RiverOak Strategic Partners

Summary of Applicant's Case put Orally - Draft Development Consent Order hearing and associated appendices

TR020002/D8/ISH8
Examination Document

Project Name:	Manston Airport Development Consent Order
Application Ref:	TR020002
Submission Deadline:	**8**
Date:	14 June 2019

MANSTON AIRPORT DEVELOPMENT CONSENT ORDER APPLICATION

APPLICANT'S WRITTEN SUMMARY OF ORAL SUBMISSIONS PUT AT ISSUE SPECIFIC HEARING 8 ON THE DRAFT DEVELOPMENT CONSENT ORDER

7 JUNE 2019

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Summary

This is a summary of the case put by RiverOak Strategic Partners Limited (**the Applicant**) at Issue Specific Hearing 8 (**ISH8**) which took place at Discovery Park, Sandwich on 7 June 2019. The item numbers referred to in this summary are those identified in the agenda for ISH8 which was published by the Examining Authority (**ExA**) on 24 May 2019, unless otherwise stated [EV-023].

1 Agenda Item 1 – Introductions

Michael Humphries QC (**MHQC**), Counsel for the Applicant, introduced himself and advised that he would be representing the Applicant at ISH8. Angus Walker (**AW**) and Alex Hallatt (**AH**) (of BDB Pitmans) and Nick Hilton (**NH**) (of Wood) also introduced themselves as representatives of the Applicant.

2 Agenda items 5-10 concerning DCO drafting

A summary of the Applicant's oral submissions made in respect of agenda items 5 to 10 can be found in tabular format below.

Agenda Item and Issue made	Applicant's submissions
5. NOTING OF MINOR OR UNCONTENTIOUS PROPOSED CHANGES	
5(a) **Article 12(6) - Temporary stopping up and restriction of use of streets** Insert the words "*a valid*" before "*application*". The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.	The Applicant agreed with this amendment. The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.
5(b) **Schedule 1 – Authorised Development** Add the words: *"which do not give rise to any materially new or materially worse environmental effects to those assessed in the environmental statement".* The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.	The Applicant agreed with this amendment. The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.

5(c) **Requirement 3 - Development masterplans** Add new (6): *"The relevant approved masterplan must be substantially in accordance with the masterplan as submitted with the application documents."* The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment	The Applicant agreed with this amendment. The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a. MHQC clarified that that the Applicant had introduced the amendment as a new Requirement 3(d) as opposed to a new sub-paragraph (6) as proposed by the ExA. For the avoidance of doubt the Applicant also referred to the document to be certified as a 'masterplan', which is listed in Schedule 10.
5(d) **Requirement 5(2) - Detailed design of fuel depot** Wording amended so that it refers to the "*register of environmental actions and commitments*". The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment. The ExA notes the Applicant's response to DCO.2.37 [REP6-012].	The Applicant agreed with this amendment. The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.
5(e)	The Applicant agreed with this amendment.

Requirements 5, 6 and 7 Remove the words "*the Health and Safety Executive*". This proposed change was made at the request of the Health and Safety Executive [REP6-040] and the ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.	The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.
5(f) **Requirement 9 - Noise mitigation** Add new form of words: *"The noise mitigation plan must be carried out in full. The authorised development must be operated in full accordance with the noise mitigation plan".* The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.	The Applicant agreed with this amendment The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a. MHQC explained that the new form of words proposed by the ExA had been separated into two paragraphs in the Applicant's revised dDCO submitted at Deadline 7a.
5(g) **Requirement 10 - Landscaping** Add new (4):	The Applicant agreed with this amendment The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.

"The landscaping scheme approved under (1) must be carried out in full." The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.	
5(h) **Requirement 11(2) - Contaminated land and groundwater** Remove the word "*the*" from the phrase "*remediation of the contamination*". The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment	The Applicant agreed with this amendment The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.
5(i) **Requirement 16(4) - Archaeological remains** Substitute "*Secretary of State*" with "*Historic England, Kent County Council and the relevant planning authority*". The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.	The Applicant agreed with this amendment The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a. The Applicant has accepted that Thanet District Council, rather than the Secretary of State, will be the main party discharging requirements and providing certificates under the dDCO (please see agenda item 10). The remainder of this summary assumes that this change is reflected in future drafts of the dDCO.

