

APP/L2250/V/10/2131934 & APP/L2250/V/10/2131936

SECTION 77 TOWN AND COUNTRY PLANNING ACT 1990 – REFERENCE OF APPLICATIONS TO THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000

**GUIDE TO HOW COMMENTS RECEIVED FROM SDC AND RULE 6 PARTIES ON CD17.3 AND CD17.5 HAVE BEEN INCORPORATED, OR OTHERWISE, INTO CD17.12 (DRAFT SECTION 106 AGREEMENT), CD17.14 (DRAFT RUNWAY EXTENSION CONDITIONS) AND CD17.16 (DRAFT TERMINAL BUILDING CONDITIONS)**

In respect of:

Planning Application Reference: Y06/1647/SH (New Terminal Building)

Planning Application Reference: Y06/1648/SH (Runway Extension)

Relating to land at London Ashford Airport, Lydd, Romney Marsh, Kent, TN29 9QL

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1. **COMMENTS FROM SHEPWAY DISTRICT COUNCIL – SDC/105**

*Following a meeting between Shepway District Council and the Airport Operator on Monday 5 September 2011, all points of principle are now agreed between Shepway District Council and the Airport Operator.*

1.1 **Response to Part 1 of SDC/105**

1.1.1 Only comment reference 10 requires a response. Comment reference 10 is in two parts:

- (a) *"It is noted that in paragraph 13.1 additional international guidance has been quoted. It has been assumed that these are new standards that have been introduced with regard to aircraft noise management."*
  - (i) **PM Response:** The Airport Operator can confirm that the most up to date ICAO guidance has been referred to.
- (b) *"Paragraphs 13.3 and 13.5 make reference to areas not exceeding 1.8 square kilometres and 2.0 square kilometres. Clarification is required from the applicant in respect of the area covered by the 57dBLeq contour. Which set of noise data did this area coverage come from, and also, from which scenario of conditions?"*
  - (i) **PM Response:** The Airport Operator can confirm that the noise data from which the noise contour areas have been derived are those in Mr Richard Perkins' proof of evidence, and relate to the 'higher growth' scenario for the first and second noise management plan thresholds.

1.2 Response to Part 3 of SDC/105

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
1.	Generally	As a matter of preference, we would prefer to see all definitions set out in the definitions section so we have sought to include them here.	Agreed, apart from the definition of "SoC" as this term is only used in the Appendix 5.
2.	"BCMP"	The bird control management plan - the definition cross refers to the BCMP to be approved under the Runway Extension Planning Permission, but needs to be clarified to include Off-Site Bird Control Measures and agreed variations.	<p>Condition 18 has been deleted from the Runway Extension Planning Permission and transferred to Paragraph 10, Schedule 1 of the Section 106 Agreement. Paragraph 10.1 is clear that any Off-Site Bird Control Measures are to form part of the BCMP.</p> <p>The definition of "BCMP" has been amended to: "<i>means the bird control management plan submitted by the Airport Operator to the Council for approval and which plan when submitted pursuant to paragraph 10.1 of Schedule 1 shall be in accordance with the Bird Control Management Plan dated December 2010 submitted to support the Applications and contain the details listed in paragraph 10.1 of Schedule 1 and which plan may change from time to time and/or incorporate remedial measures as approved by the Council pursuant to paragraphs 10.12 and 12 of Schedule 1;</i>"</p>
3.	"Calendar Year"	The Council's Environmental Health Department have commented that such a change would not suit requirements with regard to air quality assessments, which assess data based on January - December.	Agreed, amendment made to the definition of "Calendar Year" in the Section 106 Agreement to 1 January - 31 December.
4.	"Car Park Management Scheme"	This has now been broken down into two parts, the Runway Extension Parking Management Scheme and the Terminal Building Parking Management Scheme. Presumably. Once both the Runway Extension and the	<p>Agreed, amendment made to:</p> <p>1. paragraph 5.4, Schedule 1 of the Section 106 Agreement: "<i>The Terminal Building Parking</i></p>

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
		Terminal Building have been constructed, these will be regarded as a single management scheme and it would seem cumbersome to have two different schemes running in parallel.	<p><i>Management Scheme shall incorporate all of the details of the Runway Extension Parking Management Scheme together with...."; and</i></p> <p>2. paragraph 5.5, Schedule 1 of the Section 106 Agreement: <i>"...will thereafter be provided and managed in accordance with the approved Runway Extension Parking Management Scheme until the Airport Operator implements the Terminal Building Parking Management Scheme."</i></p> <p>Paragraph 5.6, Schedule 1 of the Section 106 Agreement already provides that the Airport Operator is to manage the car, motorcycle and cycle parking spaces in accordance with the approved Terminal Building Parking Management Scheme until the End Date of both of the Runway Extension and Terminal Building.</p>
5.	"Ecology Buffer Zone"	We need to see the plan showing this land. This is offsite and presumably the Airport Operator has no legal rights to do anything in respect of this land.	<p>The plan showing the "1km Survey Area" (the new name for the "Ecology Buffer Zone") was issued on 26 August 2011.</p> <p>The wording of paragraph 21, Schedule 1 of the Section 106 Agreement has been accepted by Natural England.</p>
6.	"Emergency and Governmental Activities"	The definition of this has improved in that in order for some of these activities to be exempt (particularly those of an emergency and governmental body) the Council's prior approval is now required beforehand. SDC sees no reason why all non-emergency Governmental activities should not be subject to the controls of the Agreement.	<p>The definition of "Emergency and Governmental Activities" has been amended to refer to the following only:</p> <p>1. <i>emergency activities to assist in the relief of any danger to the life or health of any person or animal;</i></p> <p>2. <i>non-training emergency operational activities of an</i></p>

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
			<p><i>Emergency and Governmental Body; and</i></p> <p>3. <i>the diversion of any aircraft from another airport to the Airport due to adverse weather conditions, technical problems, security alerts or onboard emergency or for any other emergency that the Airport may be informed of;</i></p>
7.	"Runway Extension Additional Land"	This means land which the Airport Operator does not presently own yet is required for the construction of the Runway Extension. The provisions in the agreement that relate to this require a supplemental Section 106 Agreement to be entered into in respect of that land. The connected definition is "Sufficient Interest", see below.	No comment required.
8.	"Sufficient Interest"	This is defined as meaning a freehold interest or a leasehold interest, the expired term of which is not less than 7 years. The relevance of this is that the Airport Operator is precluded from bringing the Runway Extension into operation until the Airport Operator has acquired Sufficient Interest in the Runway Extension Additional Land, following which it must enter into the supplemental Section 106 Agreement in relation to that land. The point is that the Airport Operator simply has to acquire no more than a 7 year interest in the Runway Extension Additional Land to satisfy these provisions and enter into a planning obligation in respect of that land for, presumably, no more than a 7 year period. As the obligations in the agreement will run for longer than this, this is not considered to be satisfactory. In particular, the obligations run until the "End Date". The definition of Sufficient Interest therefore needs amending to reflect a sufficiently long leasehold period. In any event, we would	Definition of "Sufficient Interest" has been amended to mean " <i>a freehold interest</i> ".

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
		question whether a leasehold interest is sufficient as if the lease is forfeited or surrendered, then any Section 106 Agreement would end and the freeholder would be free of the restrictions.	
9.	"Supplemental Section 106 Agreement"	We have now seen this document and it is acceptable.	Thank you.
10.	"Transport Coordinator"	The qualifications of this person should either be spelt out or in the substantive clause the Council's approval to such a person should be required before they are appointed.	We have accepted your wording at paragraph 3.5, Schedule 1 of the Section 106 Agreement.
11.	Clause 7	We have already commented on the inadequacy of the obligation for the Airport Operator only to have to acquire a sufficient interest in the runway extension additional land.	See our response above to "Sufficient Interest."
12.	Clause 9.1.4	We assume that there is an error here. This provides that the agreement will not be binding on any person who has a leasehold interest in the Airport Operator Land, the unexpired term of which is not less than 7 years. We assume that this should be not more than 7 years.	Amendment made.
13.	Clauses 11.3.5 and 11.3.6	The nominations are the wrong way around.	Amendment made.
14.	New Clause 22	As the Agreement now contains financial provisions we have included clauses for the indexation of payments.	Indexation using the Retail Prices Index all items is agreed.
<b>SCHEDULE 1</b>			
15.	Paragraph 3.5	This is the provision dealing with the appointment of a Transport Coordinator. As suggested above, either their qualifications should be specified or the Council's prior	We have accepted your wording at paragraph 3.5, Schedule 1 of the Section 106 Agreement.

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
		approval should be required. As the appointment is to be for a potentially considerable period and it appears that the Transport Coordinator will be a person, there should be provisions for the appointment of another person in the event that the transport coordinator resigns, retires or is otherwise unavailable to perform their functions. See paragraph 3.8. Should the TC's functions include monitoring travel plans? We have assumed not.	
16.	Paragraph 3.11	This includes a reasonable endeavours obligation and we would prefer to see this as an absolute obligation.	Deletion accepted.
17.	Paragraphs 4.1/4.2	It is not clear whether the Airport Operator can nominate one or two representatives to the Travel Plan Steering Group.	It is agreed between the Council and the Airport Operator that the Airport Operator should have two representatives. Should there be a vote of the TPSG, then KCC has one vote and the Council has one vote, resulting in four altogether. If there is a tie, then the independent TC has the casting vote.
18.	Paragraph 4.7	The REUTP must be completed before the TC is appointed.	Noted.
19.	Paragraph 5.7	It is not clear who the car park monitor is to be. Is this to be an employee of the Airport Operator or an independent person, like the travel coordinator?	It is agreed between the Council and the Airport Operator that the words " <i>(such car park monitor may also be the Transport Co-ordinator)</i> " are to be inserted after the words " <i>designate a car park monitor</i> "
20.	Paragraph 7	The list of measures identified under 7.1 should include the items of operation and frequency of the shuttle bus.	It is agreed between the Council and the Airport Operator that the Council's proposed new paragraph 7.1.3 be deleted and a new paragraph inserted requiring a mechanism for the frequency of the Shuttle Bus Service to increase as the ppa at the Airport increases.



Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
21.	Paragraph 8.1.2	There is a very imprecise test containing the clause for remedial measures, being those that are fairly and reasonably related in scale and kind to the operation of the Runway Extension. Any measures that are required from a safety perspective should be implemented without having to satisfy such a test.	Your amendments have been accepted.
22.	Paragraph 8.1.5	This should also refer to remedial measures as may be determined by the expert.	Agreed, but the reference should be to paragraph 8.1.4 and not to 8.1.2 as in your mark up.
23.	Paragraph 8.2	East Sussex County Council have previously suggested an amendment in respect of what was clause 6.2.7 (now clause 8.2.11) through the insertion of the words "or the date of the final payment of the transport contribution due under paragraph 8.2.5 hereto (whichever is the later)".	<p>As discussed between the Council and the Airport Operator on Monday 5 September 2011, the wording does not reflect the agreed position between ESCC and the Airport Operator. This additional wording would mean that if at 6 years after 30,000ppa has been reached no request for payment has been made, then the obligation would carry on indefinitely, which is not the agreed position. As agreed with the Council, wording not included in the revised draft.</p> <p>We note ESCC's additional comment to the Council of 2 September 2011 regarding paragraph 8.2.10 and have incorporated ESCC's requested amendment.</p>
24.	Paragraph 10	This clause has been substantially extended. We have amended to give SDC the power to approve the Off-Site Measures as part of the BCMP.	<p>Paragraphs 10,11 and 12 have been amended further following comments received from Natural England and the RSPB.</p> <p>The Council is approving any Off-Site Bird Control Measures through the BCMP.</p>
25.	Paragraph 11	This is a complex clause involving the monitoring of bird control measures, which reactivates automatically each	Thank you.

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
		time the number of aeroplane movements exceeds 10,000, 20,000, 30,000 and 40,000. In our view, the clause does work in so far as it requires the monitoring of the measures.	
26.	Paragraph 12	We have tightened up the obligation to implement remedial measures and to reflect that the BCMP Panel are not parties to the agreement.	Paragraphs 10,11 and 12 have been amended further following comments received from Natural England and the RSPB. Accordingly, your amendments to 12.2 and 12.3 and some of your amendments to 12.4 are not longer applicable.
27.	Paragraph 13.12 and 13.13	These clauses provide for the agreement of an additional scheme of measures if they are required or justified as a result of the monitoring exercise. However, the clauses seem to be circular in the event that if the airport operator is unable to implement the measures, it is not obliged to do so but can request an alternative scheme. This would seem to apply even if the expert has recommended the measures. We have clarified LAA's obligation to carry out remedial measures through the deletion of paragraph 13.12.	Deletions accepted.
28.	Paragraph 15	Should clause 15.1 also include an obligation to submit noise contour plans on a three monthly basis?	It is agreed between the Council and the Airport Operator that the provisions of paragraph 13.10 are sufficient to enforce the noise contour restrictions which are based on annual average and summer average.
29.	Paragraph 16	An obligation in respect of the school is welcome. We have amended it substantially to simplify the requirements and to increase the sums payable.	Following a meeting between the Council and the Airport Operator, further revisions to paragraph 16 have been agreed.  The Environmental Statement and noise evidence before the Inquiry demonstrates that the worst case noise

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
			<p>impact at the School occurs between the baseline year (i.e. the current position) and when the 500,000 ppa point is reached with the Terminal Building. This increase amounts to a 5 dB increase, which remains a negligible impact.</p> <p>Based on a mitigation option of secondary glazing, which if the School were constructed to modern standards would be sufficient to mitigate by 5 dB, the Airport Operator estimated a sum of £50,000.00 inclusive of survey costs.</p> <p>Following the Greatstone Primary School Sound Insulation Performance Review report (June 2011) and discussions with the Council, this amount has been increased to £100,000.00 in recognition of the variable facade constructions on the School, and the extra efforts required to achieve a 5 dB reduction.</p>
30.	Paragraph 18.1	We query the use of "Best Practice" in this clause and have amended accordingly.	Your amendments have been accepted. We have deleted the words " <i>setting out Best Practice measures to seek to minimise carbon emissions</i> " as these words are included in the definition of "Carbon Management Action Plan".
31.	Paragraph 21	The obligations here are simply to use reasonable endeavours to extend the surveys. There are no substantive obligations requiring the airport operator to undertake any works as a result of such surveys. Is this intended?	The wording of paragraph 21, Schedule 1 of the Section 106 Agreement has been accepted by Natural England.
32.	Paragraph 22	We have imposed an obligation to undertake the ABAP.	Your new wording has been accepted (although note that there is no definition of "Development", so the phrase

Ref	Provision in Section 106 Agreement	SDC Comment	PM Response
			"Commencement of the Runway Extension" is used).
33.	Paragraph 24	We have included a simplified clause for the payment of approval and monitoring costs.	Agreed.
<b>Remaining Schedules and Appendices</b>			
34.	Schedule 3	The agreement is approved.	Thank you.
35.	Schedules 4 / 5	The agreement is missing the listing of the runway extension obligations and the terminal building obligations.	It is agreed between the Council and the Airport Operator that the Schedules over-complicate the Agreement and, in any event, are not required as each trigger in the Agreement is clear. The two Schedules have therefore been deleted.
36.	Appendix 8	Kent highways have commented that there should be a reference to walking and cycling for employees from the local catchment area in the matters to be included in the travel plan. They have also requested the payment of a contribution towards bus shelters.	The contribution to bus shelters has been inserted into Schedule 1 (and thus deleted from Appendix 8).  The additional wording for walking and cycling has been agreed in Appendix 8.

2. COMMENTS FROM NATURAL ENGLAND – NE/104

2.1 Comments on CD17.3 – Draft Section 106 Agreement

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
1.1	<b>Definitions and Interpretation</b>		
1.2	"Calendar Year"	Defined as the financial year. Elsewhere conditions in respect of the terminal building defines "calendar year" as 1st Jan – 31st Dec.	Amendment made to the definition of "Calendar Year" in the Section 106 Agreement to 1 January – 31 December (at the request of the Council).
1.3	"Ecology Buffer Zone"	1. A map is referred to and is purported to be provided at Appendix 9. The map is not attached.	1. Provided on 26 August 2011 (note the reference to "Ecology Buffer Zone" has been changed to "1km Survey Area" for clarity).
		2. In the water vole and protected species Statement of Common Ground the text refers to the 1km survey extending from the Airport site boundary. The current text states "from the Airport site."	2. "Airport Site" means the redline boundary of the Runway Extension Planning Application. This is the Airport boundary under the proposed development. Therefore no amendment necessary.
1.4	"Runway Extension Additional Land"	A map is referred to and is purported to be provided at Appendix 3. The map is not attached.	Provided on 25 August 2011.
1.5	Clauses 11.3.5 and 11.3.6	The text appears to be the wrong way round for these two points.	Amendment made.
<b>Schedule 1</b>			
1.6	10 Off Site Bird Habitat	1. This title – referring to " <i>habitat management</i> " is misleading.	1. Condition 18 of the Runway Extension Planning Permission has been deleted from the draft conditions and transferred to paragraph 10 of Schedule 1 to the Section 106 Agreement. Therefore, the title has been amended to "BCMP

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
	Management	<p>2. In relation to the offsite application of bird control and management measures, the new provisions in sections 10 to 12 are both unsatisfactory in themselves and provide no answer to NE's concerns. They provide no substantive restrictions on what can be done and they provide no assistance in assessing the impacts of the offsite application of bird control and management measures.</p>	<p>and Bird Control Measures."</p> <p>2. The evidence of Dr Allan, Natural England's own expert, was that birdstrike risk is manageable by on-airport measures (as confirmed in the SoCG) and that was a conclusion he reached (according to Dr Allan in cross-examination) without making any assumptions as to the necessity of undertaking off-airport works.</p> <p>Accordingly, in light of Dr Allan's answers, the provisions in paragraph 10 are more than sufficient for this development.</p> <p>The Airport Operator has to go through the following process before it can carry out any Off-Site Bird Control Measures (save for those measures required in an emergency to counter an immediate bird strike threat):</p> <p>a) (paragraph 10.1) prior to the Runway Extension coming into Operation, submit the BCMP to the Council for approval (who must consult with NE and the RSPB). The BCMP is to contain details of any proposed Off-Site Bird Control Measures; and</p> <p>b) (paragraphs 10.3 and 10.4) before the Airport Operator carries out any Off-Site Bird Control Measures approved in the BCMP, submit further details of those Off-Site Bird Control Measures to the Council. The Airport</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			<p>Operator must agree those details with the Council (who again must consult with NE and the RSPB).</p> <p><b>The Airport Operator will only be able to carry out those Off-Site Bird Control Measures that have been approved and agreed by the Council in a two staged process. Further the Council has to consult NE and the RSPB. Therefore, NE and the RSPB are involved in every step of the process.</b></p>
		<p>3. The definition of Bird Control Emergency Measures is wide and would allow measures to be taken on a frequent basis under this exception, without being within the ambit of paras 10.2-10.3. The definition does not confine or limit the measures which may be taken at all.</p>	<p>3. The definition refers to "<i>immediate bird strike threat</i>" and "<i>any delay in taking action would significantly compromise air safety margins.</i>"</p> <p>It is clear, therefore, that the measures can only be used to counter a very serious and immediate birdstrike threat to ensure air safety. Furthermore, under paragraph 10.8, the Airport Operator has to notify the Council, Natural England and the RSPB that Bird Control Emergency Measures have been deployed including the reason for carrying out such Bird Control Emergency Measures, the duration of such Bird Control Emergency Measures, the scope and location of such Bird Control Emergency Measures and an assessment of the likelihood of carrying out such Bird Control Emergency Measures again in the next six months (amongst other matters).</p> <p>Given the reason for using emergency measures</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			<p>is in the event of an emergency, the Airport Operator cannot compromise on its use of Bird Control Emergency Measures. The definition is clear as to the very limited circumstance in which such measures can be deployed.</p>
1.7	10.1	<p>4a. The definition of Off-Site Bird Control Measures only covers action taken by the Airport Operator and not therefore landowners, farmers, contractors and the like who may be acting on behalf of or at the instigation of LAA.</p> <p>4b The definition also does not define “bird control measures” and does not expressly cover a number of measures which might be employed: scaring/dispersal (e.g. by dogs and people), habitat management (as opposed to modification), land use changes (as opposed to agricultural modifications), etc.</p> <p>5. The restrictions in paras 10.2 and 10.3 only apply to measures “approved as part of the BCMP”. There is no express prohibition on carrying out measures which have not been included in the BCMP. The section 106 agreement does not say that LAA cannot carry out, or cause the carrying out of, any off site bird control measures other than those approved under para 10.2.</p> <p>10.1 requires the BCMP to include details of offsite bird control measures, but the December 2010 version of the BCMP does not include such details and condition 18 requires the BCMP to be in general compliance with the</p>	<p>4a. Wording inserted into main body of Agreement at Clause 1.2: <i>"words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction."</i></p> <p>4b. We have previously made it clear what sort of interventions we could envisage for the existing identified birdstrike risks. In light of this and our comment at point 2 of this NE Ref. 1.6, no amendment is proposed.</p> <p>5. Amendment made.</p> <p>See the revised definition of "BCMP" in the Section 106 Agreement.</p>



Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		December 2010 draft.	
1.8	10.2	<p>1. The issues in the inquiry relating to what could occur as offsite measures, and the problems in assessing the impacts of these at this stage, remain unaddressed. It is currently not at all clear what the nature, intensity or extent of off-airfield bird control would be. The BCMP does not set out the measures proposed to decrease the risk of bird strike and their maximum intensity and scope such that their impacts could be assessed. The provisions in section 10 do nothing to define or limit the effects the offsite measures could have on the designated sites, their interest features and supporting habitats.</p> <p>2. The piecemeal approval process under para 10.2 could lead cumulatively to measures being taken the impact of which taken together is very substantial. There is no means of judging the cumulative impact of measures or of re-visiting measures which have previously been approved.</p>	<p>1. The evidence of Dr Allan, Natural England's own expert, was that birdstrike risk is manageable by on-airport measures (as confirmed in the SoCG) and that was a conclusion he reached (according to Dr Allan in cross-examination) without making any assumptions as to the necessity of undertaking off-airport works.</p> <p>Accordingly, in light of Dr Allan's answers, the provisions in paragraph 10 are more than sufficient for this development.</p> <p>In addition, we have previously made it clear what sort of interventions we could envisage for the existing identified birdstrike risks.</p> <p>In light of these comments, no amendment is proposed.</p> <p>2. The Off-Site Bird Control Measures that the Airport Operator will be able to deploy will have first been approved under the submission process required under paragraph 10.1. We have amended paragraph 10.1 to make it explicit that the details to be submitted must also include:</p> <p>a) the likely measures to be deployed and the likely duration; and</p> <p>b) the likely scope and the likely location of the</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			<p>measures.</p> <p>Therefore, the Council, in consultation with NE and the RSPB, will have sufficient information before it to decide whether or not to approve the Off-Site Bird Control Measures.</p> <p>Paragraphs 10.3 and 10.4 provides a further layer to the approval process, by requiring the Airport Operator to submit more details to the Council for agreement before it actually carries out the Off-Site Bird Control Measures (and such details will be specific to the actual need as, and if, it arises). <b>Without the approval and agreement under paragraphs 10.1, 10.3 and 10.4, the Airport Operator cannot carry out the Off-Site Bird Control Measures.</b></p> <p>Re-visiting of the Off-Site Bird Control Measures that the Council, in consultation with NE and the RSPB, has approved is provided for in paragraphs 11 and 12.</p>
1.9	10.2.3 and 10.2.4	<p>The requirements in paras 10.2.3 and 10.2.4 only apply to measures involving a change in land use. They would not therefore apply to changes in respect of habitats or agricultural practices which fall short of being a change in land use.</p> <p>The provisions in paras 10.2.3 and 10.2.4 would be most unlikely to go any way towards mitigating or offsetting the impact of the measures, because the measures would be</p>	Refer to our comment to point 2 of NE Ref 1.8.

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		designed to remove the interest (e.g. the food source, habitat, etc) from the land for the affected birds and could not replace this interest without undermining the reason for taking action.	
1.10	10.3 and 10.4	The need for agreement by SDC in para 10.3, or the approval of an expert under para 10.4, to the carrying out of measures approved as part of the BCMP is unlikely to limit the impact of the measures on the designated sites, their interest features and supporting habitats, due to the need to preserve safety once the Airport is operational.	<p>Paragraphs 10.1, 10.3 and 10.4 provide a two stage approval process.</p> <p><b>Without the approval and agreement under these paragraphs (and if agreement cannot be reached with the Council under paragraph 10.4 then an independent expert decides) the Airport Operator cannot carry out the Off-Site Bird Control Measures.</b></p> <p>No amendment required.</p>
1.11	10.6	In para 10.6, the phrase " <i>where it considers necessary to do so</i> " should not apply to carrying out measures in accordance with the approved BCMP and details, but the current drafting is not particularly clear. The detail should be in the BCMP.	The words " <i>where it considers necessary to do so,</i> " have been deleted (paragraph 10.7).
1.12	10.7	The reporting should include the scope and duration of the measures (as in 10.2). It should also review the likelihood of recurrence and the need for measures to limit this recurrence, together with an assessment of whether this will have an impact on the designated sites.	<p>The following new wording has been inserted into paragraph 10:</p> <p><i>"....together with:</i></p> <p><i>10.8.1 the reason for carrying out such Bird Control Emergency Measures;</i></p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			<p>10.8.2 <i>the duration of such Bird Control Emergency Measures;</i></p> <p>10.8.3 <i>the scope and location of such Bird Control Emergency Measures;</i></p> <p>10.8.4 <i>an assessment of the likelihood of carrying out such Bird Control Emergency Measures again in the next six months; and</i></p> <p>10.8.5 <i>an assessment of any pre-emptive measures that could be taken to reduce the likelihood of carrying out such Bird Control Emergency Measures again in the next six months and the impact of these pre-emptive measures and a recommendation as to whether these pre-emptive measures should be carried out.</i></p> <p>10.9 <i>Where the notification submitted to the Council pursuant to paragraph 10.8 of this Schedule 1 recommends that pre-emptive measures should be taken to reduce the likelihood of carrying out any Bird Control Emergency Measures, the Council shall consider such pre-emptive measures in consultation with Natural England and the Royal Society for the Protection of Birds and may request (in writing) the Airport Operator to carry out the recommended</i></p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			<p><i>pre-emptive measures.</i></p> <p>10.10 <i>In the event that the Council requests the Airport Operator (pursuant to paragraph 10.9 of this Schedule 1) to carry out the pre-emptive measures recommended in the notification submitted pursuant to paragraph 10.8 of this Schedule 1 and subject to the Airport Operator securing all necessary Requisite Consents, the Airport Operator shall carry out the recommended pre-emptive measures as soon as reasonably practicable."</i></p>
1.13	11 Monitoring of the BCMP	The monitoring is not related to and does not include the effects of the BCMP on the designated sites, their interest features or supporting habitats. The monitoring as such relates only to the efficacy of the BCMP in relation to the management of bird strike risk. The only reference to the effects of the BCMP is to conflict having arisen with "conservation organisations" (in para 11.1.3). The monitoring and reporting should include the effects of all bird control and related activities on the designated sites, their interest features and supporting habitats. This contextual setting for the BCMP is important. The monitoring should not only address the bird hazard but also the bird interest in the vicinity of the Airport. These could be two different things, as some species may not be regarded as bird hazard but would be affected by the bird control measures under the BCMP. It is hard to see how this will be monitored if there is not an understanding of the complete bird interest in the area.	A new paragraph 11.1.4 has been inserted:  "11.1.4 <i>the effects, positive and negative, of the BCMP on the interested features of the SPA, pRamsar and the SSSI;</i> "

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
1.14	11.1	<p>1. Provides for the submission of proposed amendments to the BCMP to SDC as part of the annual review, but under the provisions in section 11 this review only applies in certain years and not at all more than five years after the 40,000 cap is reached.</p> <p>2. Furthermore, it does not take into account the need for any changes to go through an appropriate assessment in terms of the neighbouring designated site interest features.</p>	<p>1. It is incorrect to state that "<i>this review only applies in certain years</i>". As explained in CD17.7, should the Airport grow in a continuous manner, then there will be annual monitoring from Completion of the Runway Extension to five years after the cap of 40,000 movements is reached. If growth stalls between, for example, 10,000 and 20,000 movements, then after five years of monitoring following the 10,000 movement mark the Airport Operator is released from continuing to monitor until, that is, growth resumes and exceeds 20,000 movements.</p> <p>There is no conflict in paragraph 11; paragraph 11.1 refers to the monitoring mechanism in paragraphs 11.2 – 11.6.</p> <p>We would also note your comment at 2.22 in NE/101, which states that "<i>It would be better to link the review of the BCMP to increases in passenger aircraft movements at the airport.</i>" This is precisely what we have done.</p> <p>2. The words at the end of paragraph 11.1 (starting with "<i>and if any changes...</i>") have been deleted and the following new paragraphs inserted:</p> <p><i>"11.1.7 any changes proposed to the BCMP (to be detailed in a table of amendments) and a report detailing whether or not such changes give rise to any new or different</i></p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			<p><i>likely significant effects on the SPA and the pRamsar in comparison with those identified in the documents submitted in support of the Applications; and</i></p> <p>11.1.8 <i>if required, a scheme of remedial measures detailing the measures to avoid or prevent any significant adverse effects arising from the Operation of the Runway Extension and/or the Terminal Building on interested features of the SPA, pRamsar and the SSSI (which in the case of impact on the SPA and the pRamsar shall be to avoid or prevent any adverse impact on the integrity of the SPA and the pRamsar)."</i></p>
1.15	12  BCMP Panel and Remedial Measures Scheme	<p>1. The consideration of remedial measures only arises when the monitoring under section 11 is being undertaken, but the timing provisions in section 11 mean that monitoring would not be undertaken for periods in the growth to 40,000 aeroplane movements and in the period beyond five years after reaching that level. So there would be no provision for remedial measures to be applied in these periods at all.</p> <p>2. Also, linking monitoring to the number of aeroplane movements is not appropriate as it leaves out of account a range of other factors which could influence the effects of the operation of the Airport on the designated sites, their interest features or supporting habitats, such as the nature of the aircraft using the Airport, the bird control and related measures being</p>	<p>1. It is incorrect to state "<i>the timing provisions in section 11 mean that monitoring would not be undertaken for periods in the growth to 40,000 aeroplane movements...</i>" Refer to our comment to point 1 of NE Ref 1.14.</p> <p>2. We note that your comment at 2.22 in NE/101 stated that "<i>It would be better to link the review of the BCMP to increases in passenger aircraft movements at the airport.</i>" This is precisely what we have done. Natural England appears to be contradicting itself.</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		<p>employed over time, or changes in the local environment or the designated sites and their interest features. The monitoring should apply for every year of the Airport's expanded operation.</p> <p>3. The approach of the BCMP Panel in section 12, coupled as well with the lack of monitoring of impacts under section 11 in relation to the designated sites, is unacceptable. It is inappropriate to seek to place an obligation on NE to assess the impact of the BCMP on the designated sites interests and to design whatever remedial measures may be required. NE should be a consultee in such work, but the obligation to undertake it should be on LAA as the Airport Operator and not on NE.</p> <p>4. The BCMP Panel should also include something like an environmental manager, employed by LAA, who can service the Panel.</p>	<p>3. Refer to our comments to NE Ref 1.14. The words after "<i>Schedule 1</i>" in paragraph 12.2 and the whole of paragraph 12.3 have been deleted. NE is just a consultee on the monitoring and review results.</p> <p>4. There is no role for such a manager. The Airport Operator will submit its monitoring and review results to NE and the RSPB for comment as consultees before the Airport Operator submits the monitoring and review results to the Council.</p>
1.16	12.2 – 12.6	<p>1. Paragraphs 12.2, 12.3 and 12.6 put the focus of the work of the BCMP Panel on "<i>protected bird species</i>". However, NE is not primarily concerned with protected species of birds as such, but rather the designated sites, their interest features or supporting habitats. The interest features of the designated sites include not only protected species of birds but also other species and assemblages of birds – and their habitats. All these matters must be considered.</p>	<p>1. Refer to our comment to NE Ref 1.14. The words "<i>protected bird species</i>" in paragraph 12.5 have been deleted and replaced with "<i>interested features of the SPA, pRamsar and the SSSI...</i>"</p>



Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		<p>2. In para 12.2, in relation to the SPA, the text says that before remedial measures would be required there would have to be an adverse impact on the integrity of the SPA from the bird control measures. This threshold is too high and bird control activities having lesser impacts may require action, not least as there would be combined effects from all activities related to the operation of the expanded Airport.</p> <p>3. This paragraph also does not expressly provide for impacts in relation to the SSSI, pSPA, or pRamsar.</p> <p>4. Any such "adverse impact on integrity" tipping points would need to be agreed which allow for remedial action to be taken so as to avoid or mitigate those potential adverse impacts. No evidence on what those tipping points should be has been put before this Inquiry.</p> <p>There is no information before the Inquiry as to what remedial measures could be taken, nor whether such measures would be effective or even possible. The efficacy of the provision for remedial actions, and the extent to which this could offset the impacts of the bird control measures, cannot therefore be assessed.</p> <p>5. Under para 12.4, LAA can decline to follow any</p>	<p>2. Paragraph 12.2 has been deleted – refer to new paragraph 11.1.8 (See NE Ref 11.4). The remedial measures form part of the required monitoring, which is not triggered by an adverse impact.</p> <p>3. The SSSI is expressly referred to – see amendment to paragraph 12.5. The definition of "SPA" has been amended to include reference to the pSPA and a new definition of "pRamsar" has been inserted into Clause 1 and the term added to paragraphs 11 and 12.</p> <p>4. Clarity is required from Natural England on their specific concerns.</p> <p>5. If the Airport Operator does not include the BCMP</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		<p>remedial proposals presented by the BCMP Panel. There is therefore nothing to ensure that remedial action would be taken even if it was warranted. There is no apparent mechanism to ensure that remedial actions are required to be taken by LAA.</p> <p>6. In para 12.5, 21 days would be far too short a period of time to undertake the steps in paras 12.2 and 12.3, not least as any assessment of the impacts on the</p>	<p>Panel's comments in the BCMP monitoring and review results, the Airport Operator is under an obligation to justify to the Council why those comments have been excluded.</p> <p>If the Council disagrees with the Airport Operator, then the Council will notify the Airport Operator of this together with its reasons in writing and will request the Airport Operator to reconsider those details and to re-submit within a period of three months in a form that are designed to overcome the Council's concerns (see new paragraph 12.7).</p> <p>We have also inserted the following new paragraph into paragraph 12 (paragraph 12.6):</p> <p><i>"Following the submission of each BCMP monitoring and review results to the Council pursuant to paragraphs 12.3 or 12.4 of this Schedule 1, the annual number of Aeroplane movements in the forthcoming year shall not exceed the annual number of Aeroplane movements that occurred in the year covering the submitted BCMP monitoring and review results unless and until the Council has approved the said BCMP monitoring and review results and the Airport Operator has complied with paragraphs 12.5.1 and 12.5.2 of this Schedule 1."</i></p> <p>6. The words after "<i>Schedule 1</i>" in paragraph 12.2 and the whole of paragraph 12.3 have been deleted. NE is just a consultee on the monitoring</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		designated sites, their interest features or supporting habitats, and design of remedial measures, would have be done in this time period as well.	and review results.  We have doubled the time period to 42 days.
		7. In para 12.6.2, there is an obligation to ensure that remedial measures are carried out within six months of approval. Whilst measures should be commenced as soon as possible, measures may have to be on-going and continuous and it would not therefore be appropriate to require all measures to have been carried out within six months if they have to be carried out continuously.	7. Noted. We have inserted the words " <i>and the approved scheme of remedial measures</i> " in paragraph 12.5.1 (ex 12.6.1) and the words " <i>and where practicable</i> " after " <i>in any event</i> " in paragraph 12.5.2 (ex 12.6.2).
		8. The scheme in section 12 appears to envisage that remedial measures can be inserted into the BCMP, but there is nothing in the definition of the BCMP in the s106 agreement or in condition 18 to suggest that the BCMP is intended to cover remedial measures. The existing December 2010 draft does not cover remedial measures, and condition 18 requires the BCMP to be in general compliance with that version. It is far from clear therefore how remedial measures can be incorporated into the BCMP.	8. Condition 18 has been deleted, and transferred to paragraph 10 of the Section 106 Agreement.  The definition of "BCMP" has therefore been amended to read " <i>means the bird control management plan submitted by the Airport Operator to the Council for approval and which plan when submitted pursuant to paragraph 10.1 of Schedule1 shall be in accordance with the Bird Control Management Plan dated December 2010 submitted to support the Applications and contain the details listed in paragraph 10.1 of Schedule1 and which plan may change from time to time and/or incorporate remedial measures as approved by the Council pursuant to paragraphs 10.12 and 12 of Schedule 1;</i> "
		9. The scheme in sections 11 and 12 also appears to envisage that SDC would approve any future versions	9. The Council has to approve any changes to the BCMP through the BCMP monitoring and review

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		<p>of the BCMP, but condition 18 provides only for a one-off approval of the BCMP before the runway extension comes into operation. There is nothing in sections 11 and 12 which expressly provides that any future iterations of the BCMP must be approved by SDC. It is not clear that SDC has control over the contents of future versions of the BCMP, nor to require the inclusion of remedial measures in the BCMP. SDC should retain this control if it is to be fully satisfied that it has fulfilled its duties under the Habitats Regulations.</p>	<p>results in paragraph 12. Refer to our comment to point 5 of NE Ref 1.16.</p>
		<p>10. There is no provision for expert determination (as in para 10.4) in the event that SDC is not inclined simply to approve the monitoring and review results presented by LAA, under para 12.6.</p>	<p>10.No express wording is required as the Agreement contains a dispute resolution clause.</p>
<p><b>1.17</b></p>	<p>19  Air Quality</p>	<p>This section requires a statement that: "<i>The AQMAPS should be revised annually, and the AQMS reviewed when required. Any revisions to the AQMP or the AQMS should be subject to further consultation with Natural England and the Council</i>".</p>	<p>The following amendments have been made to paragraph 19:</p> <p>In paragraph 19.6, the words "<i>(together with any proposed changes to the AQMAPS and AQMS that the Airport Operator considers necessary following the results of the monitoring carried out pursuant to the AQMAPS)...</i>" have been inserted prior to the words "<i>to Natural England for a period of...</i>"</p> <p>In paragraph 19.6, the words "<i>and the proposed changes</i>" have been inserted prior to the words "<i>, together with any consultation comments...</i>"</p> <p>In paragraph 19.6, the words "<i>for approval</i>" have</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			<p>been inserted after the words "<i>to the Council.</i>"</p> <p>The following new paragraph has been inserted:</p> <p><i>"19.8 Following approval from the Council to the changes to the AQMAPS and/or the AQMS (as applicable), the approved changes shall form part of the AQMAPS and/or the AQMS (as applicable) and the Airport Operator shall comply with the AQMAPS and/or the AQMS (as applicable) as so changed."</i></p>
1.18	19.4.1	Delete sub-paragraph (a) and (b).	Amendment made.
1.19	19.7.1	<p>1. NE request that the wording:</p> <p><i>"...submit a scheme of response measures..."</i></p> <p>if exceedances are found be changed to:</p> <p><i>"...submit a scheme of remedial measures..."</i></p>	Amendment made.
		<p>2. References to examples in the annexes to the section 106 agreement should be removed throughout the document.</p>	<p>We do not understand this comment. References to Appendices 3, 4 and 5 (ex 4, 5 and 6) are necessary in order to bring those references into the remit of the planning obligation.</p>
		<p>3. Furthermore, the reference to <i>"any significant adverse effect"</i> should be amended to <i>"any adverse effect."</i></p>	<p>Reference to <i>"any adverse impact on the integrity"</i> has been used in respect of the SAC, whilst reference to <i>"any significant adverse effects"</i> has been used for non-European sites (in accordance with the Town and Country Planning (Environmental</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
			Impact Assessment) Regulations 2011).
1.20	21	1. The paragraph title at 21 should also refer to bats.	Amendment made.
		2. In addition to this paragraph 21.2 should be amended to read:  <i>"The Airport Operator shall use reasonable endeavours to extend the updated bat foraging and commuting behaviour survey (required to be undertaken within the Airport Site pursuant to the Runway Extension Planning Permission) to the area of land within the Ecology Buffer Zone. This extended zone is necessary to provide clarity on how the Airport fits within the wider habitat and ensure that the proposals maintain species populations affected by this development through habitat linkages across the site to the wider area".</i>	The additional wording is an explanation for paragraph 21.2, which is already included in the Section 106 Agreement. It is not appropriate to include explanatory words in the operative provision of an agreement.
1.21	22.1  ABAP Panel	Suggest that RSPB is part of the ABAP Panel.	Amendment made.
1.22	22.2	Suggest a new 22.2.6, which states: " <i>Maintenance of populations of all the species directly or indirectly affected by this development.</i> "	This is unreasonably wide and, in any event, is not the purpose of the ABAP.
1.23	22.4	Agree in principle, but NE requires alternative timelines. NE suggests six to eight weeks.	We have doubled the time period to 42 days.
1.24	22.10	Agree in principle, but NE requires alternative timelines. NE suggests six to eight weeks.	We have doubled the time period to 42 days.

