

# RSP

RiverOak Strategic Partners

## **Applicant's Comments on the ExA's dDCO issued on 10 May 2019**

TR020002/D7/dDCO

Examination Document

<b>Project Name:</b>	Manston Airport Development Consent Order
<b>Application Ref:</b>	TR020002
<b>Submission Deadline:</b>	7
<b>Date:</b>	17 May 2019

**MANSTON AIRPORT DEVELOPMENT CONSENT ORDER APPLICATION**  
**APPLICANT’S RESPONSE TO EXAMINING AUTHORITY’S FIRST DRAFT DCO**

Article, Requirement or Schedule	Proposed wording	Reason	Applicant’s response
Article 6	<p>Insert a new sub-paragraph (3):</p> <p>“In the light of further heritage assessment, Heritage Constraint Areas in which deviations are restricted will be identified by the applicant in consultation with Kent County Council, and if appropriate Historic England, before they are submitted to the Secretary of State for approval”.</p>	<p>The ‘Response to the Examining Authority’s Second Written Questions by the Historic Buildings and Monuments Commission for England (Historic England)’ [REP6-index number to be allocated] states the need to reduce the risk to heritage assets that might arise from the proposed limits of deviation.</p>	<p>The Applicant is content for a provision of this nature to be included in the DCO. However, it is the Applicant’s view that the proper place for this would be in requirement 3 (Development masterplans). Notwithstanding its position on the ExA’s draft amendment, the Applicant is still working with Historic England and Kent County Council to amend the DCO so that the results of archaeological surveys are fed into the final design, based on draft amendments provided by the Applicant, Kent County Council and the Examining Authority. If an agreement is reached it is possible that the agreed amendments covering this issue may differ from those proposed by the ExA.</p> <p>The Applicant will provide an amended draft DCO at Deadline 7a including an amendment to address this issue.</p>

Article 6	<p>Insert a new sub-paragraph (4):</p> <p>“The external appearance and dimensions of any element of Works that has the potential to affect a Heritage Constraint Area should be subject to consultation with Kent County Council, and if appropriate Historic England, before it is submitted to the Secretary of State for approval.”</p>	<p>The ‘Response to the Examining Authority’s Second Written Questions by the Historic Buildings and Monuments Commission for England (Historic England)’ [REP6-index number to be allocated] states the need to reduce the risk to heritage assets or their settings that might arise from the size of and design of proposed structures.</p>	<p>The Applicant is content for a provision of this nature to be included in the DCO. However, it is the Applicant’s view that the proper place for this would be in requirement 3 (Development masterplans). This position is subject to the proviso that direct discussions with Historic England and Kent County Council on this issue are ongoing (see response to article 6 (new sub-paragraph 3) amendment shown above).</p> <p>The Applicant will provide an amended draft DCO at Deadline 7a including an amendment to address this issue.</p>
Article 12(6)	<p>Insert the words “a valid” before “application”.</p>	<p>To seek to ensure that any application is submitted in a proper form.</p>	<p>The Applicant is content with this amendment.</p>
Article 18(8)	<p>Insert new form of words:</p> <p>“the temporary suspension under paragraph (7) will end as soon as the Secretary of State has notified the undertaker, as soon as is practicable, of the date on which the use of Operation Stack land mentioned in paragraph (7)(b).”</p>	<p>To seek to clarify the sequencing and proposed effect of this Article.</p>	<p>The Applicant is content with the majority of this amendment. However, the Applicant suggests that the words ‘has ceased’ will need to be added to the end of the revised wording.</p>
Schedule 1	<p>Add the words “which do not give rise to any materially new or materially worse</p>	<p>To seek to ensure that the works listed at the end of Schedule 1 as “further</p>	<p>The Applicant is content with this amendment.</p>

	environmental effects to those assessed in the environmental statement".	associated development within the Order limits" has been assessed in the Environmental Statement.	
R 1	<p>"air transport movement" means [definition to be added following further examination]</p> <p>"General Aviation movement" means [definition to be added following further examination]</p> <p>"timetabled" means [definition to be added following further examination]</p>	Consequent to new R21 and R22.	The Applicant notes the proposed addition of definitions for "air transport movement", "General Aviation movement" and "timetabled" in connection with Requirements 21 and 22.
R 3(1)	Add "Historic England".	Consequent to R3 new (4) (see below).	The draft is not clear as to whether Historic England has been added as a participant in a two party approval process or as a consultee. The Applicant considers it appropriate that Historic England is added as a consultee to the Secretary of State's decision on approval. This is appropriate as the Secretary of State will be in the right position to make a balanced decision on the application, with appropriate input on different considerations from its consultees (including Historic England). The Applicant's position is that the correct role for Historic England would be as a consultee and not as the decision maker.