5(j) **Requirement 20 - Education, Employment and Skills Plan** Insert new (e): "*The employment and skills plan approved under (1) must be implemented in full.*" The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment. Parties should note that issues related to the employment and skills plan are to be examined in the socio-economic ISH to be held on 5 June 2019. These proposed additions to the dDCO will also be cited in that examination.	The Applicant agreed with this amendment. The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.
6. THE EXA's INITIAL dDCO: PROPOSED NEW PROVISIONS - EXA	
6(a) **Schedule 1 – Authorised development** Add the words:	The Applicant agreed with this amendment The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.

"which do not give rise to any materially new or materially worse environmental effects to those assessed in the environmental statement". The ExA notes that, in its comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.	
6(b) **Requirement 4(2) – Detailed Design** Delete: *"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 comparison with those reported in the environmental statement."* 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".*	MHQC stated the Applicant's position that section 153 of the Planning Act 2008 deals with changes to orders granting development consent, which is a different scenario to that anticipated in Requirement 4(2). Requirement 4 deals with a situation where the Applicant brings forward details of the design for approval by the relevant planning authority. Requirement 4(1) provides that those details must accord with Requirement 4(2) which means that, if implemented, the relevant part of the authorised development must be in general accordance with those documents listed in Requirement 4(2). The purpose of the text that the ExA proposes to delete is to enable the detailed design to depart from the commitment to accord with those documents, provided that the relevant planning authority is satisfied that any departure from the documents would not give rise to materially new or materially worse adverse environmental effects compared to those reported in the environmental statement. Requirement 4 allows the Applicant to implement the authorised development in a slightly different way to those anticipated in the documents listed in requirement 4(2) while still being bound by all the parameters in the DCO. Applying this to the current context it is clear that, taking the example of the Design Guide, the scenario can be envisaged where, in (say) 15 years time, the design of a particular type of building can be improved against that envisaged in the Design guide. The Applicant wants the relevant planning authority to have the power to approve a new design that will not have any materially worse environmental effect. MHQC confirmed that this approach had been used in numerous DCOs and introduced a fundamentally different process to that covered by s.153 of the Planning Act 2008 which deals with a material change to the DCO itself.

	MHQC also commented on the process of certifying documents referred to in a DCO. He explained that it is clear from Regulation 7 of the Statutory Instruments Regulations 1947 that where any schedule or other document which is identified by or referred to in a Statutory Instrument ('SI') would, if included in the SI itself, be contrary to the public interest by reason of the nature or bulk of the SI, then the schedule and document may be omitted from the SI and the Secretary of State may so certify. The practice has then grown up of the Secretary of State 'certifying' the schedule or document identified by, or referred to, in the SI but not included in the SI to ensure that it is a true copy of that referred to in the DCO.
6(c) **New requirement – Noise Mitigation** Add new requirement (9(a)): *"No part of the authorised development must be commenced until measures set out in sections 2, 3, 4 and 5 of the Noise Mitigation Plan have been implemented."* The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment. Parties should note that issues related to the noise mitigation plan are to be examined in the ISH dealing with environmental issues to be held on 5 June 2019. These proposed additions to the dDCO will also be cited in that examination.	The Applicant agreed to this amendment The amendment was included as new Requirement 9(3) in the Applicant's revised dDCO submitted at Deadline 7a. At the ecology and biodiversity hearing on 5 June, the ExA raised the possibility of further amending requirement 9(a) to include reference to sections 8 and 9 of the NMP (the establishment of the CCC and the CTF). This was mentioned again by the ExA during ISH8. MHQC confirmed that the Applicant is content for that amendment to be made.

6(d) **Requirement 13 – Surface and foul water drainage** Add new sub-paragraphs clause (3) and (4): *"No part of the authorised development is to commence until the construction of the entire surface and foul water drainage system is completed."* *"Construction of the attenuation basins must be completed within the first phase of construction if construction is undertaken in phases."* Parties should note that issues related to water drainage are to be examined in the ISH dealing with environmental issues to be held on 5 June 2019. These proposed additions to the dDCO will also be cited in that examination.	The Applicant agreed in part to the proposed amendments and inserted new sub-paragraphs (3) and (4) into Requirement 13 of its dDCO submitted at Deadline 7a, albeit the wording of sub-paragraph (3) differs slightly from that suggested by the ExA, as follows: 'No part of the authorised development is to <u>begin operation</u> until the construction of the entire surface and foul water drainage system <u>for that part</u> has been completed.' MHQC explained the reasoning behind the altered sub-paragraph (3): The first alteration was necessary because the form of wording put forward did not work in practice. Under the ExA's suggested wording the surface and foul water drainage system would be part of the authorised development which itself would be prevented from commencing until the surface water and drainage system was in place. The wording was changed so that operation could not begin until the system was in place. The second alteration was necessary because the authorised development will be carried out over a very large area and in many different parts. For instance, the Northern Grass is a part of the authorised development and it itself will be developed in parts. The revised drafting ensures that the surface and foul water drainage for any part of the development has to be completed before that part comes into operation. It does not require that the drainage system for the whole authorised development site has to be completed before any smaller part becomes operational. MHQC acknowledged that this revised wording would not cover construction related drainage impacts for that part. These would be addressed through the CEMP.
6(e) **New Requirement 21** Add new Requirement:	The Applicant agreed to the suggested amendment. The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a.

