including the flight paths and types of aircraft used in the computer modelling predictions) for the environmental impact assessment work are reflected in the operations of LAA, should permission be granted.

- No restriction has been proposed in respect of freight flights to and from the airport. Environmental Health recommend a condition is imposed should permission be granted. There should be no or limited freight movement as it is acknowledged that LAA do not propose freight as part of its current business plan. Given the experiences of other local authorities, where freight is sometimes brought in late at night, and with a tendency to be in older and noisier aircraft, it is recommended such a condition should be imposed. There is also the implication that should more freight be coming into the airport, this will generate a change in the type of vehicle accessing the airport and consequent effects on traffic noise and air pollution, which have not been considered.

Kent Highways

6.29 Kent Highways have provided the following supplementary comments in response to both LAA's initial response to the council report, the December 2009 submission and LAA proposed draft conditions and S106:

- Highway improvements to Hammonds Corner would be required at a throughput of 30,000ppa or commencement of use of the terminal building (or the runway extension) for the provision of a roundabout. 300,000 or 50,000ppa is considered too high. The council report needs to be amended to reflect this, including any conditions.

- The LAA draft condition and/ or S106 should include a Construction Traffic Management Plan in which routing, signage and delivery times can be determined. In relation to any routing plan all construction traffic should be routed via Brenzett and avoid the A259 through New Romney.

- The Travel Plan needs to be approved and implemented at 30,000ppa as this is the trigger point for the Hammonds Corner roundabout. Also the submitted capacity calculations suggest that at this point the network will be suffering and requires mitigation, so the Travel Plan will have a purpose

at this time. Monitoring of the Travel Plan should be annual. The Travel Plan to date does not include targets for the reduction of car usage and thus no measures to ensure targets are met or sanctions are included. It should be consistent with the KCC I-Trace monitoring system.

- The Car Park Management Plan should be implemented prior to first occupation of the terminal building or commencement of use of the extended runway. The monitoring of this should be in the Travel Plan.

- Kent Highways disagree with the reduced level of service quoted in 7.3 of the draft S106 heads of terms in respect of the Shuttle Bus provision. The quarterly patronage figures take no account of seasonal variations, economic stability or the possible gradual increase in popularity of the airport. As such the Shuttle Bus should be provided and maintained as part of the Travel Plan for a 10 year period. Any proposal due to reduced patronage should be revised by submitting a variation to the S106 or planning condition.

- Kent Highways agree with the stepped monitoring approach for the Highway works to the entrance to the airport (8.1 of the S106), but since there may be a potential highway safety problem the first monitoring should take place at 30,000ppa. Crash analysis, capacity analysis and safety audit of the junction should be carried out at this and each subsequent monitoring period to determine if mitigation works are required. The monitoring should be carried out at the passenger throughput levels suggested in 8.1 (but starting at 30,000ppa) or at 18 month intervals, whichever comes sooner.

- The Signing Strategy should be implemented prior to first occupation of the terminal building or use of the extended runway.

- Whilst the submission includes no proposals to increase freight air traffic (and no plans for additional storage units or compounds have been submitted to suggest that this may occur), previous correspondence has only addressed extension to passenger services. Taking into account no restriction on the current freight arrangements it should be noted Kent Highways have not considered any further impact generated by air traffic associated with increased freight operations as part of these applications.

7. SUPPLEMENTARY APPRAISAL

7.1 This section of the report only amends and supplements where appropriate section 7 of the September 2009 council report. It focuses only on those aspects affected by LAA's 'initial response' to the council report and December 2009 submission, including statutory and other consultation responses. Consideration is given to LAA's updated draft conditions and heads of terms for a S106 legal agreement, other subsequent comments and discussions, a Revised Appropriate Assessment, a general review of the information and advice from BV.

SAC, SPA and Appropriate Assessment

- i) Dungeness SAC
- 7.2 LAA argue as in paragraphs 2.2-2.6 above, their December 2009 submission and page 2 of their consultant's letter in Appendix 3 that any impacts would not cause the integrity of the SAC to be affected. Furthermore enhancement proposals, as proposed through the Biodiversity Action Plan, would ensure habitat would be safeguarded and improved (e.g. Great Crested Newt habitat and monitoring of vegetated shingle). LAA also refer to the White Horse Millennium Landmark case, which involved the direct loss of part of a European site where compensation was not proposed.
- 7.3 Despite these arguments, Natural England maintains its objections, stating LAA has not demonstrated the proposals will not have an adverse effect on the integrity of the Dungeness SAC. This is further detailed in Natural England's comments, as set out in ii) and viii) of their representation in Appendix 1. This includes concerns about air quality (nitrogen deposition), Great Crested Newts and details of some of the measures in the Airfield Biodiversity Action Plan. KCC are concerned about the permanent loss of SAC land, cumulative impacts, changes in land management and nitrogen deposition effects. The RSPB and Kent Wildlife Trust are concerned about nitrogen deposition effects on the SAC, and the RSPB remain concerned about sewage. Comments have been received from Buglife, Protect Kent and LAAG about nitrogen pollution, including comments regarding invertebrate surveys, the Airfield Biodiversity Action Plan and lighting.
- 7.4 BV as part of the review of the LAA submissions and key consultations have advised that:
- The runway extension will lead to a small permanent loss of habitat within the SAC as a new paved runway area. Further land will be included under the management of the clear and graded strip as semi improved grassland. This habitat can also be considered as lost in terms of the SAC conservation objectives as it will require regular management to maintain it according to CAA guidelines. The majority of the habitat to be lost is, however, currently arable land or existing semi improved grassland, so it cannot be concluded that this loss will lead to an adverse effect upon the integrity of the SAC with regard to habitat loss.
 - Ditch habitat that is suitable for use by Great Crested Newts will be lost should the development proceed. Habitat lost is sub-optimal for Great Crested Newts at present and LAA have provided detailed proposals for ditch and pond creation, which will provide better breeding opportunities for Great Crested Newts in the short to medium term. The airport proposals will lead to a permanent loss of Great Crested Newt foraging habitat under the paved strip, however the change of existing arable land to semi improved grassland will partially mitigate for this loss. To ensure that the designated feature of the SAC is not adversely affected by the development the requirement for a long term Great Crested Newt

monitoring programme with measures incorporated to provide additional foraging habitat (through the purchase of further arable land and conversion to high quality foraging land if required) is proposed. This is if the population is proved to be declining in the vicinity of the airfield. Assuming these measures are put in place it cannot be concluded that the development would lead to an adverse effect upon the integrity of the SAC with regard to Great Crested Newts.

