APPLICATION BY RIVEROAK STRATEGIC PARTNERS LTD ("THE APPLICANT")

FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE UPGRADE AND REOPENING ON MANSTON AIRPORT

PINS Reference Number: TR020002

WRITTEN SUMMARY OF STONE HILL PARK LTD'S ORAL SUBMISSIONS PUT AT THE SECOND DRAFT DEVELOPMENT CONSENT ORDER ("DCO") HEARING HELD ON 7 JUNE 2019

1. **BACKGROUND**

1.1. The Issue Specific Hearing on the draft DCO (the "Hearing") was held at 10:00am on 7 June 2019 at Discovery Park, Sandwich, CT13 9FF.

1.2. The Hearing took the form of running through items listed in the agenda published by the Examining Authority (the "ExA") (the "Agenda").

1.3. The format of this summary follows that of the Agenda and only refers to parts of the Agenda where Stone Hill Park Limited ("SHP") made substantive comments.

1.4. The comments made by SHP on the dDCO are without prejudice to SHP's position that, inter alia;

1.4.1. the Applicant's case is not credible;

1.4.2. no need has been demonstrated, and the case presented by the Applicant, which is based on the Azimuth report, is fundamentally flawed;

1.4.3. no compelling case in the public interest has been demonstrated;

1.4.4. no justification has been provided as to why the Works, as listed in Schedule 1 of the Revised Draft Development Consent Order, satisfy the legal tests of "NSIP development" or "Associated Development";

1.4.5. no justification for the extent of land acquisition has been provided;

1.4.6. no reasonable attempts have been made to acquire the land voluntarily or alternatives explored by the Applicant;

1.4.7. no credible business plan has been presented;

1.4.8. there is no evidence that funding is available;

1.4.9. there is no evidence that the level of funding proposed is adequate;

1.4.10. there is no evidence that the Applicant can reasonably expect to raise and commit the necessary funding to implement the authorised development;

1.4.11. the Applicant has not assessed the likely worst case environmental effects; and

1.4.12. it is not lawful or appropriate for survey results to be deferred until a later decision making stage etc.

2. AGENDA ITEM 6 – THE EXA'S INITIAL dDCO: PROPOSED NEW PROVISIONS – EXA

New Requirement 21:

2.1. SHP would suggest to the ExA that a more robust requirement would be required to limit the degree to which the environmental effects could be materially worse than those which have been assessed in the ES. The rationale is provided below, together with an explanation of why the erroneous fleet mix used suggests that the ES has not assessed the likely worse case environmental effects.

Requirement 21

"The operation of the airport is subject to

i. A total annual commercial air transport movement limit of 26,468 ATMs that includes the following sub limits;

i. A maximum of 17,170 Cargo ATMs, of which no more than 12,860 cargo aircraft movements can be by jet aircraft;

ii. A maximum of 9,298 of passenger ATMs;

ii. a total annual General Aviation movement limit of 38,000 [TBC – the 38,000 may be excessive as the ES does not appear to have fully assessed the impacts of these movements]."

Rationale for Proposed Drafting

2.2. Notwithstanding the lack of credibility of the Applicant's forecast, the DCO must include requirements that limit the development to that assessed. Accordingly, SHP agree with the ExA's proposal that there would need to be a cap on cargo ATMs to protect (but only partly so – see below) against the environmental effects being materially worse than assessed in the ES, and not just those that could derive from an increase in passenger trips (as accepted by the Applicant at the Hearing). SHP explained that Cargo ATMS are generally far older aircraft than passenger aircraft, with worse environmental effects in terms of noise, air quality, accident rates etc. It would therefore be far more competent for the DCO to include a limit (that could be reviewed at a later date if required and with the benefit of evidence) rather than to have no limit.

2.3. However, this cap, in itself, would not offer sufficient protection against the environmental effects being materially worse, as the environmental assessments are based on a fleet mix (set out in Appendix 3.3. of the ES [APP-044]), which is based on the forecast in the Azimuth report [APP-085].

2.4. As explained in detail SHP's recent submissions, the forecast contained in the Azimuth report [APP-085] is wholly incompatible with the E-commerce business model set out in the Applicant's recent oral and written submissions. A further consequence is the erroneous fleet mix, which would not be appropriate for an import led E-commerce integrator model of the nature explained by the Applicant (i.e. to import freight to serve the south east of England).

Why is this relevant to this DCO requirement?

2.5. The ES assumes 1,456 integrator feeder aircraft in Year 2, rising to 4,310 in Year 2. The environmental effects assessed in the ES therefore assume that these aircraft account for over 25% of all cargo ATMs over the forecast period.

2.6. The integrator feeder aircraft in the fleet mix are assumed to be ATR-72s, which are by far the smallest and lightest aircraft included in the mix having a maximum landing weight on 22 tonnes. For context, the average maximum landing weight of the other cargo aircraft included in the mix is c.170 tonnes (the largest being 306 tonnes - see analysis contained in Appendix 1 appended to this summary).