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
<b>General Comments</b>			
1.25		<p>No changes have been made in response to the comments at 1.16 and 1.17 in NE/101 and so the comments remain. These comments were:</p> <p><b>9. Noise Management (9.1.5 /9.1.6):</b> Natural England recommends a threshold figure is set and agreed in the conditions. A mechanism for consultation with NE or the RSPB regarding the noise management plan should be included.</p> <p>The October 2007 SEI on birds and noise (CD 1.23i) and the October 2007 statement to inform (CD1.25c) included proposed mitigation measures for the effects of noise on birds, including a noise monitoring review and remedial system for noise effects on SPA birds. These measures should be included in the noise management provisions of the s106 obligation and specified in an appropriate level of detail.</p> <p>Natural England also notes that the Applicant's draft heads of terms for the section 106 agreement dated 4 January 2010 reference was made to noise performance standards devised in terms of ornithology. This is also appended to the SDC's planning committee report. This has been omitted from the latest draft of the s.106 obligations. This should be reinstated in order to monitor peak noise levels within the SPA.</p> <p><b>10 Operational Restrictions:</b> There are no provisions</p>	<p>We have inserted a new condition that requires all Aeroplanes that have a take off weight of 5700kg or over to follow flight path FP12. LAA does not consider such a requirement is necessary. However, in so far as the Inspector considers that this condition is necessary and subject to the condition satisfying the test of necessity, the Airport Operator would be content for the condition to be imposed.</p> <p>We would also refer Natural England to Condition 25 of the draft Runway Extension Planning Permission, which states that engine power checks are not to take place within the Airport Site except within the areas known as "Hold B" and "Hold C" as shown marked "B" and "C" on the plan attached to the planning permission in Annex 11.</p>

Natural England Ref	Relevant planning obligation	NE Comment	PM Response
		<p>dealing with the relationship between the flight paths and other operational procedures and ecological interests. For example the obligation 10.1.1 could be reworded to state that “every Aeroplane and helicopter to be operated in such a manner as to cause the least disturbance practicable to local residents and fauna of the designated sites”.</p> <p>Monitoring in 10.4 should also include the flight path taken by planes. If predicted flight paths ratios used in the application documents are deviated from significantly, for example by greater use of the flight paths over flying the designated sites and the SPA in particular then a remedial action plan should be produced and implemented. This should be secured by a condition.</p>	
<b>Appendices</b>			
1.26	Appendix 4 (now Appendix 3)  Air Quality Monitoring Proposals	The reference to number 12 and 13 (to be found in paragraphs numbered 12 and 13 in the new Appendix 4) should now read "numbers 9 and 10".	Amendment made.
1.27	Appendix 5 (now Appendix 4)  Agreed Vegetation Monitoring Proposals	There is an erroneous 13(f) which should be deleted.	Amendment made.



2.2 Comments on CD17.5 – Draft Conditions

Natural England Ref	Relevant condition	NE Comment	PM Response
<b>CD 17.5 Draft Conditions</b>			
2.1	3 Construction Environmental Management Plan  3.3	Reference to a habitat management plan to protect important flora and fauna habitats during the construction phase has been deleted from the revised draft condition 3. The reason given is that instead LAA will use construction species protection plans. However, these plans only relate to particular species (especially with regards the ditches, but also the bats). It does not include other species or habitats.  NE would like to see proposal for a habitat management plan to be reinstated (subject to avoiding any conflict with the protected species requirements).	The words " <i>a habitat management plan to protect important flora and fauna habitats during the construction phase</i> " have been inserted.
2.2	10 Updated Baseline Ecological Surveys  10.2 & 10.3.2	Suggest providing reference to current specific species guidelines, as per 10.1 and 10.3.  The following references could be made:  10.2: " <i>...such surveys to be undertaken at the appropriate time of year following the most up to date good practice guidelines for reptiles published by Natural England at the time of the survey</i> ".  10.3.2: " <i>...such surveys to be undertaken at the appropriate time of year following the most up to date good practice guidelines for reptiles published by Natural England at the time of the survey</i> ".	Wording inserted.

Natural England Ref	Relevant condition	NE Comment	PM Response
2.3	10.4	<p>1, In addition to standard splash sampling techniques it may be appropriate for further pond netting. This would extend the capture options for medicinal leech, which can be a challenge.</p> <p>As this would require work on all of the waters on the site this may also present a good opportunity to search for the presence of water bird nests.</p>	<p>1. It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that:</p> <ul style="list-style-type: none"> <li>• "<i>May and August</i>" be changed to "<i>June and July</i>";</li> <li>• The words "<i>(using pond netting to aid capture)</i>" be inserted after "<i>splash sampling technique</i>"; and</li> <li>• No reference to water bird nests is required.</li> </ul>
		<p>2. An example of good practice in respect of medicinal leech is: Ausden, M., Banks, B., Donnison, E., Howe, M., Nixon, A., Phillips, D., Wicks, D. &amp; Wynne, C. 2002. The status, conservation and use of the medicinal leech. <i>British Wildlife</i> <b>13</b>, 229-238.</p>	<p>2. It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that there is no need to include the references.</p>
2.4	10.5.1	A ditch NVC survey would be appropriate here.	It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the words " <i>shall follow the NVC survey requirements and</i> " are to be inserted after the words " <i>survey required under this Condition</i> ".
2.5	10.5.3	<p>Should include reference to extending the remit of the survey to include amphibious invertebrates (to cover those on the lower ditch margins).</p> <p>This is referred to in 10.5.3 but requires a section in its own</p>	It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the words " <i>and amphibious</i> " are to be inserted after the words " <i>survey of aquatic</i> ".

Natural England Ref	Relevant condition	NE Comment	PM Response
		right. This should include a ditch scoring method which tracks and takes account of a greater proportion of the fauna than an analysis of what is rare.	
2.6	11.1 Mitigation	Sixth line – reference to "10.4" should read "10.5".	Amendment made.
2.7	11.2	The phrase " <i>have regard to and reference</i> " should be replaced by the phrase " <i>be informed by</i> " (as in condition 11.1).	Amendment made.
2.8	11.4	1. Change the references from LAA/9/C to Appx 4, 5, 6 as set out in 11.1.	Amendment made.
		2. Appropriate references should also be made in respect to medicinal leech to reflect what has been agreed in the Statement of Common Ground.	It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that no amendment is required.
2.9	12 Monitoring and Remedial Actions	The text in each paragraph: 12.1 12.3 12.5 12.7 all refer to <i>survey monitoring</i> . To avoid confusion this needs to change to <i>relative population estimate monitoring</i> .	Amendment made.
2.10	12.7	It may be that the medicinal leech move across the new ditch system slower than is anticipated. There may be greater success in terms of distribution if the medicinal leech are introduced at different starting points.	It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the words " <i>Assessment of survey results will include consideration of spatial distribution of populations, as well as total population numbers.</i> " are to be

Natural England Ref	Relevant condition	NE Comment	PM Response
			inserted after the words " <i>carried out pursuant to Condition 10.4.</i> "
2.11	12.2 12.4 12.6 12.8 12.12	Suggest that the results of the HSI, relative population estimate monitoring, and where necessary, remedial management habitat requirements, shall be submitted to the Local Planning Authority within 28 days of the survey being completed	Amendment made to refer to submission within 28 days of the survey being completed.
2.12	12.9.3	1. Currently this refers to Invertebrates. Instead this should be separated out and treated in a similar way to, for example, medicinal leech and common lizard.	1. Amendments made.
		2. Reference here to surveys along ditch sections of 100m. Does this mean 100m ditch lengths surveyed or a survey within 100m of the Airport boundary? If it is length, is this based on measurement of the resource or a round figure – or indeed what has happened historically? As this condition contemplates surveying over a long period of time it would be better to establish and mark fixed ditch lengths, with distinct identification codes, which can then be mapped.	2. It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the words " <i>ditches delineated into 100 metre sections.</i> " are to replace the words " <i>ditch sections of 100 metres</i> ".
2.13	12.10	1. Suggest amending reference to include survey and analysis of obvious signs of water quality deterioration rather than water quality and pollution.	It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the words " <i>any clear signs of water quality deterioration</i> " are to replace the words " <i>water quality and pollution</i> ".
		2. Suggest also using sectional photos.	It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the words " <i>A photographic record of each water body and 100</i> "

Natural England Ref	Relevant condition	NE Comment	PM Response
			<p><i>metre ditch section will be made for every survey undertaken pursuant to Condition 12.9" are to be inserted at the end of the Condition 12.10.</i></p>
2.14	12.12	<p>1. This currently only refers to aquatic invertebrates. There needs to be a section to cover the need for remedial action for the aquatic plants etc.</p> <p>2. NE suggests a more exact method of monitoring. Whilst the median score is sound, it should refer to the condition of defined ditch sections, the median score of which is 1.38. Establishing the monitoring framework, with named and located sample stretches which constitute a number of defined ditch length runs is important. This is particularly the case with regards</p>	<p>1. It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the following new Condition is inserted for Aquatic emergent and bank vegetation:</p> <p><i>"In the event that the results of any of the survey monitoring carried out pursuant to Condition 12.9 show that the population of any of the species (including the duckweed Wolffia arrhiza) surveyed are in decline, an assessment for habitat suitability for such species within the Airport Site and an assessment for management remedial measures shall be undertaken and submitted to the Local Planning Authority for approval (in consultation with Natural England) within 28 days of the survey being completed and the habitat suitability and management remedial measures shall be carried out in accordance with the terms of the Local Planning Authority's approval."</i></p> <p>2. It has been agreed between Jo Dear (NE) and Mark McLellan (for the Airport Operator) that the words "<i>(in defined 100 metre ditch sections)</i>" are inserted after "<i>value of 1.38</i>".</p>

Natural England Ref	Relevant condition	NE Comment	PM Response
		the 1300 ditch which appears to be ditch 1. Query whether there is monitoring value in sub-dividing it to allow assessments in relation to both runway proximity and other ditch connectivity, in addition to defining and naming the other, remaining ditch lengths some of which will have been disrupted and closed down at a time when they were operating at a good standard. NE suggests that this is written with reference to a monitoring strategy note which clearly defines this.	
2.15	13 Operation	Change the last few words of this sentence to read: „...netted to prevent birds entering the ditch network system“.	Amendment made.
2.16	14.1	1. 4th line – delete the word “including”	Amendment made.
		2. Reference to a Biodiversity Action Plan has been deleted from this and the following subsections. At 2.21 of NE/101 we had requested that there should be a trigger for a requirement to produce and implement a remedial action plan, in consultation with NE and subject to approval by the LPA. NE still believes that we should have a requirement for remedial actions to be implemented if the ABAP shows deterioration in habitat quality/species populations as a result of the Airport operations/management prescriptions.	The ABAP is contained in the Section 106 Agreement – paragraph 22 of Schedule 1.
2.17	14.2.1	1. References to LAA/9/C should be removed.	Amendment made
	14.2.2	2. These references should be amended to include all habitat that may be impacted by the scheme and which could have an impact on the great crested	The use of the words “which may affect...” are not clear, whilst the existing wording makes it clear when the updated baseline ecology survey is to be

Natural England Ref	Relevant condition	NE Comment	PM Response
		<p>newts. Suggested new opening sentence to 14.1, 14.2 and 14.3:</p> <p><i>"Prior to any works being undertaken which may affect terrestrial or aquatic habitat used by great crested newts as part of this development, an updated relative population estimate survey of great crested newts shall be undertaken by LAA of the water bodies within the Airport Site..."</i></p>	<p>carried out "i.e. prior to any works related to the infill of or creation of ditches and water bodies..).</p> <p>We also do not understand the need for the suggested wording to be added to Conditions 14.2 and 14.3.</p>
2.18	16 Bats	Suggest cross-reference to para 21.2 of Schedule 1 to the Section 106 agreement.	Conditions should not cross refer to a Section 106 Agreement.
2.19	17.1 Medicinal Leech – netting	17.1 should be qualified to make it clear that it does not override the restriction on netting ditches in condition 13.	There is no need to qualify this Condition. The Condition is clear that where netting of waterbodies takes place within the Airport Site, the netting must be in accordance with Annex 10. Annex 10 is taken from the SoCG.
[no reference number given]	18 Bird Control Management Plan	<p>No significant change has been made to condition 18 relating to the BCMP and so all comments made at 2.22 in NE/101 remain (subject to comments on monitoring made in relation to the s106 agreement).</p> <p>These comments made at 2.22 in NE/101 were:</p> <ol style="list-style-type: none"> <li><i>"This condition relates to the current draft BCMP and therefore incorporates the problems and uncertainties of the current draft BCMP identified by Natural England.</i></li> </ol>	1. Condition 18 has been transferred to paragraph 10 of Schedule 1 to the Section 106 Agreement. As we have previously stated, we disagree with the comments regarding the BCMP, which is subject to the approval and monitoring process under the Section 106 Agreement. Please refer to the paragraphs 10, 11 and 12.