- The expansion of the airport to 300,000ppa or 500,000ppa will lead to an increase in nitrogen deposition across the majority of the SAC of between 0.1 and 0.3 kgN/ha/yr. This represents between 1% and 3% of the minimum APIS assigned critical load of 10kgN/ha/yr for the most sensitive designated feature, which is perennial vegetation of stony banks. The current background Nitrogen level as provided by APIS is 10.2kgN/ha/yr.

- The background level of nitrogen deposition is predicted to fall before 2012 when the runway extension is scheduled to be completed, and by this time the background is scheduled to have fallen sufficiently that this increase in nitrogen deposition (under either scenario) will not lead to a breach in the minimum APIS assigned critical load.

- The latest Natural England condition assessment found that 96.88% of the SAC was meeting a target with 59.63% in favourable condition, with a further 37.25% in unfavourable recovering condition. 3.11% is classified as unfavourable or unfavourable declining. This data suggests that despite the current exceedance of the assigned minimum critical load the designated habitat has not been adversely affected. Based upon this information, combined with declining background levels, meaning that the airport development will not exceed the assigned critical load under either scenario, it cannot be concluded that the development would have an adverse effect upon the integrity of the SAC with regard to designated habitats.

7.5 Whilst officers support the recommendations of BV, there is some concern about the comments from Natural England, Kent County Council, Kent Wildlife Trust and others with regard to the assumptions of declining nitrogen deposition levels nationally and locally. This is especially when some of the existing levels around the airport are considered already high for vegetated shingle. Increases in nitrogen deposition will result due to expansion, and there are various specialist arguments about what is the acceptable critical load. Should the planning applications be allowed, nitrogen deposition levels would need to be strictly controlled and monitored.

ii) Dungeness to Pett Level SPA

7.6 LAA argue as in paragraph 2.7 above, their December 2009 submission, and pages 2-3 of their consultant's letter in Appendix 3, that there is no reasonable scientific doubt that any impacts (e.g. visual impacts from aircraft and impacts due to bird control activities) would not cause the integrity of the SPA to be affected. LAA argue they have presented a clear

case that birds of conservation interest would habituate to increased aircraft noise, and they have provided evidence from scientific literature and from other airports that designated sites and airports can coexist. LAA believe any concerns about bird scaring in the draft Bird Control Plan can be secured through planning conditions and a S106. It is also argued greater weight should be given to the opinions of LAA's renowned ornithology consultant team, whose experience and expertise is significantly greater than that provided by BV and Natural England, especially as the latter have no or little experience of the LAA aerodrome, knowledge of bird control activities and their ecological impact. LAA also make reference to the Little Cheyne Court Winfarm decision regarding low levels of disturbance to birds, and that birds do habituate to bird scaring techniques in designated areas.

- 7.7 Natural England maintains its objections, stating LAA has not demonstrated the proposals will not have an adverse effect on the integrity of the Dungeness to Pett Level SPA. This is further detailed in Natural England's comments, as set out in i), x) and xi) of their representation in Appendix 1. This includes concerns about bird hazard management, disturbance to birds from air traffic, implications of aircraft site safeguarding policy, comparisons with other airports, helicopters and other air activities.
- 7.8 The RSPB considers that the further information fails to demonstrate there will not be an adverse effect on the integrity of the SPA. The Bird Control Plan is not considered sufficiently detailed to allow for the necessary assessment of the full impacts of those measures on SPA site integrity, and there are concerns about disturbance to birds from air traffic. The RSPB has provided a five page supplementary annex, which includes detailed issues with the Bird Control Plan, including agreement with landowners, crossing wildfowl, game birds, impacts of off-site control and non-target species, bird-scaring cartridges and pistol, bird safeguarding and format of the Bird Control Plan
- 7.9 KCC, Kent Wildlife Trust and LAAG have all raised concerns about the Bird Control Plan, plus visual and noise impacts on the SPA.
- 7.10 BV as part of the review of the LAA submissions and key consultations have advised that:
- The expansion of the airport to 300,000ppa or 500,000ppa will lead to a significant increase in aircraft movements. This will lead to an increase in the noise and visual disturbance events associated with these movements. The development proposals also include allowance for up to 2000 helicopter movements per year, which equates to approximately 5.5 per day. Helicopter movements have been recorded in a number of studies as having a significant effect upon foraging and roosting birds by putting large flocks to flight.
 - The airport expansion would also involve the implementation of a Bird Hazard Control Programme, which would include the use of pyrotechnics,

species specific distress call (gulls and corvids) and a range of other measures, including arm waving under the flight paths. Research undertaken by LAA in November and December 2009 observed that curlews and oystercatcher feeding approximately 600m from the airport were disturbed by the use of pyrotechnics and left the area. The recorded noise levels at the nearest receptor were between 71 and 79dB proving that birds will react at sound levels below the previously predicted 80dB. Whilst neither species is listed on the SPA designation it is plausible that other species would react in similar manner. It is also plausible that should designated species be foraging, resting in mixed flocks or in close proximity with easily startled species then entire flocks (including designated bird species) would be displaced.