2.7. In previous submissions, SHP's aviation experts have clearly explained that ATR-72s would not be required for the E-commerce integrator model now proposed by the Applicant. It is highly revealing that, despite being given multiple opportunities to provide an explanation, the Applicant has chosen not to.

2.8. If the ATR-72 aircraft were replaced by other aircraft in the forecast (e.g. aircraft that are c.8 times the maximum landing weight i.e. c.170 tonnes) the environmental effects would undoubtedly be materially worse. For additional context, Part 2 of Appendix 1 of the Noise Mitigation Plan [REP6-022] shows that the ATR-72 turboprop aircraft are the quietest of all aircraft shown, being classified as exempt or having the lowest noise quota count of 0.25. (*Please note that the latest version of the Noise Mitigation Plan submitted by the Applicant [REP7a-022] refers to, but does not include, the Appendices showing the noise levels of the different type of aircraft*.)

2.9. The other Code C aircraft in the mix (e.g. Boeing 737-800) are c.2.4 - 3.0 times heavier than the ATR-72 aircraft and, as Jet aircraft, are far noisier with quota counts of 0.5/1. Hence replacement of the ATR-72s by other Code C aircraft would also result in the noise being greater than assessed in the ES.

2.10. Therefore, in order to attempt to ensure that the environmental effects could not be materially worse than assessed, the Requirement 21 would need to include a sub-restriction that would ensure *"no more than 12,860 cargo aircraft movements can be by jet aircraft"* (i.e. 17,170 less the 4,310 ATR-72 turboprop aircraft assessed in the ES).

2.11. As a final point, the consequence of the Applicant's approach of evenly spreading out the timing of flight movements throughout the day is that the ES has not assessed the worst case effects of the proposed development, and in many cases the "worst case" appears to use "best case" assumptions. A fundamentally illogical and unsustainable position to adopt. For example, the Applicant claims that its vastly oversized development (e.g. in respect of the number of stands etc) is required to deal with the concentration and bunching of ATM activity. However, the Applicant has not even assessed the material effects any such concentration would have on traffic and transport, noise (e.g. for school day) and other assessments.

2.12. As a consequence, the DCO would need to include a complex suite of requirements to offer protection to the local community. If the ES had properly assessed the likely worst case effects, then this would not be required. However, at this late stage in the examination, it is not practical to attempt to determine what these restrictions would need to be or how they would be monitored, costed and controlled.

2.13. SHP understands that one such requirement under consideration is a restriction on passenger ATMs during a morning period. SHP await further detail on what is proposed, but note that any restriction in the morning period would fundamentally undermine the Applicant's ability to secure any low cost operators (or any airline for that matter), which is reliant on quick turnaround times and maximising the number of daily rotations. As York Aviation has already explained at previous hearings and in written submissions, the more restrictive night flying policy would already materially undermine the Applicant's prospects of securing low cost carrier ATMs. In the Applicant's apparent readiness to accept this restriction, the Applicant again demonstrates a fundamental lack of understanding of how passenger airlines make money – they only make money when flying and would not be doing so if they were prevented from flying during prime periods. It further suggests that this is not a "real" project.

New Requirement 22

2.14. The quota count of 3,028 is excessive, particularly where it only covers the period 06:00-07:00 (other than for later arriving aircraft).

2.15. Based on the quota counts applying to the assessed fleet mix, the majority (by far) of aircraft have a quota count of between 0 and 1. Based on applying the highest quota count shown in Part 2 Appendix 1 for each aircraft, a quota count of 3,028 would theoretically allow for over 4,644 ATMs. Based on applying the lower QC count for each aircraft type, the number could theoretically exceed 8,000.

2.16. Hence, the quota count proposed is meaningless as applied only to the single hour in the morning and would provide no effective control on operations.

3. AGENDA ITEM 7 – THE EXA'S FIRST DRAFT DCO: PROPOSED NEW PROVISIONS – The Applicant

Article 2 – Interpretation, Requirement 19 – Airport-related commercial facilities and Schedule 1 –Authorised Development

3.1. Without prejudice to SHP's case that this application does not meet the requirements of a NSIP, SHP explained that the definition of "airport related" would allow development that that is outside of what would otherwise be permitted under PA2008 (i.e. development for which development consent is required and associated development as set out in section 115 of PA2008).

3.2. SHP has submitted extensive submissions on these matters throughout the examination explaining that associated development cannot be legitimate if it does not have a direct relationship with the principal development, (i.e. *"the development"* that has *"the effect"* of increasing *"by at least 10,000 per year the number of air transport movements of cargo aircraft for which the airport is capable of providing air cargo transport services").* SHP has set out in detail the associated development criteria, how the criteria need to be considered, how the claimed associated development does not satisfy the relevant tests and how the Applicant has failed to provide any substantive evidence that would allow the ExA to even start making an assessment as to whether the tests have been satisfied.