Natural England Ref	Relevant condition	NE Comment	PM Response
		<p>2. <i>The approval process for the BCMP appears to occur only once. The condition should apply for any subsequent updates of the BCMP.</i></p>	<p>2. The Council approves the BCMP and then the BCMP is monitored in accordance with the Section 106 Agreement. Any changes to the BCMP, arising through the monitoring, have to be approved by the Council.</p>
		<p>3. <i>The condition does not lead to the prospect of any restraint being applied to the bird control activities undertaken under the BCMP.</i></p>	<p>3. The BCMP has to be approved by the Council, who in turn will consult with Natural England and the RSPB. In addition, Natural England and the RSPB are consultees, through the BCMP Panel, of the monitoring results.</p> <p>In addition, a new paragraph 10.12 has been inserted:</p> <p><i>"10.12 Following the approval of the BCMP pursuant to this paragraph 10 and save in respect of the Bird Control Emergency Measures, no changes shall be made to the BCMP unless approved by the Council pursuant to paragraph 12 of this Schedule 1 or as may otherwise be approved by the Council following consultation with Natural England and the Royal Society for the Protection of Birds."</i></p>
		<p>4. <i>The nature and frequency of the monitoring under the condition is very unclear and should be specified in more detail. The monitoring should include a trigger for a requirement to produce and implement a remedial action plan and/or amendments to the BCMP, in</i></p>	<p>4. See paragraphs 11 and 12 of Schedule 1 to the Section 106 Agreement.</p>



Natural England Ref	Relevant condition	NE Comment	PM Response
		<p><i>consultation with NE (and the RSPB) and subject to approval by the LPA.</i></p>	
		<p>5. <i>Given the timescale for the increase in air traffic at the airport, including for passenger air transport movements, the timescale of monitoring annually for the first three years and then every five years would be inadequate. It would be better to link the review of the BCMP to increases in passenger aircraft movements at the airport.</i></p>	<p>5. We have linked monitoring to transport movements in paragraph 11 of Schedule 1 to the Section 106 Agreement, which was Natural England's original position (see comment at point 2 to NE Ref 1.15).</p>
		<p>6. <i>The condition should include a right for the LPA (including at the request of NE) to inspect all bird control and related records held by LAA.</i></p>	<p>6. The following new paragraph has been inserted into paragraph 11:</p> <p><i>"11.7 Within five Working Days of receiving a written request from the Council, the Airport Operator shall provide to the Council copies of its bird control logs for the period specified in the Council's written notice (and where no such period is specified in the written notice the Airport Operator may request clarification from the Council and upon receipt of the said clarification the Airport Operator shall provide copies of its bird control logs for the period specified in the clarification within five Working Days of receiving the clarification) <b>PROVIDED THAT</b> the Council may not make more than four written requests pursuant to this paragraph 11.7 in any one Calendar Year."</i></p>

Natural England Ref	Relevant condition	NE Comment	PM Response
2.20	General Comments		
		<p>NE's comments in NE/101 on:</p> <ul style="list-style-type: none"> <li>• Calendar year aircraft movements (condition 19, ex 20) and</li> <li>• Night-time period (condition 23, ex 24)</li> </ul> <p>Have not been addressed and so these comments remain. These comments were:</p> <p><b>20 Calendar year aircraft movements:</b> The definition of Emergency and Governmental Activities includes both operational and training activities by naval, military and air force of any country. The military use of the Airport in particular by helicopters, is significant and this would allow a significant number of additional movements beyond the caps imposed by the condition.</p> <p>Natural England believes it may also be appropriate for conditions to be imposed which restrict the timing of commercial passenger aircraft movements and the number of movements in certain weight categories or types of aircraft.</p> <p><b>24 Night-time Period:</b> The definition of Emergency and Governmental Activities includes both operational and training activities by naval, military and air force of any country. The military use of the Airport in particular by helicopters, is significant and this would allow a significant number of additional movements beyond the caps imposed by the condition.</p>	<p>Amendments were made and we refer you to our responses in CD17.7. Note:</p> <ol style="list-style-type: none"> <li>1. Training has been deleted from the definition of "Emergency and Governmental Activities." (new amendment)</li> <li>2. The cap on Helicopters is 1,200, which includes "Emergency and Governmental Activities".</li> <li>3. The cap on Aeroplane movements is 40,000, which includes "Emergency and Governmental Activities". (new amendment)</li> <li>4. A restriction on timing of commercial passenger flights would be too restrictive and impracticable. The 500,000ppa, 40,000 Aeroplane movement cap and 1,200 Helicopter movement cap are sufficient restrictions.</li> </ol>

Natural England Ref	Relevant condition	NE Comment	PM Response
2.21	<b>Appendices to the draft planning permission</b>		
2.22	Appendix 1  Construction Management Strategy	The section „Site Roads and Haulage Routes“ is missing is final paragraph, which should be re-instated:  <i>“The CEMP will need to account for the improvement works to the highway at the junction of the B2075 and A259 (known as Hammonds Corner) which must be undertaken prior to reaching 30,000 ppa.”</i>	The word "any" has been used rather than "the" before "highway" as when the Runway Extension is Constructed, the road improvements to Hammonds Corner are not required. This is more reflective of the true position.  <i>"The CEMP will need to account for any improvement works to the highway at the junction of the B2075 and A259 (known as Hammonds Corner) which must be undertaken prior to reaching 30,000 ppa."</i>
2.23	Appendix 2  Terrestrial Habitat Works on the Disused Runway	Insert the words: "cut from this location only"	Amendment made.
2.24	Appendix 7  Ditch Construction Management Plan	No plans have been attached.	The plans are the same plans as attached at Appendix 1 of CD4.12, the SoCG Ditch Mitigation Strategy.  Plans re-provided on 31 August 2011
2.25	Appendix 7  Point 4	NE believes it would be better for digger buckets to be used to move sediment, water and animals.	Amendment made.
2.26	Appendix 8  Further Design Details of	No plans have been attached.	The plans are the same plans as attached at Appendix 1 of CD4.12, the SoCG Ditch Mitigation

Natural England Ref	Relevant condition	NE Comment	PM Response
	the 1300m Replacement Ditch Length		Strategy. Plans re-provided on 31 August 2011
2.27	Appendix 10 Point 2.4	8th line – delete “that”.	Amendment made.

3. COMMENTS FROM THE RSPB – RSPB/103

RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
<p><b>Maximum scaring/ worst case scenario</b></p>	<p>Paragraph 11, Schedule 1, Section 106 Agreement</p>	<p>1. The RSPB disagrees with LAA's position that no further information regarding bird control (both on and off-site) is needed. We consider that details need to be provided now so that the Secretary of State can take his decision based on the full and necessary information. Without this, uncertainty remains as to extent of the potential for adverse effects on the designated sites, and it is therefore not possible for statutory obligations to be complied with.</p>	<p>1. The evidence of Dr Allan, Natural England's own expert, was that birdstrike risk is manageable by on-airport measures (as confirmed in the SoCG) and that was a conclusion he reached (according to Dr Allan in cross-examination) without making any assumptions as to the necessity of undertaking off-airport works.</p> <p>Accordingly, in light of Dr Allan's answers, the provisions in paragraph 10 are more than sufficient for this development.</p>
		<p>2. As stated in our previous comments (dated March 2011 (RSPB101)) on the draft s.106 (CD17.1), no mitigation is proposed for potential impacts of bird control on functionally linked land. This remains the case.</p>	<p>2. See response to point 1 above.</p>
<p><b>Further revisions of the BCMP</b></p>	<p>Paragraphs 10 - 12, Schedule 1, Section 106 Agreement</p>	<p>The draft s.106 and conditions do not appear to include provision for any revised BCMPs to be further agreed by SDC (in consultation with NE). The RSPB is therefore concerned that this leaves scope for increased bird control, in future BCMPs, to be introduced without due consideration to the potential impacts to designated sites.</p>	<p>The Council has to approve any changes to the BCMP through the BCMP monitoring and review results in paragraph 12. In addition, a new paragraph 10.12 has been inserted:</p> <p><i>"10.12 Following the approval of the BCMP pursuant to this paragraph 10 and save in respect of the Bird Control Emergency Measures, no changes shall be made to the BCMP unless approved by the Council pursuant to paragraph 12 of this Schedule 1 or as may otherwise be approved by the</i></p>

RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
			<i>Council following consultation with Natural England and the Royal Society for the Protection of Birds."</i>
<b>Monitoring of the BCMP</b>	Paragraph 11, Schedule 1, Section 106 Agreement	There remains a lack of detail as to monitoring the impacts of the BCMP on the designated sites. Only para 11.1.3 of schedule 1 of the s.106 refers to nature conservation, and this is only with regard to conservation organisations ("whether any conflicts have arisen between the strategies and methods in the BCMP and local residents, landowners and occupiers or conservation organisations"	A new paragraph 11.1.4 has been inserted:  <i>"11.1.4 the effects, positive and negative, of the BCMP on the interested features of the SPA, pRamsar and the SSSI;"</i>
<b>BCMP Panel</b>	Paragraph 12, Schedule 1, Section 106 Agreement	1. This is a welcome addition to the s.106 (schedule 1, para 12). However, there is no provision to ensure that LAA has to act upon the panel's recommendations. The current wording is drafted in such a way that it is assumed that SDC will accept LAA's reasons for not following the panel's recommendations.	1. If the Airport Operator does not include the BCMP Panel's comments in the BCMP monitoring and review results, the Airport Operator is under an obligation to justify to the Council why those comments have been excluded.  If the Council disagrees with the Airport Operator, then the Council will notify the Airport Operator of this together with its reasons in writing and will request the Airport Operator to reconsider those details and to re-submit within a period of three months in a form that are designed to overcome the Council's concerns (see new paragraph 12.7).  We have also inserted the following new paragraph into paragraph 12 (paragraph 12.6):  <i>"Following the submission of each BCMP monitoring and review results to the Council pursuant to paragraphs 12.3 or 12.4 of this</i>

RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
		<p>2. Furthermore, the creation of a panel and mention of potential remedial works does not reduce our concerns as to the lack of detail as to the extent, frequency and scale of bird control measures (particularly offsite) that may be necessary to protect public safety (and which the final BCMP will include) and the lack of proposed mitigation measures.</p>	<p><i>Schedule 1, the annual number of Aeroplane movements in the forthcoming year shall not exceed the annual number of Aeroplane movements that occurred in the year covering the submitted BCMP monitoring and review results unless and until the Council has approved the said BCMP monitoring and review results and the Airport Operator has complied with paragraphs 12.5.1 and 12.5.2 of this Schedule 1.</i></p> <p>2. Please refer to our responses to Natural England References 1.6 – 1.12. We also refer you to our response above in respect of your reference <b>"Maximum scaring/ worst case scenario."</b></p>
<b>Definition of emergency measures and activities</b>	Definitions	<p>Greater detail has been provided in the draft s.106 and conditions as to emergency measures and activities. However, the definitions are broad enough (s.106 definition: "emergency activities to assist in the relief of any danger to the life or health of a person or animal") to mean that our concerns remain as to the type and the level of bird control measures (in the worst case) that could be used in emergency situations. Such emergency situations could potentially arise on a daily basis (if for example, a significant bird strike risk is apparent when a scheduled passenger aircraft is arriving/departing). These potential measures should be considered in the worse case scenario so a full picture of the possible activities can be seen and considered in the appropriate assessment to be under</p>	<p>The definition of "Emergency and Governmental Activities" has no relevance to the definition of "Bird Control Emergency Measures".</p> <p>The definition of "Bird Control Emergency Measures" refers to "<i>immediate bird strike threat</i>" and "<i>any delay in taking action would significantly compromise air safety margins.</i>"</p> <p>It is clear, therefore, that the measures can only be used to counter a very serious and immediate birdstrike threat to ensure air safety. Furthermore, under paragraph 10.8, the Airport Operator has to notify the Council, Natural England and the RSPB</p>

RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
		taken by the Secretary of State.	<p>that Bird Control Emergency Measures have been deployed including the reason for carrying out such Bird Control Emergency Measures, the duration of such Bird Control Emergency Measures, the scope and location of such Bird Control Emergency Measures and an assessment of the likelihood of carrying out such Bird Control Emergency Measures again in the next six months (amongst other matters).</p> <p>Given the reason for using emergency measures is in the event of an emergency, the Airport Operator cannot compromise on its use of Bird Control Emergency Measures. The definition is clear as to the very limited circumstance in which such measures can be deployed.</p>
<b>Exclusions to aeroplane movement cap</b>	Condition 19	<ol style="list-style-type: none"> <li data-bbox="689 890 1404 1129">1. The 1,200 annual helicopter movement cap now applies to all helicopter movements (including governmental and emergency activities). 1,200 helicopter movements is still however a large increase on current helicopter activity at LAA and therefore, in consideration of the potential disturbance impacts from helicopters to designated sites and protected birds, the RSPB considers the cap remains too high.</li> <li data-bbox="689 1166 1404 1345">2. Emergency and governmental activities (which also includes government training activities if approved by SDC) continue to however be excluded (condition 19)) from the 40,000 aeroplane cap. Total aeroplane movements at LAA could therefore be significantly higher than 40,000 per annum. The RSPB therefore</li> </ol>	<ol style="list-style-type: none"> <li data-bbox="1429 890 2054 1098">1. The 1,200 cap has been agreed with the Council. The Airport Operator currently has no restrictions on the number of helicopter movements at the Airport, or indeed any restrictions as to the time of day when helicopters can land/take off. The cap, therefore, is a benefit of the Planning Applications.</li> <li data-bbox="1429 1166 2054 1257">2. The 40,000 Aeroplane movement cap now includes Emergency and Governmental Activities.</li> </ol>



RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
		<p>considers that the total aeroplane movement cap should cover all aeroplane movements, irrespective of their purpose.</p>	
<p><b>Noise Management Plan</b></p>	<p>Paragraph 13, Schedule 1, Section 106 Agreement</p>	<p>We note that in CD17.7, LAA state that ornithology (and a possible draft Statement of Common Ground is still being discussed and any amendments arising from this will be included in the next draft of the s.106.</p> <p>Our previous comments (RSPB101) on CD17.3 therefore still stand as it appears that no relevant changes have been made in the draft s.106 to date. Whilst we would of course engage in such discussions, LAA have to date made no attempt to discuss our previous comments on the noise management plan.</p>	<p>We have inserted a new condition that requires all Aeroplanes that have a take off weight of 5700kg or over to follow flight path FP12. LAA does not consider such a requirement is necessary. However, in so far as the Inspector considers that this condition is necessary and subject to the condition satisfying the test of necessity, the Airport Operator would be content for the condition to be imposed.</p> <p>We would also refer Natural England to Condition 25 of the draft Runway Extension Planning Permission, which states that engine power checks are not to take place within the Airport Site except within the areas known as "Hold B" and "Hold C" as shown marked "B" and "C" on the plan attached to the planning permission in Annex 11.</p>
<p><b>Specific Comments</b></p>			
<p><b>Draft s.106</b></p>	<p>Paragraph 10.1, Schedule 1, Section 106 Agreement</p>	<p>“The BCMP shall include details of any Off-Site Bird Control Measures that may be utilised to supplement the on-site bird control measures” (CD17.3). In other words, the final BCMP will include such details, but not the draft version (contained in appendix 2 of LAA/6/C) that is being considered by the Inquiry at present. We think that it is fundamentally flawed to put off identification of the maximum off-site bird control measures when it is this very</p>	<p>The evidence of Dr Allan, Natural England's own expert, was that birdstrike risk is manageable by on-airport measures (as confirmed in the SoCG) and that was a conclusion he reached (according to Dr Allan in cross-examination) without making any assumptions as to the necessity of undertaking off-airport works.</p>

RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
		issue that has to be grappled with at this stage.	<p>Accordingly, in light of Dr Allan's answers, the provisions in paragraph 10 are more than sufficient for this development.</p> <p>Please see the updated provisions in paragraphs 10 – 12, Schedule 1, Section 106 Agreement.</p>
	Paragraph 10.1, Schedule 1, Section 106 Agreement	LAA has also removed reference to the final BCMP being “in accordance” with the December 2010 draft BCMP (as was the case with the previous draft s.106, CD17.1, schedule 1, para 8.1), so the scope for changes to the final BCMP may be potentially greater than previously was the case.	<p>Condition 18 has been deleted from the Runway Extension Planning Permission and transferred to Paragraph 10, Schedule 1 of the Section 106 Agreement. Paragraph 10.1 is clear that any Off-Site Bird Control Measures are to form part of the BCMP.</p> <p>The definition of "BCMP" has been amended to: <i>"means the bird control management plan submitted by the Airport Operator to the Council for approval and which plan when submitted pursuant to paragraph 10.1 of Schedule 1 shall be in accordance with the Bird Control Management Plan dated December 2010 submitted to support the Applications and contain the details listed in paragraph 10.1 of Schedule 1 and which plan may change from time to time and/or incorporate remedial measures as approved by the Council pursuant to paragraphs 10.12 and 12 of Schedule1;"</i></p> <p>Please also see the updated provisions in paragraphs 10 – 12, Schedule 1, Section 106 Agreement.</p>
	Paragraph 10.3,	States that LAA will not carry out the offsite measures	We refer you to our response above in respect of

RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
	Schedule 1, Section 106 Agreement	(except emergency measures) contained in the final approved BCMP unless and until SDC (in consultation with NE and the RSPB) and LAA have agreed the details submitted pursuant to para 10.2 of schedule 1. This obligation gives absolutely no certainty that such measures will not affect the designated sites, especially given the lack of detail as to the location and extent/quantity of offsite measures that may be necessary to protect aircraft/public safety. The fact that LAA and SDC have to “agree” to the offsite measures also does not provide an adequate restraint to ensure that any offsite measures will not adversely affect the designated sites. If the applications are approved and the runway extension is operating, public safety will clearly be paramount and it will be hard for SDC to not agree to measures necessary to protect public safety.	<p>your reference <b>"Maximum scaring/ worst case scenario."</b></p> <p>The Off-Site Bird Control Measures that the Airport Operator will be able to deploy will have first been approved under the submission process required under paragraph 10.1. We have amended paragraph 10.1 to make it explicit that the details to be submitted must also include:</p> <ul style="list-style-type: none"> <li>a) the likely measures to be deployed and the likely duration; and</li> <li>b) the likely scope and the likely location of the measures.</li> </ul> <p>Therefore, the Council, in consultation with NE and the RSPB, will have sufficient information before it to decide whether or not to approve the Off-Site Bird Control Measures.</p> <p>Paragraphs 10.3 and 10.4 provides a further layer to the approval process, by requiring the Airport Operator to submit more details to the Council for agreement before it actually carries out the Off-Site Bird Control Measures (and such details will be specific to the actual need as, and if, it arises). <b>Without the approval and agreement under paragraphs 10.1, 10.3 and 10.4, the Airport Operator cannot carry out the Off-Site Bird Control Measures.</b></p>

RSPB Ref	Relevant planning obligation or condition	RSPB Comment	PM Response
			Please also see the response to Natural England Ref 1.12.
<b>Draft Conditions</b>	Condition 18	The change from “in accordance” (CD17.2, condition 19) to “general compliance” (CD17.5) (regarding the approval of the final BCMP from the December 2010 draft version) enables greater scope for the final BCMP to include significantly more bird control measures than may have been envisaged/alluded to in the draft BCMP.	Condition 18 has been deleted and transferred to the paragraph 10, Schedule 1, Section 106 Agreement.  We refer you to our response to your comment on paragraph 10.1.
	Condition 18	The details set out in a-g of condition 18 (details as to LAA’s bird control habitat management plan, dispersal of birds, scaring techniques employed on-site etc) are necessary now.	Natural England's witness on bird control/bird strike, Dr Allan, agreed that the BCMP was appropriate. The following is an extract from the SoCG:  <i>"4.1 The bird management techniques proposed and the bird control staffing structure in the BCMP are agreed, and accepted as appropriate to the proposed future operation of the Airport, with the following clarifications and caveats:...."</i>  The caveats do not include any concerns of lack of details on habitat management or scaring techniques.

4. **COMMENTS FROM KENT WILDLIFE TRUST**

- 4.1 Kent Wildlife Trust has confirmed, letter of 25 August 2011, that CD17.3 and CD17.5 "*captures fully the substance*" of the Statements of Common Ground agreed between Kent Wildlife Trust and the Airport Operator.