- Distress calls of herring gulls were also recorded to disturb gulls within 2km of the airfield when played at the boundary of the airfield. Gulls are often an indicator species of avian predators, such as peregrine falcon and other birds, which will often react to the behaviour of flocks of gulls, leading to indirect disturbance. The relatively short time period when the noise behavioural study work was undertaken (4 days) has also not allowed a full evaluation of how birds react under a range of climatic conditions which will significantly affect the propagation of noise across the SPA. It is likely that under different conditions, either through weather or through varying assemblages of birds at nearby receptors, that the effects recorded under these brief test conditions would be more distinct.

- Based upon the information supplied by the applicant it is clear that it cannot be concluded that the airport development would not have an adverse effect upon the integrity of the SPA.

7.11 Officers accept this is a highly specialist area and note the arguments put forward by LAA and their consultants. However officers find these arguments difficult to agree with given the comments of Natural England, the RSPB and KCC's ecologist, and especially given the advice of the BV. It is noted however, that it might be possible to refine further the Bird Control Plan and put in place controls to help ensure its deliverability (if further information is provided and agreements could be reached).

iii) BV Revised Appropriate Assessment

7.12 The council have to make an Appropriate Assessment of the implications of the proposed development for the SAC and the SPA before it reaches a decision on the planning applications. BV's Revised Appropriate Assessment report under the Habitat Regulations forms Appendix 2, and replaces the Appropriate Assessment report at Appendix 7 of the September 2009 council report. This is a freestanding report commissioned by the council and prepared by BV. officers concur with the findings of the report: That the LAA proposals are not considered to adversely affect the integrity of the SAC site, subject to mitigation; that the LAA proposals cannot be concluded not to have an adverse effect upon the integrity of the SPA and by applying the 'precautionary principle', the proposals should not be allowed.

SSSI

- 7.13 LAA argues in paragraph 2.9 above, their December 2009 submission and page 3 of their consultant's letter in Appendix 3 that any impacts on the SSSI are minimal and do not result in a significant adverse effect. That there are no significant impacts on SSSI geomorphology, plants, invertebrates, amphibians, birds, or mammals, which cannot be adequately compensated by the recommendations proposed within the Airfield Biodiversity Action Plan. Furthermore, that most residual attention has been focused on birds. It is argued LAA must balance its duty to protect aerodrome safety with conserving the SSSI in a favourable status, and this would be achieved by implementing the proposed Bird Control Management Plan (containing bird conservation objectives), alongside the Airfield Biodiversity Action Plan (containing objectives for safeguarding and improving habitat for non-risk bird species). LAA also state that impacts from bird scaring activities would certainly be no greater than they are presently and, in some areas, improvements over present conditions would be made.
- 7.14 Natural England maintains its objections, arguing the proposals as presented are likely to have an adverse impact on the Dungeness, Romney Marsh & Rye Bay SSSI. This is further detailed in Natural England's comments, as set out in iii), viii), x) and xi) of their representation in Appendix 1. This includes concerns about conflict with Policy NRM5 of the South East Plan, disturbance to bird species, loss of SSSI habitat, buried geomorphology, air quality impacts (nitrogen deposition), comparisons with other airports, helicopters and other air activities.
- 7.15 KCC are concerned about the loss of SSSI land, habitat degradation through nitrogen deposition, impact on invertebrate populations (e.g. lighting in the evening and early morning), potential displacement of birds around the airport and SSSI generally. Buglife are concerned about the impact on invertebrates. Comments from the RSPB, Kent Wildlife Trust and LAAG regarding the Bird Control Plan and nitrogen deposition are also applicable.
- 7.16 BV as part of the review of the LAA submissions and key consultations have advised that:
- The development will lead to the permanent loss of habitat from within the SSSI as a result of the additional paved runway and the conversion of a further area into semi improved grassland. This will reduce the total area of the SSSI, although considering the relatively low value habitats in this specific area to be lost, the effect will be minor. BV however draw SDC's attention to PPS9 and accompanying circular 2005/06, the Wildlife & Countryside Act 1981, and the Countryside and Rights of Way Act (2000), which provide guidance to planners on assessing the effects of development on protected habitats. It is the view of BV that although this loss of total site area will not significantly affect SSSI, it should still be given suitable consideration and weight in making the planning decision. BV

recommend that with regard to development on SSSI's it is important for SDC to give due regard to the views of Natural England, who are the governments statutory advisor on nature conservation matters, before making a decision.

- The development of LAA will lead to the nitrogen deposition of between 0.1 and 0.3kgN/ha/yr across the majority of the SSSI, with small areas in the vicinity of the airport gate of relatively low value habitat experiencing higher deposition rates. This is a significant contribution to the background level of nitrogen. Although the background level is predicted to decrease over time, any addition of nitrogen into what is essentially a low nutrient system is likely to have an adverse effect upon Schedule 8 plants, terrestrial invertebrates (indirect effects through increased shading out of larval food plants), Warne's thread moss and the general assemblage of Schedule 8 plants. A number of consultees have drawn into question the suitability of the APIS assigned critical load, and recent reports and reviews of scientific literature suggest that the critical load may be set too high, a more appropriate level being in the region of 5 – 8kgN/ha/yr. Although for assessing the effects upon the SAC it is appropriate to use the APIS assigned critical load. Following UK best practice when assessing effects upon the wider range of species and habitats, for which the SSSI is designated, it is more appropriate to consider the relevant scientific literature as APIS assigned critical loads are not strictly applicable.

- Taking this into account it is likely that the deposition of between 0.1 and 0.3kgN/ha/yr across the majority of the SSSI as a result of the airport expansion will have an adverse effect upon the SSSI. The effect will be moderated in that background nitrogen is declining, but is still likely to be significant considering the uncertainty regarding the sensitivity of habitat to nitrogen deposition. It is the view of BV that this effect constitutes a reason for refusal when combined with the other effects upon the SSSI. Again BV's advice to SDC is to consider the views of Natural England fully when considering the effects upon a SSSI.