3.3. SHP has been consistent in its submissions.

3.4. In contrast, the Applicant is still to provide the explanation and justification of the works that it considers to be the NSIP works (the principal development) and the associated development. This despite a request from the ExA, and commitment given by the Applicant, at the initial dDCO hearing on 10 January 2019. The Applicant's submissions on these matters have been contradictory, inconsistent and incomplete, albeit in its response to the ExA's second written question **DCO.2.33** [REP6-012], the Applicant did at least acknowledge that development that does not have the requisite effect referred to in section 23(5)(b) cannot be part of the principal development;

> *"The NSIP is to increase the capability of the airport to provide cargo facilities – the passenger terminal is therefore not part of that but is rather classified as associated development. The increase in passengers will not reach the threshold of 10 million per annum that would make it a NSIP in its own right."*

3.5. As SHP has explained in its submissions, including section 5 of Appendix 1 (NSIP Rebuttal) to its Written Representations [REP3-025], there are a number of other Works Numbers that the Applicant has erroneously classified as NSIP development. For example, Works No. 2 (8 light and business aircraft hangars and associated fixed base operator terminal) and Works No.s 10 & 11 (comprising 7 Code C stands relating to proposed recycling and passenger operations, as explained in the Environmental Statement [APP-033]) clearly do not increase the capability of the airport to provide air cargo facilities.

Article 19 – Compulsory acquisition of land

3.6. SHP explained the rationale for the Crichel Downs type principles it set out in its answer to Second Written Question DCO.2.49 [REP6-053] and explained its concerns that the application of the standard Crichel Downs Rules (as drafted for use by Government departments) would not be appropriate in the circumstances.

3.7. SHP provided an example at the Hearing whereby the Applicant was successful in acquiring the land for a cost of, say £25 million, set by the Lands Tribunal, but then did nothing to advance its own plans, claiming that it was unable to secure the necessary funding to develop its proposed project. Under the Crichel Downs Rules, the Applicant could seek planning consent for a similar residential led project to that which SHP has submitted a planning application for, or an alternative commercial scheme and progress development without being required to offer the land back to SHP. It would only be where the Applicant wished to dispose of the land that had not been materially altered it would be required to offer the land to SHP, albeit even then, there are many exceptions from the obligation to offer back (see section 15 of the Crichel Downs Rules). Furthermore, the Applicant would only be required to offer the land back to SHP at the then current market value (to be determined by the Applicant's professionally qualified valuer).

3.8. This is a unique case, where one private entity is attempting to compulsorily acquire another party's land holding of 742 acres, and the landholding in question forms 92% of the Order Land. The principals of the Applicant have long coveted the land, having been involved in two previous attempts to secure compulsory acquisition powers, failing both times. The principals have no track record of successful airport development, have submitted zero information on their experience and track record to this examination, and SHP consider that the Applicant's primary objective is to secure a 742 acre land holding in Kent.

3.9. SHP trusts the ExA is fully cognisant that this is not a normal DCO and the Applicant cannot just simply point to precedent of other DCOs as justification for drafting of the Articles, when the nature of the application, the Applicant and the nature of compulsory acquisition sought are incomparable with any other DCO.

3.10. SHP has simplified the provisions it set out in its answer to Second Written Question DCO.2.49 and proposes that the following subparagraphs would need to be added to replace sub paragraphs (3) and (4) included in the ExA's first draft DCO. The provisions would offer some limited protection against the Applicant using the DCO process to effect a "land grab";

> *"(3) The undertaker, and its successors, must covenant with SHP only to use the SHP Land for the purposes of the Authorised Development and/or uses that do not extend beyond the type of development permitted by the Order. The undertaker must not dispose of any interest in the SHP Land unless the successor has entered into a direct covenant with the current owner of the SHP Land (which includes an obligation to require its successors to provide a similar covenant on any disposal).*
>
> *(4) A restriction is to be registered on the title to the land stating that no dispositions of the SHP Land (or any part) can be registered without the successor entering into a direct covenant with SHP.*
>
> *(5) The undertaker must offer back the SHP Land to the owner of the SHP Land at the price paid for the land where the Applicant has not commenced the Authorised Development prior to the expiration of 2 years beginning with the date that this Order comes into force;*
>
> *(6) The undertaker must offer back the SHP Land to the owner of the SHP Land at the price paid for the land where the Applicant has not commenced operation of the Authorised Development (including the operation of commercial air transport movements) prior to the expiration of [6] years beginning with the date that this Order comes into force;*
>
> *(7) Should the undertaker, or its successor, wish to dispose of any of the SHP Land where the Authorised Development set out in Schedule 1 has not yet commenced on the relevant land, the undertaker must first offer the land back to SHP at current market value. This provision does not apply to any disposals of land to statutory bodies required to facilitate the construction or operation of the Authorised Development."*
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> Note: "SHP Land" to be defined within the DCO as the freehold land comprising Title Numbers K803975, K837264, K891199, K806190, K873633, K873634 and K743314.