"The operation of the airport is subject to *i) a total annual air transport movement limit of 26,468 atms; and* *ii) a total annual General Aviation movement limit of 38,000 atms."*	The ExA stated that it was considering breaking down the component parts of the total annual air transport limit of 26,468 into component parts as assessed in the ES. This would be a cap on freight ATMs of 17,170 and passenger ATMs of 9,298. MHQC informed the ExA that the Applicant wanted to capture its concerns around potential growth in passenger ATMs which could have higher road trip generation than cargo ATMs. The following wording was suggested on behalf of the Applicant: *'i) a total annual air transport movement limit of 26,468 of which not more than 9,298 can be passenger ATMs'* The result of this revised wording would be that there could be fewer than 9,298 passenger ATMs which could be taken up by cargo ATMs (which have fewer impacts on road traffic). MHQC explained that if there were any residual concerns about the effect of changing the fleet mix on noise impacts then if there were more freight ATMs the proposed noise contour cap would ensure that noise levels could not exceed those that had been assessed. The Applicant responded to a representation from Stone Hill Park Limited (**SHP**) that cargo aircraft tend to be older which would result in other environmental effects (such as impacts on air quality). MHQC stated that concentrations and limit values for NO2 are dominated by surface access vehicle emissions rather than aircraft emissions. The Examination is looking a long way into the future before the ATM numbers would reach the numbers that are assessed at Year 20 in the Environmental Statement. Background NO2 levels are falling all the time in the area of Manston Airport and would be well below the threshold of 40mcg per cubic metre threshold. NH pointed out that the Environmental Statement provides plots showing the impact of aviation on the air quality at the airport over time. These provide support for the Applicant's position. MHQC added that, if there was a reduction in traffic movements (as a result of fewer passenger flights) a reduction in air quality impacts on residential properties would be expected. The Applicant provides a note at Appendix 1 to this document as to why a cap on freight ATMs is not necessary. The ExA noted the introduction of a new commitment in the Noise Mitigation Plan submitted at Deadline 7a which provides that the area enclosed by the 50dB(A) Leq16hr (0700-2300 contour) shall not exceed

	47.4 square kilometres, and the area enclosed by the 40dB(A) Leq8hr (2300-0700) contour shall not exceed 47.4 square kilometres. MHQC confirmed that the Applicant would be content to include that commitment as a requirement in the DCO. As to the consequences of breaching that contour the Applicant would look at the mechanisms by which the contour would be operated (other airports provide precedent). While the commitment could include reference to a specific contour it is important to avoid the situation where the Applicant would be subject to criminal enforcement because the wind happened to blow in a certain direction, thus affecting that contour. The Applicant committed to provide a mechanism to the Examination.
6(f) **Requirement 1 – Interpretation** Add definitions of: *"air transport movement"* *"General Aviation movement"* The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with these amendments. The ExA note that, in its response to DCO.2.46, Kent County Council [REP6-045] states that total movement limits should be specified for the night time period. Parties should note that issues related to the operation of the airport are to be examined in the ISH dealing with environmental issues to be held on 5 June 2019. These proposed additions to the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as	The ExA noted that its initial dDCO did not include definitions of 'air transport movement' and 'General Aviation movement' but that examples of definitions were provided by the CAA (for 'air transport movement') and ICAO (for 'general aviation movement'). Definitions for 'passenger air transport movement' and 'cargo air transport movement' might also now be needed (see item 6(e)). MHQC confirmed that the alternative definitions provided by the CAA and ICAO were being considered by the Applicant. The Applicant would be comfortable with the use and adaptation of those sorts of definitions. The Applicant would be content to consider drafting proposed by the ExA and to comment on that drafting in its response to the ExA's second dDCO.