- Lighting of the runway and terminal building may have an adverse effect upon night flying invertebrates for which the SSSI is designated. LAA have suggested that night flying will be not be operated (or be minimal) during the most active night flying invertebrate season of April – October. So considering the present situation where there are no restrictions on night flying, there will be a likely neutral effect upon night flying invertebrates. This assumes that planning conditions are imposed to minimise night time runway lighting (when there are no flight movements and ensuring that low intensity or Ultra Violet filtered lighting is used for the terminal building).

- The proposed re-creation of ditch habitat will provide adequate mitigation for that to be lost. In order to ensure that this measure is successful for both Great Crested Newts and aquatic invertebrates a suitably worded planning condition would need to be imposed to ensure the long term management of these new features, combined with an annual monitoring programme to monitor the success. Management practices should be

informed by monitoring results. This work should be undertaken in consultation with Natural England to ensure that monitoring protocol is suitable and contributes to the overall SSSI monitoring programme. The residual effect upon Great Crested Newts and aquatic invertebrates is therefore considered to be neutral.

- The effects upon the bird interest of the SSSI will be significant based upon the data supplied by LAA. The SSSI abuts or overlaps the boundary of the airfield and bird species for which the SSSI is designated will be likely to use habitats close to the airfield boundary (a view supported by the original environmental statement bird survey work). Experimental noise and bird behaviour monitoring undertaken in November and December 2009 proved that wading birds would be affected by the use of pyrotechnics within 600m of the airfield at noise levels of between 71 and 79dB. It proved that gulls might be affected by the use of distress calls at distances of up to 2km from the boundary of LAA.

- Up to 2,000 helicopter movements are proposed, and research suggests that helicopter activity can have a greater adverse effect upon foraging and resting birds than similar aeroplane movements. The assemblage of birds (all waterfowl using the SSSI) are protected under the legislation associated with the SSSI and therefore an adverse effect upon any species (which has already been proved for at least three species in limited research) will lead to a significant effect. Given the proximity of the SSSI and the range of species present, combined with the very large number of birds, the implementation of the development in respect of noise and visual disturbance from flight movements (helicopter and aeroplane) and through the implementation of the Bird Control Plan will have a significant adverse effect upon the ornithological features of the SSSI. BV is of the view that this reason alone would be a suitable ground to refuse consent in relation to the SSSI.

7.17 Officers note the arguments put forward by LAA and their consultants. However officers find all of these arguments difficult to agree with given the comments of Natural England, the RSPB and KCC's ecologist, and given the advice of BV. Overall there is considered to be an adverse effect on the SSSI, which is considered contrary to planning policy. It is difficult to see how these adverse effects could be fully mitigated and compensated for. Of particular concern are the effects on birds and nitrogen deposition on plants.

7.18 It should be noted that officers have reconsidered Natural England's earlier comment that the permanent loss of buried geomorphology, due to the proposed runway footprint, is considered significant (paragraph 7.30 of the council report). Officers consider this loss to have only minor implications and that conditions regarding samples (as per Natural England's recent comments) should be applied to any planning consent, if the applications are resolved to be granted. This would be despite continuing objections from Natural England, whose comments also relate to associated ditches and the proposed runway extension area.

Hammonds Corner and Protected Species

- 7.19 BV has given the following advice: 'Although PPS9 is clear that before a development is consented the full range of ecological impacts should be understood, and case law in Cornwall supports this stance, BV are of the opinion that LAA have now undertaken sufficient survey work to prove that the site at Hammonds Corner is likely to be of limited ecological value. Development in this area (assuming pre-construction survey work and best practice mitigation measures, if required, are employed) they will not have an adverse effect upon any protected sites or protected species. BV also advise that SDC need to take account of the opinions of Natural England with regard to this aspect of the development as they are the government's statutory advisors on all Nature Conservation matters.
- 7.20 Officers have reconsidered their position (paragraphs 7.35 – 7.36 of the council report). Whilst Natural England still object to any consent to the runway extension and terminal and car park, in advance of full details of highway improvements and associated full protected species surveys, officers agree with LAA that full details could be reserved pending submission of a planning application and/ or highway scheme for improvements to Hammonds Corner. Kent Highways recommend that this is undertaken before 30,000ppa is reached. Given continuing objections from Natural England on allowing any development before full protected species surveys are carried out, officers advise that such details would need to be tied to a condition regarding commencement of works for the runway extension, new terminal and car park, not when a particular level of passenger numbers is reached. Should any protected species concerns not be overcome as part of the Hammonds Corner Road improvements, it would not be possible to commence any development for the runway extension and terminal. This approach also responds to the possible scenario that the runway extension facilitates cargo rather than passenger aviation.

Proposed SPA Extension and Proposed RAMSAR Site

- 7.21 LAA argue as in paragraph 2.10 above, their December 2009 submission and page 3 of their consultant's letter in Appendix 3 that no legal protection is conferred on either site and the analysis of impacts is provided only to inform rather than as a basis for decision-making. Yet it is argued that the information and effects associated with these proposed designations is being cited as a reason for refusal. As such inappropriate weight has been given to this issue. Notwithstanding that the sites are not formally designated as an SPA extension and RAMSAR at the current time, LAA has in any event carried out impact assessments based on the available understanding of the proposed designations of these sites. The conclusion is that impacts would be no worse than those impacts on the existing SPA and SSSI (i.e. no significant adverse impact on the integrity of the sites if they were formally designated). LAA have also re-confirmed the list of assessments that have been carried out in this regard, confirming their

belief that the effects on the 'proposed' SPA extension and RAMSAR have been sufficiently considered.