5. **COMMENTS FROM CPRE PROTECT KENT – CPRE/10/E**

- 5.1 CPRE's comments relate to paragraph 16, Schedule 1 of the Section 106 Agreement.
- 5.2 Following a meeting between the Council and the Airport Operator, further revisions to paragraph 16 have been agreed.
- 5.3 The Environmental Statement and noise evidence before the Inquiry demonstrates that the worst case noise impact at the School occurs between the baseline year (i.e. the current position) and when the 500,000 ppa point is reached with the Terminal Building. This increase amounts to a 5 dB increase, which remains a negligible impact.
- 5.4 Based on a mitigation option of secondary glazing, which if the School were constructed to modern standards would be sufficient to mitigate by 5 dB, the Airport Operator estimated a sum of £50,000.00 inclusive of survey costs.
- 5.5 Following the Greatstone Primary School Sound Insulation Performance Review report (June 2011) and discussions with the Council, this amount has been increased to £100,000.00 in recognition of the variable facade constructions on the School, and the extra efforts required to achieve a 5 dB reduction.

6. COMMENTS FROM LAAG – LAAG/126

LAAG Ref	Topic	LAAG Comment	PM Response
<b>Section 106 Agreement</b>			
1.	Definition – Emergency and Governmental Activities	Point 3 should be eliminated. Training for an emergency activity – is not an emergency activity. It is a commercial activity and should not be allowed.	<p>The definition of "Emergency and Governmental Activities" has been amended to refer to the following only:</p> <ol style="list-style-type: none"> <li>1. <i>emergency activities to assist in the relief of any danger to the life or health of any person or animal;</i></li> <li>2. <i>non-training emergency operational activities of an Emergency and Governmental Body; and</i></li> <li>3. <i>the diversion of any aircraft from another airport to the Airport due to adverse weather conditions, technical problems, security alerts or onboard emergency or for any other emergency that the Airport may be informed of;</i></li> </ol>
2.	Definition – Public Transport Movements	<p>Under definition "Public Transport Aircraft" – Training should be either excluded or if included definition of light propeller aircraft should be:</p> <p>"Propeller Aircraft under 5.7tonnes"</p>	The definition of "Light Propeller Driven Aircraft" means " <i>a propeller powered aircraft with a maximum take-off weight not exceeding 5,700kg.</i> "
3.	Helicopter flight paths	The current instructions for helicopters in 14.2 (10.2 of old Section 106 agreement) are incompatible with the instructions for helicopter routings set out on the airport's entry in the UK AIP (CD16.1 – EGMD AD 2.16) which specifically instructs large helicopters to use the fixed wing flight paths for approach to runway 03 and 21. This means	<ol style="list-style-type: none"> <li>1. There is no incompatibility with the UK AIP.</li> <li>2. To route Helicopters coming from the Continent along the north-westerly flight path would involve routing the Helicopters past New Romney, Greatstone, Littlestone, St Mary's Bay etc. to get</li> </ol>

LAAG Ref	Topic	LAAG Comment	PM Response
<b>Section 106 Agreement</b>			
		<p>the noisiest aircraft will be routed over Lydd and the coastal towns.</p> <p>Further, in a response to your request the airport said the following in August 2008 (see CD1.43a – para 2.7.6)</p> <p>2.7.6 <i>It is also proposed that an appropriate planning mechanism is used to restrict the flight paths of all helicopters (save for emergency movements and the Air Show) departing and landing at LAA to a north-westerly flight path as illustrated in Appendix 6</i></p> <p>However, the wording in 14.2 has been weakened – to reasonable endeavours.</p> <p>This needs to be sorted out as helicopter noise is far worse than most aircraft noise and has been excluded in all noise assessments and proposed monitoring. Further, the “exclusion” in the definition of Public Transport Aircraft includes “Emergency and Governmental” and the definition of “Governmental” encompasses all operational and training flights by military helicopters from any country. Therefore, military helicopter movements are unlimited.</p>	<p>to the NW of the airfield, which in turn would create unnecessary noise/pollution and disturbance.</p> <p>3. Large Helicopters must use the runway (not the Runway Extension) to reduce the amount of downwash when landing.</p> <p>4. The north-westerly flight path routes Helicopters (UK origin or destination) directly away from the SPA, SSSI and the SAC and therefore is beneficial to the designated sites.</p> <p>5. Paragraph 14.2, Schedule 1 has to be a reasonable endeavours obligation as the Pilot in Command must have the ability to take alternative action in the interests of safety.</p> <p>7. See amendments to the definition of "Emergency and Governmental Activities", which no longer includes training.</p> <p>8. The Helicopter cap of 1,200 includes "Emergency and Governmental Activities".</p>
4.	Greatstone Primary School	Point 16.2 – the aircraft weight threshold is far too high. Children today at Greatstone Primary School are primarily experiencing noise from light aircraft (<5.7tonnes). Indeed, the common ground statement shows that 99% of the movements at LAA today are by light aircraft (CD4.4 (LAA)	Following a meeting between the Council and the Airport Operator, further revisions to paragraph 16 have been agreed.  The Environmental Statement and noise evidence



LAAG Ref	Topic	LAAG Comment	PM Response
<b>Section 106 Agreement</b>			
		<p>– 3.15 and 3.16).</p> <p>With the threshold set at 45 tonnes it is possible, in theory, for the entire forecast throughput of 300,000ppa/500,000ppa to be conveyed by aircraft types weighing less than 45 tonnes. Flybe is conducting its services from Manston using Bombardier Q400 aircraft which has a MTOW of only 29.3tonnes while the Embraer 175 which Flybe will use increasingly in the future has a MTOW of between 37.5 – 40.4 tonnes (see LAAG/8/D – 5.14 – 5.16 and Appendix 1).</p> <p>The cut off point should be lowered to 5.7tonnes as this will better represent the change in circumstances post the runway extension.</p>	<p>before the Inquiry demonstrates that the worst case noise impact at the School occurs between the baseline year (i.e. the current position) and when the 500,000 ppa point is reached with the Terminal Building. This increase amounts to a 5 dB increase, which remains a negligible impact.</p> <p>Based on a mitigation option of secondary glazing, which if the School were constructed to modern standards would be sufficient to mitigate by 5 dB, the Airport Operator estimated a sum of £50,000.00 inclusive of survey costs.</p> <p>Following the Greatstone Primary School Sound Insulation Performance Review report (June 2011) and discussions with the Council, this amount has been increased to £100,000.00 in recognition of the variable facade constructions on the School, and the extra efforts required to achieve a 5 dB reduction.</p>
5.	Purchase Scheme	Note we repeat the point made in LAAG/106. In the past Lydd Airport has stated it would support a house purchase scheme - Indeed it was proposed by Michael Howard and is mentioned in Mr Perkin's evidence (LAA/5/A - 4.2.7.2 page 14).	It was made clear at the Committee Meeting in March 2010, that this purchase scheme was outside the Section 106 Agreement and was a corporate commitment of the Airport Operator. This remains the case.
<b>Conditions</b>			
1.	Time Condition	There is no basis for allowing Lydd Airport such latitude over the commencement date of construction for both the runway and terminal. Why shouldn't LAA conform to the	We refer to our comment in CD17.7 and which has been accepted by the Council. The time limit reflects the evidence put forward by Louise Congdon

LAAG Ref	Topic	LAAG Comment	PM Response
<b>Section 106 Agreement</b>			
		<p>standard time of three years?</p> <p>The reduction of the runway time from 5 to 4 years is derisory and the 10 year time for the terminal is unreasonable.</p>	<p>and the annual growth projection at the Airport should the Runway Extension application be permitted.</p>
2.	Calendar Year aircraft movements	<p>There needs to be some restraint on the movements of larger aircraft types, as there was in the previous planning application. A large proportion of the 40,000 movements forecast this time round, are expected to remain by light aircraft &lt;5.7tonnes. However, in practice by not putting a constraint on the larger aircraft types, a significant proportion of the movements could be made by group 1&amp; 2 aircraft - providing a vastly different noise profile to the one modelled. See LAAG/106 point 1.</p>	<p>The proposed noise contour restrictions in the Section 106 Agreement place an adequate constraint on the Airport as the Airport will not be able to operate outside the 5dB LAeq noise contour as described in paragraph 13, Schedule 1. This is the agreed position with the Council.</p>
3.	Monitoring	<p>A number of the monitoring initiatives, for example medicinal leech, have annual surveys for a number of years, then surveys every 3-5 years thereafter. Since traffic will increase over time the risk of adverse impacts will also rise commensurately. Therefore, at the very least, the survey periods should be truncated from 3-5 years to every 2 years. Airports can double their throughput over five years from a relatively high base - therefore there is too much potential for undetected damage if the survey period is an extended five year period.</p>	<p>The monitoring years for the ecology conditions have been agreed with Natural England.</p>
4.	Operational Management – Terminal	<p>For the avoidance of doubt, the operational management aspects should be included in the conditions for both the runway extension and the new Terminal since the runway planning application is capped at 300,000ppa and the</p>	<p>As previously stated we do not consider this is necessary as Conditions on aircraft movements, air show, aeroplane weight, night-time period and ground operations are secured on the Runway</p>

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		terminal at 500,000ppa.	<p>Extension Planning Permission and so do not need to be replicated on the Terminal Building Planning Permission. The Terminal Building can only be Occupied once the Runway Extension has been Completed (this is a S106 obligation), and so the Runway Extension Planning Permission will be the first permission to be triggered. Therefore, these operational restrictions are more appropriately secured on the Runway Extension Planning Permission.</p> <p>However, should the Inspector consider it necessary to replicate the conditions, then the Airport Operator would be happy to accept the repetition of the conditions.</p>
5.	Failure to condition RNAV flight path	<p>The RNAV flight procedures were introduced in 2009. The noise implications of these flight paths, and particularly the important approach paths, were not assessed in the ES. The airport maintains the RNAV procedures will only be used as a back up for the ILS if it is out of action. However, they will be used commercially because of the track miles they save (see LAAG/10/A - 3.50-3.54 &amp; LAAG/10/E - 4.7 &amp; 4.8). Further, these flight paths have implications for safety at Dungeness due to their orientation (LAAG/10/A - 6.18).</p> <p>LAAG believes (see LAAG/122) that they should be conditioned to be used only as a back up to the ILS. LAA's reluctance to accept this condition suggests they agree with Mr Spaven's assessment. Further, since these flight paths have the potential to cause adverse impacts</p>	<p>We are surprised to see this comment given that LAAG has previously stated that the RNAV is not the procedure of choice.</p> <p>The Airport Operator maintains the position there is no reasonable need or justification for such a condition.</p>

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		environmentally (flight paths will be closer to the Marsh Academy) and they have not been incorporated into the ES, there is also the possibility of legal redress.	