R 3	<p>Add new (4):</p> <p>“Before the Master Plan is submitted the Applicant should commission further assessment of the historic character of the airfield and model the options for increasing the proportion of land in non-harmful land-uses in response to the result of heritage surveys”.</p>	<p>The ‘Response to the Examining Authority’s Second Written Questions by the Historic Buildings and Monuments Commission for England (Historic England)’ [REP6-index number to be allocated] states that sign-off of the Master Plan should be dependent on adequate provision having been made for heritage surveys, options modelling and preservation.</p>	<p>The Applicant is content with this amendment subject to its understanding of the amendment to R3(1) above. This response is subject to the proviso that direct discussions with Historic England and Kent County Council on this issue are ongoing (see response to article 6 (new-sub paragraph 3) amendment shown above).</p> <p>The Applicant will provide an amended draft DCO at Deadline 7a including an amendment to address this issue.</p>
R 3	<p>Add new (6):</p> <p>“The relevant approved masterplan must be substantially in accordance with the masterplan as submitted with the application documents.”</p>	<p>To seek to ensure that the layout and distribution of uses of the proposed scheme as constructed substantially accords with the layout and distribution of uses of the proposed scheme as examined.</p>	<p>The Applicant is content with the proposed amendment.</p>
R 4(2)	<p>Delete:</p> <p>“unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any departures from those documents would not give rise to any materially new or materially worse adverse environmental effects in</p>	<p>Details fixed by the terms of the DCO can only be changed if authorised, and following adherence with the prescribed approach explained in section 153 of and Schedule 6 to the PA2008.</p> <p>The Applicant’s attention is direct to the Planning Inspectorate’s Advice Note 15: Drafting Development Consent Orders</p>	<p>The Applicant does not agree with the removal of this wording. The wording is intended to provide a limited degree of flexibility while also enabling the Secretary of State to retain control over any changes that are proposed. Importantly, any changes approved must have impacts that are no worse than those assessed in the Environmental Statement and in many cases the impacts will be less than those assessed.</p>

	comparison with those reported in the environmental statement.”	and, in particular paragraphs 17.3. and 17.4.	While the ExA has previously stated that the Examination is specific to this project, and that precedent does not have to be followed, the Secretary of State has seen fit to approve similar wording repeatedly in other development consent orders (see for example requirement 12(1) of the M20 Junction 10a Development Consent Order 2017).
R4(3)	Amend wording to read:  “Where amended details are approved by the Secretary of State following the approach set out in section 153 of and Schedule 6 to the PA2008,…”	See R4(2), above.	See response to R4(2), above.
R5(2)	Wording amended so that it refers to “register of environmental actions and commitments”	Replaces incorrect reference to “REAC”	The Applicant is content with this amendment.
Rs 5, 6 and 7	Remove the words “the Health and Safety Executive”.	In its response to DCO.2.8, the Health and Safety Executive (HSE) states that:  “HSE takes the view that the applicant will need to ensure they are complying with all the relevant health and safety legislation as and when it applies. This may include (but is not limited to) provisions of the Health	The Applicant is content with this amendment.

		<p>and Safety at Work Act 1974 and Regulations under this Act, such as the Construction Design and Management Regulations 2015 and The Control of Major Accident Hazards Regulations 2015. The relevant applicable legislation may require the applicant or other bodies to consult with, notify or otherwise involve HSE in the process of following through on the objectives of the DCO and HSE will become involved at that stage. HSE does not need to be consulted at this stage in relation to the documents referred to above.</p> <p>As a result, HSE does not wish to be included as a consultee in sections 5, 6 and 7 of the draft DCO.”</p>	
R 9	<p>Add new form of words:</p> <p>“The noise mitigation plan must be carried out in full. The authorised development must be operated in full accordance with the noise mitigation plan”.</p>	<p>The ExA agrees with the wording suggested by Thanet District Council in its response to Ns.2.9 which, the ExA considers, strengthens the implementation of the provisions of the noise mitigation plan.</p>	<p>The Applicant is content with this amendment.</p>
New R 9a	<p>Add new Requirement:</p> <p>“No part of the authorised development must be commenced until measures set</p>	<p>The ExA has had regard to the Applicant’s response to DCO.2.50 which states that:</p>	<p>The Applicant is content with this amendment.</p>