4. AGENDA ITEM 9 – PROPOSED AMENDED OR NEW PROVISIONS – OTHER PARTIES

Article 9 – Guarantees in respect of payment of compensation, etc

4.1. SHP had set out the rationale for its proposed amendments to this Article in paragraphs 7.2 and sub-paragraphs 7.2.1-7.2.3 of SHP's Written Summary of Oral Submission out at

the CA Hearing [REP5-]. The purpose was to address both the lack of evidence on the availability of funding and the level of funding that would be secured in Article 9(1)(a).

4.2. In view of the unusual nature of the Applicant, it being a £1 shell company, with its shares held by two SPVs of no financial standing, its controlling entity being a BVI Company and funding purported to come from a Belize company, M.I.O. Investments Ltd on which nothing is known, an escrow arrangement of the sort proposed could have gone some way to addressing concerns regarding the availability of funding.

4.3. **SHP accepts the ExA is not able to compel an Applicant to place funds in escrow ahead of a decision being made or provide a guarantee/bond.** However, the Applicant's dismissive approach to a constructive proposal, only further focuses attention on the lack of transparency and certainty on the availability of funds. As the ExA reminded the Applicant at the second CA Hearing, there was *"no verifiable evidence on the likelihood of funds"* being available before the examination.

4.4. SHP explained that the Examining Panels on other DCO examinations had raised concerns about funding where an SPV was the Applicant. SHP noted the example of the Hinkley Point scheme where the Applicant was owned by EDF Holdings Ltd (80%) and Centrica (20%), both of whom were very large companies of significant means. Despite this, the ExA raised concerns regarding the availability of funding, and in response the Applicant assisted the examination by offering a guarantee from one of the parent companies, which was of undoubted financial standing.

4.5. MHQC for the Applicant stated that he had acted for the Applicant of the Hinkley Point project and disputed that any guarantee had been offered.

4.6. The ExA is referred to paragraphs 7.34-7.36 of the Hinkley Point C Panel's Report to the Secretary of State dated 19 December 2012 as noted below;

> *"**Availability of funds for compensation***
> *7.34 Accompanying the Statement of Reasons was a Funding Statement (APP281) in which the Applicant stated that it is a wholly owned subsidiary of NNB Holding Company Limited which is a joint venture company with 80% owned by EDF Holdings Limited and 20% owned by GB Gas Holdings Ltd (Centrica). There is a Shareholders Agreement which governs the basis on which the Applicant will be financed.*
>
> *7.35 The Applicant has taken expert advice on the likely cost of implementing the proposed development, including the cost of construction and the funding of the necessary land acquisition. The Applicant has assessed the commercial viability of the proposed development in the light of this information and, if development consent is granted, the development of Hinkley Point C would be funded by a cash call process governed by the Shareholders Agreement. It concludes that the availability of funding would not be an impediment to the implementation of development or to the acquisition of land deemed necessary.*
>
> *7.36 We requested details of the terms of the Shareholders Agreement (PDEC12) and subsequently its termination provisions (PDEC24). We inquired of the Applicant (PDEC24) whether a parent company guarantee could be provided and, following the Applicant's disinclination to do so, the matter was discussed at the compulsory acquisition hearing. As a consequence of the discussions at the hearing the Applicant*

offered (subject to Board approval) to provide a parent company guarantee up to a limit of £10million. This was subsequently provided (PD115)."

4.7. As SHP has explained in previous submissions, the amount set out in the Article 9(1)(a) would grossly understate the level that would be required. Compensation is not for the Examination, but one necessity for the Examination is to ensure that the Promoter has demonstrated there would be adequate funds for any costs associated with compulsory acquisition, noise mitigation and blight.

4.8. Notwithstanding all the matters the ExA has to consider in assessing whether the Applicant has satisfied the relevant compulsory acquisition tests (which the Applicant demonstrably has not), the ExA is required to submit its DCO with its report to the Secretary of State irrespective of the merits of the Applicant's case or the recommendation from the Panel. Therefore, in preparing its DCO, the ExA would need to be satisfied that the amount in the Article would be sufficient - otherwise the ExA would be unable to satisfy themselves under the Guidance and any Article would be defective. This would be prejudicial and have human rights implications given land could be forcibly taken. The precise level of compensation is not for the Examining Authority, and if the Compensation figure from the Upper Tribunal was lower than the amount in the Article, then the remaining amount could be returned to the Promoter. But it should not be the other way around, that the Article did not secure sufficient funds to pay third parties for their land. Therefore, the ExA must take a precautionary approach and look at the higher figure for security purposes. In this regard, the ExA should refer to the detail set out in Appendix 6: Compensation Assessment to SHP's Written Representations [REP3-025]. In paragraph 8.2, Avison Young (formerly GVA) states;

"The compensation provision made in RSP's funding statement is insufficient to meet the compensation obligations resulting from a made DCO. It is important to note that RSP's most recent offer of £20m excludes any value associated with residential development potential, demonstrating the need for RSP's funding provision and business case to be reassessed to reflect significantly higher compensation liabilities."