it has not been covered in the ISH dealing with environmental issues.	
6(g) **New Requirement 22** Add new Requirement: *"No aircraft can take-off or be timetabled to land between the hours of 2300 and 0600"*	The Applicant agreed to this amendment The amendment was included in the Applicant's revised dDCO submitted at Deadline 7a as a new requirement 21(2). The ExA raised the relationship between the existing night quota and the prohibition on aircraft taking-off or being timetabled to land between the hours of 2300 and 0600. The ExA asked whether it was possible, using the fleet mix to convert the quota count into a notional number of ATMs. MHQC confirmed that the Applicant was considering the suitability of the night noise Quota Count ('QC') budget of 3028 given the night ban between 2300 and 0600. The Applicant was also looking at the issue of a late arriving aircraft which, due to its late arrival, falls into the 2300-0600 period. If the quota is tightened then it might prove unacceptable to the Applicant for that aircraft to count towards the quota as it would impact the number of departures possible during the 0600-0700 period. This response would be provided at Deadline 8. In response to a question from SHP about how many air transport movements would occur during the 0600 to 0700 period MHQC said that the Applicant was looking at that. MHQC also pointed out that part of the reason airports use the quota count system is to try to drive the use of quieter aircraft.
6(h) **Requirement 1 – Interpretation** Add definition of: *"timetabled"*	The ExA invited the Applicant to provide wording for the definition of 'timetabled' (or alternatively 'scheduled') to be used in the dDCO. MHQC confirmed that the Applicant would consider and provide some wording for this definition.

The ExA notes that, in its Comments on the ExA's dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment. Parties should note that issues related to the operation of the airport are to be examined in the ISH dealing with environmental issues to be held on 5 June 2019. These proposed additions to the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the ISH dealing with environmental issues.	
7. THE EXA'S FIRST dDCO: PROPOSED NEW PROVISIONS – THE APPLICANT	
7(a) **Article 2 – Interpretation, Requirement 19 - Airport-related commercial facilities and Schedule 1 - Authorised Development** In Article 2 – Interpretation add: *""airport-related" development means development directly related to, or associated with, or supportive of operations at Manston Airport including, but not limited to, offices for various support functions and freight forwarders, freight distribution centres, flight catering, car hire activities, maintenance and valeting operations, support functions for aircraft maintenance, airline training centres, airline computer centres, security*	MHQC referred to the inclusion of a definition of 'associated development' in the Applicant's dDCO. He explained that this was unnecessary and considered bad practice in legislative terms. Section 11 of the Interpretation Act 1978 makes it clear that where an Act confers powers to make subordinate legislation, expressions in the subordinate legislation have the meaning in the principal Act unless the contrary intention appears. As the Applicant is not attempting to alter the meaning of the definition of 'associated development' given in s.115 of the Planning Act the definition in the dDCO should be removed. The ExA explained that part of the discussion concerning 'associated development' was whether the principal development was that related to the activities necessary to categorise the application as an NSIP (i.e. the elements facilitating cargo movements) and whether aspects such as flight catering and car hire in the definition of 'airport-related' should be struck out as they do not relate to that definition of what the principal development is. MHQC explained that as provided by paragraph 5(i) of the Planning Inspectorate's 'Guidance on associated development applications for major infrastructure projects' ('the Guidance') there needs to be a direct relationship between 'associated development' and the principal development. Looking at the definition in s.115 of the Planning Act 2008 'associated development' means development which is