	<p>out in sections 2, 3, 4 and 5 of the Noise Mitigation Plan have been implemented.”</p>	<p>“the measures incorporated in sections 2, 3, 4 and 5 of the Noise Mitigation Plan envisage that compensation and mitigation schemes will be established prior to the commencement of the airport operations. The mechanisms for making a claim are adequately set out in the Noise Mitigation Plan and therefore the Applicant does not consider it necessary to add any additional articles or requirements.”</p> <p>However, the ExA note the use of the word “envisage” and consider that the implementation of these provisions should be explicitly secured in the dDCO.</p>	
R 10 (new 4)	<p>Add new (4):</p> <p>“The landscaping scheme approved under (1) must be carried out in full.”</p>	<p>To be consistent with references to other plans or documents or schemes in the dDCO.</p>	<p>The Applicant is content with this amendment.</p>
R 11(2)	<p>Remove the word “the” from the phrase “... remediation of the contamination...”</p>	<p>To seek to avoid an interpretation of this subclause that the contamination referred to is only that referenced in R11(1).</p>	<p>The Applicant is content with this amendment.</p>
R 13	<p>Add new sub-paragraphs clause (3) and (4):</p> <p>“No part of the authorised development is to commence until the construction of</p>	<p>To secure mitigation that is required to support the Applicant’s conclusion of no adverse effect on integrity in their Report to Inform the Appropriate Assessment. The mitigation seeks to ensure that the</p>	<p>The Applicant is of the opinion that the current drafting of new sub-paragraph (3) would not be appropriate. Due to the way that construction is carried out it is not possible to separate the construction of the surface water and foul water</p>



	<p>the entire surface and foul water drainage system is completed.”</p> <p>“Construction of the attenuation basins must be completed within the first phase of construction if construction is undertaken in phases.”</p>	<p>ecological protection embedded in the surface and foul water drainage system is available prior to operation and essential elements are in place as early as possible in the construction period.</p>	<p>drainage system from any other element of construction. The surface and foul water drainage system is generally an integral part of the other elements of the construction. The Applicant proposes the following wording:</p> <p>‘No part of the authorised development is to begin operation until the construction of the entire surface and foul water drainage for that part is completed’</p> <p>The Applicant is content with the addition of sub-paragraph (4)</p>
R 16(4)	<p>Substitute Secretary of State with “Historic England, Kent County Council and the relevant planning authority”.</p>	<p>To seek to ensure that the relevant bodies already specified in sub-paragraphs (5) and (6) are informed if archaeological remains are revealed.</p>	<p>The Applicant is content with this amendment.</p>
R 20(new e)	<p>Insert new (e):</p> <p>“The employment and skills plan approved under (1) must be implemented in full.”</p>	<p>To be consistent with references to other plans or documents or schemes in the dDCO.</p>	<p>The Applicant is content with this amendment.</p>
New R21	<p>Add new R21.</p> <p>“The operation of the airport is subject to</p>	<p>The ExA has had regard to the Applicant’s response to DCO.2.46 which states that:</p> <p>“It is the Applicant’s view that having the limits in the Noise Mitigation Plan (as at</p>	<p>The Applicant is content with this amendment.</p>

	<p>i) a total annual air transport movement limit of 26,468 atms; and</p> <p>ii) a total annual General Aviation movement limit of 38,000 atms.”</p>	<p>present) and requiring the development to be operated in accordance with the Noise Mitigation Plan, a certified document, has the same legal effect as having the limits in the DCO itself. The Applicant believes that having all noise mitigation measures (which an ATM limit would principally be) in once place would be more convenient.”</p> <p>However, the ExA is of the opinion that, bearing in mind that the DCO if made would be a Statutory Instrument, having this Requirement within that document would serve to strengthen its implementation and would provide transparency and accessibility in future.</p>	
New R22	<p>Add new R22:</p> <p>“No aircraft can take-off or be timetabled to land between the hours of 2300 and 0600”</p>	<p>Refer to Applicant’s response to DCO.2.47 which references the response to DCO.2.46.</p> <p>However, the ExA is of the opinion that, bearing in mind that the DCO if made would be a Statutory Instrument, having this requirement within that document would serve to strengthen its implementation and would provide transparency and accessibility in future.</p>	The Applicant is content with this amendment.