- 7.22 Natural England maintains its objections, that the applicant has not demonstrated that the proposals will not have an adverse effect on the integrity of the proposed extension to the SPA and the proposed RAMSAR site at Dungeness. Natural England have updated the information associated with this, including the classification and qualifying status for each proposed designation, the need to secure appropriate protection under national law and that the council should afford substantial weight to this in the determination of the current planning applications. Natural England state they are finalising the departmental brief for these sites, and following internal executive level approval the brief will be submitted to Joint Nature Conservation Committee (JNCC). It will then be submitted to Defra before it is tendered for public consultation. Formal status will be afforded prior to the public consultation stage. Natural England envisage that Defra will be provided with the departmental brief in May.
- 7.23 Points raised with regards to the effects of the draft Bird Control Plan, visual and noise disturbance to birds from air traffic, and potential effects of the airport site Safeguarding Policy are considered by Natural England to also apply to the bird species and assemblages meeting the qualifying criteria for the proposed SPA additions and extensions and the proposed RAMSAR site. As Great Crested Newts, medicinal leech and aquatic invertebrates are included in the proposed RAMSAR site classification, the potential impacts on these species should also be considered in assessing impacts of the proposed development.
- 7.24 The RSPB comment that the further information fails to demonstrate that there will not be an adverse effect on the integrity of the proposed SPA extensions and RAMSAR. This is for similar reasons to those given for the SPA and SSSI.
- 7.25 BV in their Revised Appropriate Assessment report have carried out a revised 'shadow assessment' of the effects on the 'proposed' SPA extension and RAMSAR. Whilst these are not currently subject to assessment under the Habitat Regulations BVs revised 'shadow assessment' is similar to the previous assessment in the September 2009 report: The content of the revised assessment is as follows:
- There will be no direct impacts in terms of habitat loss on the pSPA assuming the potential boundaries specified by Natural England are as previously communicated. There will be a likely direct loss of 0.018% (1.62ha) of habitat within the RAMSAR site, which will be paved to form the new runway strip and the loss of 0.14% (12.85ha) of the RAMSAR to semi improved grassland to form the "clear and graded strip" (assuming the boundary of RAMSAR site follows the boundary of the existing SSSI, as expected. Habitat within the 12.85ha to be lost is currently of low value to birds for which the RAMSAR would be designated, and as such would be unlikely to have a detrimental effect upon site integrity.

- The indirect impacts of the development (runway only and runway and terminal scenarios) on the SPA extension and RAMSAR will be of the same type as explained in detail for the Dungeness to Pett levels SPA (noise and visual as a result of the Bird Control Plan). The severity of the impacts of the development will be increased for the following main reasons: The SPA extension and RAMSAR boundary would be significantly closer to the airport than at present, and hence impacts in terms of noise (from aircraft and the Bird Control Plan) and visual would be greater. Designation of the proposed RAMSAR 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 Bird Control Plan, which has been proven to have an impact upon birds) would not have an impact therefore upon the integrity of the RAMSAR site.

- The applicant has not considered the impact of the runway development upon the RAMSAR and SPA extension in any detail, as both sites have not been designated at present. Advice from Natural England suggests that the designation process for both sites will commence during 2010, and as such due consideration should be given to assessing the impacts of the development scenarios upon these sites. Should planning consent be granted and the two sites were subsequently designated as described above, then a further Appropriate Assessment would be required.

- Based upon the data supplied by the applicant, which clearly shows that birds as far as 600m away from the airport boundary will be affected by the use of pyrotechnics, combined with the effects of noise and visual disturbance from aircraft movements it cannot be concluded that the project would not adversely affect the integrity of the proposed SPA extension and RAMSAR.

7.26 Officers have considered again all the issues raised by all the parties regarding the proposed SPA extension and potential RAMSAR site. These proposed designations are not yet official or confirmed, but do need to be afforded some weight in the determination of the planning applications, though clearly not so much weight as an official or full designation.

7.27 The advice of both Natural England and BV is that in the case of the proposed SPA extension, the number of protected bird species would be increased and the boundary of the protected site would be closer to the airport perimeter. BV advise that the applicant has not demonstrated the proposals will not have an adverse effect on the integrity of the existing SPA. With regard to the proposed extension BV go further and advise there will be a significant adverse effect.

7.28 The potential RAMSAR designation is likely to follow the boundaries of the existing SSSI, but would afford the wide range of species in this area greater protection than at present. BV advise that the applications would be harmful to the SSSI and potential RAMSAR. As stated above, the fact

that this is not a formal designation, means that only some weight can be applied to the decision making process.

- 7.29 Officers have been advised that to grant planning permission would be premature pending a decision on the possible extension to the SPA and the possible designation of the SSSI as a RAMSAR site. Natural England have also advised that substantial weight should be given to these proposed designations.
- 7.30 Under the Habitat Regulations, should the SPA extension be designated after the grant of planning permission, but before the development is completed, then the council would be required to review the permission by carrying out a further Appropriate Assessment, to ascertain whether the planning permissions would adversely effect the newly designated SPA. The council would have to decide whether it should affirm, modify or revoke the permission. Should the council make a revocation or modification, then LAA would be entitled to make a claim for compensation. LAA has pointed out to the council that the possibility of designation of the proposed SPA extension post the grant of planning permission should the development not be completed, is not a material consideration that should be taken into account in determining the applications now and refers to the case of Alnwick DC and Secretary of State for Environment, Transport and the Regions in support of this point. However, members may be interested to note that LAA has made an offer to the council of not claiming compensation (or fully indemnifying the council) should the council be required to revoke or modify the planning permission granted in respect of the two applications. LAA asked that should the council take up this offer, in the event of a resolution to grant, the offer would be recorded in an agreement made pursuant to Section 11.1 of the Local Government Act 1972.
- 7.31 With regard to the potential RAMSAR site as a matter of law there is no obligation to review the grant of planning permission upon designation and this is a point made strongly by LAA to the council. However, the council's own legal advice is that as a matter of policy, the UK government has concluded that in order to honour our obligation under the RAMSAR convention, the obligation to review permissions should apply to fully designated RAMSAR sites in the same way as it does to 'European' designated sites. The council could, therefore, find itself having to review the implications of the designation of a RAMSAR site as well as an extended SPA, although it is recognised that the policy and legislative requirements between the two types of designation do differ.