4.9. The Applicant's estimate for the costs of Compulsory Acquisition of £7 million includes costs such as SDLT that would run to c.£0.5m. Accordingly, it would appear that the Applicant has only allowed for c.£6.5m to be paid to the owners of the land, and despite the ExA's request for more information the Applicant has refused to provide any breakdown. The only information before the examination on the Applicant's "value estimate" is the copy of the letter dated 10 October 2018 from the Applicant's adviser Colin Smith of CBRE, stating his view that the SHP land was valued at £2m - this letter was submitted by SHP as part of its Answers of First Written Questions [REP3-303] and was appended to the Avison Young Compensation Report). Mr Smith's letter was factually inaccurate in a number of areas, and this was compounded by incomplete testimony at the CA hearing where he omitted the fact that SHP had acquired the land from the previous owner of the closed airport in September 2014 for a price of £7 million. Please note that further detail and evidence on the adequacy of funding will be included in SHP's Written Summary of Oral Submission put at the Second CA Hearing.

4.10. On the basis the ExA is required to submit a DCO to the Secretary of State irrespective of its recommendation, suggested amendments to Article 9 are noted below. The level of

security has been left blank pending the ExA's consideration of the appropriate level, which would need to be sufficient to cover the costs relating to;

4.10.1. compulsory acquisition of the Order Land;

4.10.2. the implementation of the Noise Mitigation Plan, which would be materially higher than suggested by the Applicant should the 60DB contour level be applied in line with Government recommendation and/or the Noise contours prepared by the CAA on behalf of Five10Twelve be applied; and

4.10.3. the installation of the new HRDF Beacon (recognising that this would need to be fully operational, and fully tested, prior to any authorised development commencing in safeguarded areas) – the costs would be expected to exceed £1 million.

> *"Guarantees in respect of payment of compensation, etc.*
> *9.—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 19 to 33, until—*
> *(a) subject to paragraph (3), security of [£TBC million] has been provided in respect of the liabilities of the undertaker—*
> *(i) to pay compensation to landowners in connection with the acquisition of their land or of rights over their land by the Applicant exercising its powers under Part 5 of this Order; and,*
> *(ii) to pay noise insulation costs and relocation costs underas required by Requirement 9 of Schedule 2 to this Order;*
> *(iii) to pay the installation and all other costs relating to the relocation of the HRDF Beacon [assumed to be £1.5 million]; and*
> *(b) the Secretary of State has approved the security in writing.*
>
> *(2) The security referred to in paragraph (1) may include, without limitation, any one or more of the following—*
> *(a) the deposit of a cash sum;*
> *(b) a payment into court;*
> *(c) an escrow account;*
> *(d) a bond provided by a financial institution;*
> *(3) The Secretary of State is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order."*

Article 18 – Authority to survey and investigate the land

4.11. Paragraph 7.3 of SHP's Written Summary of Oral Submission out at the CA Hearing [REP5] summarised why the wide powers sought by the Applicant to survey and investigate land would be inappropriate. In its revised Explanatory Memorandum (paragraph 3.44), the Applicant argues that it is required in order to *"remove the necessity to compulsorily acquire that land and thus reduce the land brought within the Order limits."* Without SHP's freehold land there is no project. Article 18 would be appropriate, for example, where the acquiring authority needs to undertake micro siting surveys, so that it could minimise compulsory acquisition (e.g. micro siting or a pipeline within a corridor).

4.12. We would refer the ExA to paragraphs 3.4 - 3.7 of SHP's covering letter submitted at Deadline 4 [REP4-064], SHP's answer (including appendices) to second written question Ec.2.2 [REP6-053] and SHP's comment on the Applicant's answer to second written question Ec.2.2 [REP7-014].

4.13. These submissions provide detailed background to the Applicant's consistent history of breaching the terms of previous section 53 authorisations and agreements that provided for access to the land and demonstrate the valid concerns that wide ranging powers of the type sought by the Applicant would be highly prejudicial to SHP. These submissions also highlight concerns that the Applicant has misled the ExA regarding its attempts to undertake surveys. It is also noted that other bodies such as Historic England appear to have taken in good faith the Applicant's assertions that surveys could not be undertaken due to issues of access.

4.14. SHP would also note that there is a Parking Services Agreement between SHP and the DfT that covers effectively all of the Order Land to the south of Manston Road. See answer to the first written question CA.1.23 [REP3-303].

4.15. The current drafting of Article 18(7) only provides for the right of access to be suspended where;

> *"the Secretary of State notifies the undertaker in writing that—*
> *(a) Operation Stack has been declared by Highways England or Kent Police; and*
> *(b) the imminent use of the Operation Stack land for lorry parking purposes would be incompatible with the exercise of rights notified to the Secretary of State under paragraph (2)."*

4.16. This would not cover scenarios where works in preparation for a mobilisation event are underway or where any development is underway of the sort that the ExA had sight of at the site visit on 19 March 2019. This is a highly complex agreement, with material obligations on SHP, which could be prejudiced by the type of access rights that would be afforded the undertaker under the current drafting of the dDCO, and the lack of any controls or protective conditions that should apply to protect the legitimate interests of the landowner.

4.17. In view of the issues raised above, the following minor amendments to Article 18 would need to be incorporated in the DCO submitted by the ExA;

Paragraph (1) amended to;

"(1) Subject to paragraph (8), the undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—"

The inclusion of a new Paragraph (8);

"(8) paragraph (1) does not apply to SHP Land without the consent of the owner of the SHP Land, but such consent must not be unreasonably withheld or delayed."

Note: "SHP Land" to be defined as the freehold land comprising Title Numbers K803975, K837264, K891199, K806190, K873633, K873634 and K743314.

Article 26 – General Vesting Declaration

4.18. The Applicant should not be able to rely on the powers in the Compulsory Purchase (Vesting Declarations) Act 1981, as amended by Article 26, in respect of SHP Land. These powers, where they would relate to any of SHP's freehold land, are wholly inappropriate for a number of reasons;

4.18.1. SHP's land comprises substantially all of the land interests required for the project - there is no project without SHP's land. The landowner is known, and the Applicant has already satisfied itself that SHP has title to the land as a result of the extensive work that has gone in to the preparation of the Book of Reference. Therefore, there is no reason why the Applicant would need to use a general vesting declaration as an alternative to the notice to treat procedure in respect of SHP's freehold land.

4.18.2. Under the Vesting Act, the acquiring authority is only required to pay 90% of **its own** estimate of the compensation due. Whilst a "normal" acquiring authority could be expected to act fairly, it is clear from the Applicant's submissions to the examination (and equally, the information it has withheld from the examination), that there could be no confidence that the Applicant would not seek to abuse or take advantage of these powers. To highlight this risk, CBRE's letter of 10 October 2018 (appended to the Avison Young report) included an opinion of value of "circa £2m", which suggest that with Vesting powers, the Applicant could attempt to pay only £1.8m (90% of £2m) pending compensation being determined at a later point.

4.18.3. Furthermore, as explained at the Hearing, the Applicant has recently sought to use the threat of the GVD power as leverage to influence SHP to accept a materially lower sale price than that which the Applicant had previously agreed to pay (but failed to deliver on) as fully explained in SHP's previous submissions). The relevant extract from an email sent by an RSP Director on 24 May 2019 is shown below (please note that a redacted copy of the relevant email is attached as Appendix 2 – a copy of the full email will be appended to SHP's other Deadline 8 submissions, together with appropriate context that addresses the other misleading statements in the email from the RSP Director);

> *"There is a significant risk for you of compulsory purchase powers being granted, and hence the amount we pay you being in line with the estimate of our expert valuers CBRE.* ***90% of our estimate*** *would be payable upon us entering the land,* ***and the remainder might not be paid for several years****." [emphasis added]*

4.19. Accordingly, Article 26 would need to be amended to carve out the freehold interests held by SHP under Land Registry Title Numbers K803975, K837264, K891199, K806190, K873633, K873634 and K743314. Only a Notice to Treat should be exercisable over SHP's freehold interests. The Applicant would still be able to gain entry and implement the DCO and **SHP would retain title to the site (at which it is operating commercial activities) until compensation is paid to it**.

4.20. In its comments on the Applicant's answer to second written question CA.2.29, SHP explained that a blanket restriction against the use of the GVD for all the Order Land would

not be appropriate. It is perfectly understandable that an Applicant would wish to be able to use the General Vesting Declaration method, where the interests are small and fragmented, to address the risk that undiscovered owners of lands or rights may still exist. That would be an appropriate use of these powers.

4.21. At the Hearing, the Applicant sought to claim that there is no real difference between a General Vesting Declaration and a Notice to Treat processes, suggesting that under both circumstances 90% of the undertakers "valuation" of the land is payable before a final Lands Tribunal decision is made. The two situations are not remotely comparable in the context of this specific situation.