Noise and Tranquillity

- 7.32 Officers do not wholly agree with LAA's comments summarised in paragraphs 2.13-2.14 above. Noise issues have been adequately covered in paragraphs 7.44 - 60 and 9.8 of the September 2009 council report, and officers do not believe various comments are contradictory or sufficiently detailed. Overall it is considered there will be a minor - moderately

significant adverse noise effect, and by LAA's own admission there will be a moderate adverse impact to some properties in the local community. The environmental impact assessment work states where impacts cannot be mitigated 'increases in airborne noise levels only exceed the recognised CAA criterion for the onset of significant community annoyance at 66 properties based on the annual average'. The Environmental Health Officer in Appendix 6, pages 145-147 of the council report, gives further details of other properties and areas potentially affected (e.g. up to 106 properties potentially exceeding the significant 57 dB(A) noise contour, including Greatstone Primary School, and concerns about the loss of tranquillity in the wider area, including the Kent Downs AONB).

- 7.33 Paragraphs 7.48 - 7.49 of the council report state that when comparing the existing baseline with the future baseline and future with consent scenarios a significant increase in noise will occur and when weighing up the merits of the proposal there is an adverse noise impact. This is based on discussions with BV. In paragraphs 7.58 – 7.59 of the council report, as part of BV's conclusions, it states that whilst there will be an overall minor adverse noise impact, there will be a material worsening in the acoustic environment which will really be noticed by some people living close to the airport and also Greatstone Primary School, which should be taken as an adverse consequence and set alongside other adverse effects and benefits. BV also comment in paragraph 7.46 that recent research in to aviation noise indicates that there may be no identifiable threshold at which noise becomes a serious problem, as even low levels of noise can cause some annoyance which rises as noise increases.
- 7.34 LAA's proposed draft conditions and heads of terms of a S106 legal agreement have been considered in the September 2009 council report when considering the impact of noise as summarised above. The amended version has also been considered further by the Environmental Health Officer (paragraph 6.28 above).
- 7.35 Despite the benefits associated with no night flights, the proposed development will facilitate expansion of passenger numbers, including larger fully laden planes and general aviation. The aim of any conditions is to provide certainty to those affected of the nature and extent of the noise impact (paragraph 7.55 of the council report), not necessarily reduce the impact of effects associated with airport expansion. The number of flights at LAA will potentially increase from less than 62 mainly small aircraft per day to 115-127 per day, including 12-22 larger fully laden passenger aircraft per day (LAA's own assumptions, as detailed in the tables on pages 8 and 9 of the council report). This represents a total increase from approximately 22,400 to 46,355 flights per annum, proposed to be capped at 40,000 per annum according to LAA's draft conditions. This excludes helicopters, which is currently estimated at 1,200 movements per annum, against a proposed cap of 2,000 per annum in LAA's proposed draft conditions. Double glazing at Greatstone Primary School will not diminish the effects on external areas to the school, including playgrounds.

- 7.36 Should the council resolve to grant consent, BV has advised the draft noise conditions proposed by LAA will need to be refined. For example, whilst the council and LAA might agree to a restriction on total flights, passenger numbers, freight, helicopters, just as important is consideration of a restriction on aircraft type. All the noise modelling and subsequent impact assessment is based on an assumed fleet mix. To achieve certainty that there would be no noise impact greater than that shown in the assessment, then type of aircraft used could be constrained (particularly for the larger noisier aircraft). Limits on the area enclosed by a certain noise contour could also be in terms of average or single modes. Various other detailed recommendations are made by BV, which would need to be discussed further with LAA if the applications are to be agreed. This includes reconsideration of the number of helicopters allowed (a limit of the existing 1,200 per annum, not the proposed 2,000 per annum) and clarity as to the extent of other activities.
- 7.37 In response to the recent consultation the RSPB comment that the applicant has failed to recognise and take into account the impact of increased aircraft traffic on the amenity value of the RSPB Dungeness Reserve and the surrounding area. The frequency of peak noise events is likely to erode the tranquil nature of the Reserve and surrounding area. The RSPB is concerned that this will damage the visitor and educational experience at the Reserve.
- 7.38 Notwithstanding the above, it should be noted that LAA argue the airport is existing within the local area and is currently operating below capacity without any planning restriction, which means proposed conditions restricting night flights, etc, will be beneficial. Furthermore, in the past, operations were far greater, nearer 300,000ppa. LAA also argue tranquillity should not be given significant weight as there is no measure for assessing impacts from on tranquillity aircraft noise.

Other Issues

- 7.39 SDC's Economic Development Officer's comments are considered to have been properly taken in to account, and further comments have been provided by the Economic Development Officer, as in paragraph 6.27 above. Sufficient weight has been given to the Local Plan policy to support expansion of LAA, which is subject to provisos, and various other local, regional, national and international policies which can be found in detail in the main September 2009 report.
- 7.40 LAA has commented on LAAGs concern about changes to the flight paths, stating the flight paths have not changed and new equipment does not alter the findings of any of the assessments. Notwithstanding this, the issue of flight paths and operations will need to be considered further as part of any conditions.
- 7.41 The council should be aware that although the applications for expansion have been presented as passenger driven, without any conditions LAA

could potentially increase its freight (or cargo business), which might have different implications for noise, traffic, air quality, the local economy and employment. LAA have been reluctant to consider a condition restricting freight operations as it might restrict their business. Also as noted by Kent Highways, a major expansion of the freight business would inevitably require storage units or compounds, which are currently not part of the applications.