4.22. Under GVD, the undertaker takes possession and title at the point it pays 90% of **its own** estimate. Under the Notice to treat route, interim payment is **only** made if requested by the landowner, and title remains with the landowner until it is paid full compensation for the site. This is a very important distinction, as it changes the balance of negotiating power materially, and provides a degree of protection to the landowner. It is highly unlikely that there has been another circumstance in a DCO where an Applicant has explicitly and opportunistically sought to use the threat of GVD powers in the manner the Applicant has. The Applicant would not need these powers over SHP's land and would be wholly undeserving of them.

4.23. It is therefore proposed that the following new paragraph (1) would need to be included within Article 26 of the DCO the ExA is required to submit to the Secretary of State;

"(1) This Article 26 shall not apply to the SHP Land"

"SHP Land" is to be defined as the freehold land comprising Title Numbers K803975, K837264, K891199, K806190, K873633, K873634 and K743314.

Article 29 (Temporary use of land for carrying out the authorised development):

4.24. Pursuant to Article 29(1)(a)(ii), all of SHP's land would be subject to temporary possession before any notice of treat is served. This would not be acceptable. Without SHP's land, there would be no project. Therefore, the Applicant should not be allowed to take temporary possession and delay taking the freehold. This would be unequitable. Accordingly, and for the same reasons as set out in Article 18 above, there would be no justification for SHP's land to be subject to temporary possession. Article 28 should not apply to all of SHP's land in the Book of Reference.

4.25. It is therefore proposed that the following new paragraph (1) would need to be included within Article 29 of the DCO the ExA are required to submit to the Secretary of State;

"(1) This Article 29 shall not apply to the SHP Land"

"SHP Land" is to be defined as the freehold land comprising Title Numbers K803975, K837264, K891199, K806190, K873633, K873634 and K743314.

5. AGENDA ITEM 11 – ANY OTHER RELEVANT ISSUES

Requirement 2 – amend the time period

5.1. SHP would suggest that Requirement 2 be amended. The Applicant has been unwavering in its heroic assertion that an airport would be operational in Q1 2022, and that the authorised development would commence no later than Q1 2021. The requirement as currently drafted would effectively require authorised development to commence no later than 2026 (assuming a period for legal challenge). Applying a more realistic construction programme of 2 years would mean an airport was not operational until 2028, 6 years after the Applicant asserts.

5.2. SHP would propose the following change;

"2. The authorised development must commence no later than the expiration of [2] years beginning with the date that this Order comes into force."

New Requirement 23

5.3. It is evident from the submissions of the DIO (and the submissions of SHP - see SHP answer to third written question CA.3.6 [REP7a-reference to be allocated]) that the HRDF Beacon would be a material impediment to the implementation of the proposed development.

5.4. For example, Works No. 1 (Airside Cargo Facilities) and Works No. 3 (the construction of a new air traffic control centre) are within safeguarded areas, and could not be developed until a new HRDF Beacon was operational and it had been demonstrated that there was no technical degradation compared to the existing HRDF Beacon. SHP would expect that the DIO should require a new requirement that restricts development within relevant safeguarding zones until DIO/MOD provide appropriate confirmation. It is unclear how this could be appropriately secured outwith the DCO, as the Applicant has argued. The costs of such installation would also need to be secured in Article 9. It is not credible that any competent investor/funder would commit funds to a project until this material risk has been fully mitigated.

APPENDIX 1: FLEET MIX ASSESSED IN THE ASSESSED IN THE ENVIRONMENTAL STATEMENT

The environmental assessments are based on a fleet mix (set out in Appendix 3.3. of the ES [APP-044]), based on the forecasts contained in the Azimuth report [APP-085].

As explained in detail SHP's recent submissions, the forecast contained in the Azimuth report [APP-085] is wholly incompatible with the E-commerce business model set out in the Applicant's recent oral and written submissions. One consequence is the erroneous fleet mix, which would not be appropriate for an import led E-commerce integrator model of the nature explained.

As set out in Appendix 3.3, the environmental assessments assume >25% of forecast cargo ATMs are ATR-72 integrator feeder turboprop aircraft highlighted in the table below.

As shown in the table, these aircraft are the smallest and lightest aircraft included in the cargo fleet mix having a maximum landing weight on 22 tonnes. For context, the average maximum landing weight of the other cargo aircraft included in the mix is c.170 tonnes (the largest being 306 tonnes - see analysis contained in Appendix 1 appended to this summary).

These aircraft also generate materially less noise than the other aircraft assessed.