- 7.42 Concerns from some consultees about Climate Change and safety at Dungeness Nuclear Power Station are considered to be adequately covered in the council's September 2009 report. There is a minor error in the September 2009 council report relating to car parking, which should be 639 spaces, not 637 for the terminal building. This error was based on the original application submission details.
- 7.43 Overall the September 2009 council report is considered to provide a balanced assessment of all the issues and effects, not being unduly negative. This supplementary report has reconsidered some of the issues in the context of the subsequent submission, consultations and discussions. Officers dispute that there has been a lack of engagement with LAA, the applications now being under consideration for more than three years, subject to four formal supplementary submissions and consultations, plus numerous meetings, correspondence, discussions and other information.
- 7.44 Third party mediation has not been considered necessary or appropriate, especially given information and legislative requirements. Despite objections from some statutory authorities, such as Kent County Council and Natural England, SDC have used consultants BV to independently advise on specialist aspects such as aviation noise, air quality, ecology and compliance with Environmental Impact Assessment Regulations. Ultimately these applications might also be 'called-in' by the Secretary of State.

Potential Conditions and S106 Legal Agreement

- 7.45 LAA's proposed draft conditions and heads of terms for a S106 are considered in para 7.94 of the 24 September 2009 council report, as well as other parts of the report where appropriate.
- 7.46 LAA's amended January 2010 proposed draft conditions and heads of terms for a S106 legal agreement form Appendix 4. Should the council be minded to grant planning permission, officers consider that LAA's proposed draft is a reasonable basis on which to negotiate additional planning conditions and clauses in a S106 legal agreement. Most of these have already been discussed with LAA in principle, if not fully detailed and agreed. Those that would need to be discussed further would include, but are not limited to, the following:
- i) No commencement of works for the runway or terminal building and car park until full details of an Environment Management System (waste

management and procedures to avoid contamination), Airport Biodiversity Action Plan, Bird Control Plan, Air Quality Management Strategy and improvements to Hammonds Corner have been submitted to and approved by the council (submission of these important details currently relate to commencement of aircraft operations, particularly aircraft over 45 tonnes, and passenger numbers rather than construction works for the runway, terminal and car park).

- ii) Consideration of additional operational restrictions related to flight paths and types of aircraft based on the assumptions in the Environmental Impact Assessment. It is noted that the LAA now additionally propose a cap on pure cargo or freight movements. This is no more than 10% of all aircraft movement, where the maximum takeoff weight of the aircraft is in excess of 10 tonnes, will be pure cargo (Appendix 3, letter from Indigo Planning 7 February 2010, page 6, Planning Control Measures).
- iii) In addition to the Air Quality Management Strategy, agreed maximum nitrogen deposition levels and regular inspection of the plant communities within the airport boundary and designated sites (SAC and SSSI).
- iv) Other ecology and geomorphology conditions, as identified in the September 2009 council report and this supplementary report, plus any other conditions following further discussions with Natural England, the RSPB and BV.
- v) Further discussions regarding requirements of the Council's Economic Development Officer, Environmental Health Officer and Kent Highways (as set out in paragraphs 6.27-6.29 of this report).
- vi) Other conditions and informatives as advised by statutory and non statutory authorities where considered reasonable, details related to other aspects of the applications set out in the September 2009 council report (socio-economic, transport and traffic, air quality and Climate Change, terminal design, landscaping, lighting, flood risk, drainage, sewage, construction, contamination, archaeology, historic environment, security and safety), and any other conditions recommended by the Head of Planning. In the event that LAA and the Head of Planning are unable to agree the terms of the Section 106 agreement and/or the planning conditions, the areas of disagreement would be reported to the council to consider.

8. HUMAN RIGHTS AND OTHER LEGAL COMMENTS

- 8.1 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the council needs to balance the rights of the

individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

- 8.2 Comments in paragraphs 8.1 and 8.3 of the September 2009 council report still apply.

9. AMENDED SUMMARY AND CONCLUSIONS

- 9.1 Like other sections of the September 2009 council report, most of the summary and conclusions remain valid. This is with the exception of the following, which is amended and supplemented as follows.
- 9.2 Local Plan policy SD1 concerns economic need and sustainability. SD1 (k) concerns safeguarding and enhancing the amenity of residents, (c) protecting and enhancing the Kent Downs AONB and (d) protecting and enhancing designated or proposed sites of international and national importance. These issues as they relate to noise and tranquillity are covered at various parts of paragraphs 7.46 -7.60 and 7.95 of the September 2009 council report. Notwithstanding this, it is made clear in paragraph 9.8 of the council report that it would not be recommended the applications be refused on noise and tranquillity grounds alone, but that this could be a reason for refusal alongside others if the benefits of the proposals are not considered to outweigh the adverse effects when taken together. This is because of the minor-moderate overall adverse extent of the noise effects, and because Local Plan policy encourages expansion of LAA, subject to provisos about international ecology designations and other special features.
- 9.3 BV have reviewed the Appropriate Assessment under the Habitat Regulations in relation to the SAC and SPA, and provided a Revised Appropriate Assessment. This concludes the applications will not have any adverse effects on the integrity of the Dungeness Special Area of Conservation (SAC), subject to mitigation. However, 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 therefore not be allowed.
- 9.4 The applications are considered to result in adverse effects on the Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (SSSI) and Dungeness National Nature Reserve. BV advised that LAA have not demonstrated the applications will not have an adverse effect on the proposed extension to the SPA and potential RAMSAR. In fact BV consider they are likely to result in significant adverse effects. Officers consider this a material planning consideration.