Summary of Fleet Mix from Appendix 3.3. to the ES [APP-044]

Order in Appendix 3.3	Carrier	Aircraft Type	Quota Count - Low	Quota Count - High	Max Landing Weight (Tonnes)
1	Amazon	767-400	0.50	2.00	159
2	Amazon	777-200	0.50	4.00	224
3	Cargolux	747-800	1.00	2.00	306
7	Fedex / DHL	767-300	0.50	2.00	136
8	Fedex / DHL	757-200	0.25	1.00	90
9	Fedex / DHL	330-200	0.50	2.00	180
10	**Fedex / DHL (Feeders)**	**ATR72**	**0.00**	**0.25**	**22**
11	Fresh fish and spider crabs	777-200	0.50	4.00	224
12	Iran Air	777-200	0.50	4.00	224
13	Live animal operations	777-200	0.50	4.00	224
14	Middle Eatsern Airlines	777-200	0.50	4.00	224
15	Pakistan International Airlines	777-200	0.50	4.00	224
16	Postal Services	737-800	0.50	1.00	65
17	Qatar Airways	777-200	0.50	4.00	224
18	Russian airlines	747-400	1.00	8.00	296
19	TAAG Angola airlines	747-400	1.00	8.00	296
20	TAAG Angola airlines	747-800	1.00	2.00	306
21	Other Freight operations	737-300	0.50	1.00	53
22	Military Freighter Moverments	C-130E	0.50	2.00	203
23	Military Freighter Moverments	C17	n/a	n/a	70
24	Humanitarian and Medivac	747-400	1.00	8.00	296
25	Humanitarian and Medivac	747-800	1.00	2.00	306

Notes

1. Only aircraft with assessed flights are included
2. Quota Count numbers taken from Noise Mitigation Plan

APPENDIX 2 – COPY OF REDACTED EMAIL FROM RSP DIRECTOR DATED 24 MAY 2019

Please refer to paragraph 4.18.3

From: Niall Lawlor <[redacted]>
Date: Friday, 24 May 2019 at 16:08
To: Pauline Bradley <[redacted]>
Cc: Tony Freudmann <[redacted]>
Subject: Offer on Manston - Subject to Contract

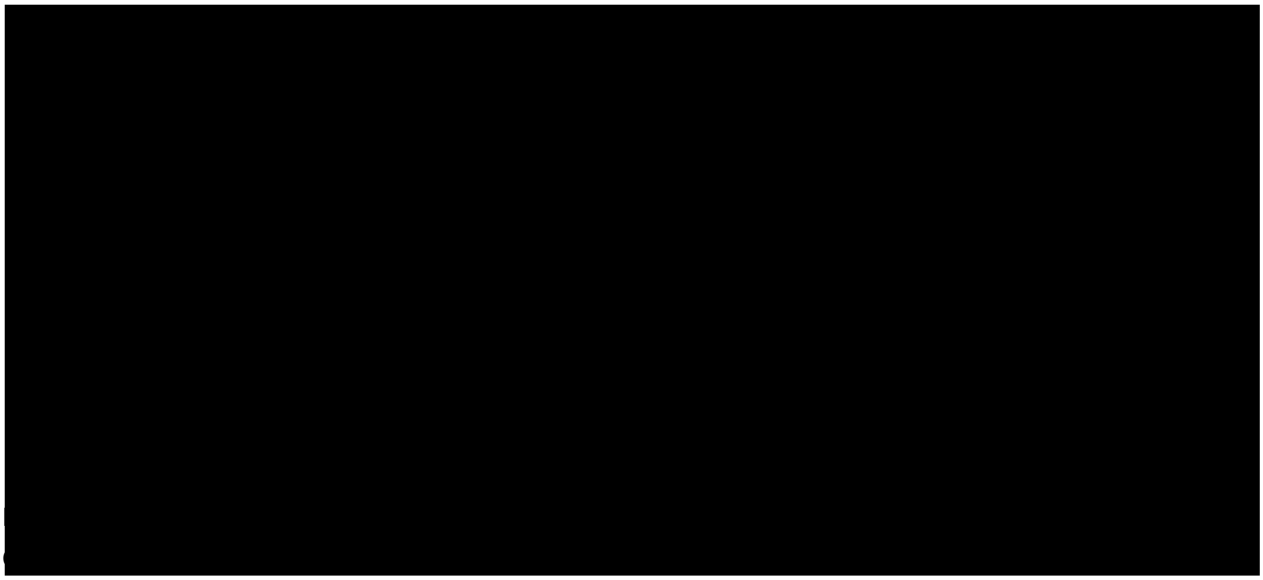
Dear [redacted],

Having reached out to you [redacted] last Friday, and Tony touching base with Pauline, I received Pauline's email on Monday afternoon, and subsequently Pauline and I spoke on Wednesday.

My partners and I wish to place the following on record:

- [redacted]
- [redacted]
- [redacted]
- There is a significant risk for you of compulsory purchase powers being granted, and hence the amount we pay you being in line with the estimate of our expert valuers CBRE. 90% of our estimate would be payable upon us entering the land, and the remainder might not be paid for several years. [redacted]

[redacted]



Best regards,

Niall Lawlor