- 9.5 Despite Natural England's continuing objection, officers now consider that further details of protected species surveys associated with highway improvement works required to Hammonds Corner could be submitted prior to commencement of any works to the runway and terminal.
- 9.6 Other issues have been considered in this supplementary report, which are considered not to substantially alter the content of the September 2009 council report.
- 9.7 It should be noted that whilst these planning applications are being recommended for refusal, officers consider that LAA have put forward a strong case in support of the applications. However, because of the advice from Natural England and the council's consultants, it has not been possible to recommend consent. This is because of the potential and likely adverse effects on the internationally designated SPA, the nationally designated SSSI, and proposals for an extension to the SPA and potential designation of a RAMSAR. Taking this in to account, officers are of the opinion that the adverse noise impact and the implications for sustainability should be retained as reasons for refusing the applications, especially given other alternatives at Manston.
- 9.8 As mentioned above, the council have to make an Appropriate Assessment before it can grant planning permission. This means that the council have no realistic alternative than to adopt the Appropriate Assessment prepared for it by BV. Once the council have accepted the BV report as its Appropriate Assessment under the Habitat Regulations, it must take this into account in reaching its decisions on the planning applications. Legal advice is that the council can only then grant planning permission in the light of the conclusions of the assessment if Members have ascertained that the development will not adversely affect the integrity of the European sites. Legal precedent indicates that when approaching that question, Members must be satisfied 'beyond reasonable scientific doubt'. In other words, Members would need to be satisfied that there were no reasonable prospects that BV were right in its conclusions. The difficulty is for Members to demonstrate in evidential terms that there is no scientific doubt remaining in connection with the applications not effecting the integrity of the European sites. In essence, Members would in those circumstances be agreeing with the evidence submitted by LAA and its advisors and rejecting the independent advice of its own advisors, BV, Natural England and KCC.
- 9.9 In the event the council believes there could be a significant effect on the integrity of the SAC and/ or SPA, but believes there to be no alternative solutions and 'imperative reasons of overriding public interest' (IROPI), then council may not agree to the proposals without first notifying the Secretary of State (Regulation 49 of the Habitat Regulations).
- 9.10 Aside from the separate requirements of the Habitat Regulations, if the council determines the planning applications should be approved, and are not considered contrary to the Adopted Shepway District Local Plan

Review, then the legal advice is that there is no formal requirement to refer these planning applications to the Government Office of the South East (GOSE) for the Secretary of State's consideration. However, GOSE has been requested by third parties to 'call-in' the applications for their own determination given their potential implications for regional, national and international policy. Consequently GOSE has been tracking the progress of these applications and officers have been requested to inform GOSE of the council resolution as soon as it is available.

- 9.11 Notwithstanding the above, if consent is resolved to be granted the council should inform Natural England of the reasons it has chosen not to agree with their advice.

10. BACKGROUND DOCUMENTS

- 10.1 The consultation responses set out at Section 1 and any representations at Section 3 are background documents for the purposes of the Local Government Act 1972 (as amended).

AMENDED RECOMMENDATION

- 1. 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.**
- 2. That planning permission be refused for the runway extension (Y06/1648/SH) and the new terminal and car park (Y06/1647/SH) on the following grounds:**
 - a) The applicant has not demonstrated the proposals will not have a significant adverse effect on the Dungeness to Pett Level Special Protection Area (SPA). Consequently, the proposals are considered contrary to Shepway District Local Plan Review policies CO8 and TR15, South East Plan policy NRM5 and PPS9.**

- b) The proposals will result in adverse effects on the Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest (SSSI) and Dungeness National Nature Reserve, contrary to Shepway District Local Plan Review policy CO9, South East Plan policy NRM5 and PPS9.
- c) The applications have not demonstrated they will not have an adverse effect on the proposed extension to the SPA and potential RAMSAR, which are considered likely to result in significant adverse effects, and are a material planning consideration, being contrary to Shepway District Local Plan Review policy CO8, South East Plan policy NRM5 and PPS9.
- d) There will be adverse noise effects on the local community, especially near the airport, and some of these are considered materially significant. Whilst the effects can be partially mitigated, not all of them can. There will also be some other limited adverse effects in the area, including the enjoyment of the Romney Marsh and Dungeness area generally, and the Kent Downs AONB. Consequently the proposals are considered contrary to Shepway District Local Plan Review policy SD1, particularly SD1 (k) and to a lesser extent (c) and (d).
- e) Whilst the expansion and associated investment in the local economy is a welcome prospect, the potential adverse and adverse effects on the SPA, SSSI, proposed SPA and potential RAMSAR, the local community and surrounding area mean that the planning applications should be refused. Furthermore, given there is no overriding strategic justification for the proposals the adverse effects make them unsustainable in the planning policy context, being contrary to Shepway District Local Plan Review policy SD1 and South East Plan policy CC1.

3. To inform the Government Office for the South East (GOSE) and Natural England of the council's resolution to adopt the Appropriate Assessment and refuse planning permissions

In coming to this decision, regard has been had to the following policies:

Shepway District Local Plan Review – SD1, BE1, BE2, BE7, BE15, BE16, U1a, U2, U4, U6, U7, U8, U9, U10, U10a, U15, TR1, TR2, TR5, TR6, TR8, TR11, TR12, TR13, TR15, CO1, CO3, CO4, CO5, Co8, CO9, CO10, CO11, CO12, CO13, CO14, CO15

SD1, BE1, BE2, BE7, BE15, BE16, U1a, U2, U4, U6, U7, U8, U9, U10, U10a, U15, TR1, TR2, TR5, TR6, TR8, TR11, TR12, TR13, TR15, CO1, CO3, CO4, CO5, Co8, CO9, CO10, CO11, CO12, CO13, CO14, CO15

The South East Plan – BE6, CC1, CC2, CC4, CC7, PPS9, SP2, T1, T2, T5, T4, T8, T9, T14, NRM1, NRM4, NRM5, NRM7, NRM9, NRM10, NRM11, NRM12, W2 and M1

Decision of Committee