facilities, business aviation facilities and storage facilities for airlines" Add: *""associated development" has the same meaning as in section 115 (development for which development consent may be granted) of the 2008 Act;"* Parties should note that issues related to Associated Development are to be examined in the Compulsory Acquisition Hearing (CAH) to be held on 4 June 2019. These proposed additions to the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the CAH. This item will draw, inter alia, on responses to Second Written Questions CA.2.18, DCO.2.10, DCO.2.33, DCO.2.34 and DCO.2.44 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014].	associated with development for which development consent is required (i.e. an NSIP under s.14(1)). In the case of airports s.23 sets out that 'airport-related development' which exceeds certain thresholds and complies with certain geographical requirements is an NSIP. It is thus slightly confusing to introduce the concept of 'airport related' to describe 'associated development' that is not itself the NSIP; although it should be noted that Schedule 1 Work Nos. 15, 16 and 17 actually use the expression 'airport related commercial facilities', rather than 'airport related development'. It is quite clear, however, that flight catering, for example, is a form of commercial 'associated development' that is also 'airport-related'. Paragraph 6 of the Guidance says '*It is expected that associated development will, in most cases, be typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project, for example (where consistent with the core principles above), a grid connection for a commercial power stations*.' (emphasis added). In that context there is nothing in the applicant's description of associated development that does not fall within that broad understanding of development which is typical of development brought alongside the principal development. SHP stated that the principal development is the development which 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 argued that only airport related development that is directly related to meeting the thresholds under section 23 (in this case cargo ATMs) can be part of the principal development (i.e. the NSIP). Thus SHP argued that a number of the works set out in Work Nos. 1-11 and 13 cannot be part of the principle development and thus items in the Applicant's list of 'associated development' are not in fact associated with the principal development as a result. MHQC explained that this is not the position. Section 23 talks about 'airport-related development' and that the starting position is to look at the proposed physical airport-related development proposed and to ask whether that development is the construction or alteration of an airport. It is then necessary to ask whether that airport-related development (i.e. the principal development) meets the locational and capacity thresholds to be an NSIP. Thus, (a) is the development in England or English waters, and (b) is it expected to meet one of the capacity thresholds in section 23(5) (in this case the cargo ATM capacity threshold in s.23(5)(b)). In the case of this application the answer to those questions is 'yes' and the airport related development (i.e. the principal development), therefore, qualifies as an NSIP. There is no additional test

	which says that every element of that principal development must have something to do with the cargo ATM threshold; it is the airport related development looked at as a whole that must meet the threshold. On that basis, MHQC was on the view that Work No. 12 (new passenger terminal) should form part of the principal development (i.e. the NSIP) as it was originally, and that this amendment to Schedule 1 should be made at the next Deadline. Once you have established that the principal development is one that qualifies as an NSIP you can then ask whether there are other forms of development that are 'associated' with it. Those other things may be brought forward as 'associated development' The Act does not say that 'airport-related development' which qualifies as an NSIP needs to be disaggregated into lots of different parts. To take another example of a power station there would be a lot of parts that would not be a constituent part of a generation capacity of 50MW. It would not be correct to disaggregate the staff canteen or control room from the principal development because they are not generating electricity. You look at the whole generating station and ask if it meets the NSIP thresholds. There is no authority for the proposition put forward by SHP. It is, therefore, an impermissible gloss on the interpretation of the legislation. Thanet District Council (**TDC**) reminded the Examination that they had proposed an alternative definition of 'airport-related development' at Deadline 7 to ensure that the airport is begun or in operation before the Northern Grass is occupied. In response to TDC's concerns MHQC proposed wording for a requirement to tie occupation of buildings on the Northern Grass to the airport becoming certified and Work No.1 (the cargo sheds) becoming operational. Those would be the key works that show that the airport has come forward. The wording would be as follows: 'Buildings comprised in Works Nos. 15, 16 and 17 must not be occupied before: a) the aerodrome is granted EASA certification; and b) the commencement of operation of Work No.1 (or any part thereof).'

	The Applicant agreed to discuss the proposed wording with TDC (including any consequences of Brexit).
7(b) **Article 2 – Interpretation** Delete: *"to the extent that is unlikely to give rise to any materially new or materially different environmental effects from those identified in the environmental statement" from the definition of 'commence'.*	This wording was included in the definition of "commence" in error. It is not necessary to include these words in the definition of "commence" because the definition only serves to define what material operations will comprise 'commencement' for the purposes of the dDCO.
7(c) **Article 19 - Compulsory acquisition of land** Add new sub-paragraphs (3) and (4): *"(3) The undertaker will treat the Crichel Down Rules as applying to land acquired by it under this article it as if it were a UK government department."* *"(4) In this article 'Crichel Down Rules' means the rules contained in 'Guidance on Compulsory purchase process and the Crichel Down Rules' published by the Ministry of Housing, Communities and Local Government in February 2018 or any successor to such rules."*	SHP stated that their land forms over 90% of the Order land and that this was basically the whole of the site for the authorised development. SHP had concerns about a number of exceptions to the Crichel Down rules which allow Government departments not to offer the land back the original owner. It also had concerns that the Applicant would acquire the land and then not fund the airport development. In this case SHP would have lost land. The principles that they proposed in their response to DCO.2.49 were intended to require the Applicant to offer back the land on the same terms on which it was acquired. Triggers were included to ensure that the Applicant could not benefit from failing to deliver the authorised development. MHQC responded by reminding the Examination that the Crichel Down rules do not apply to the Applicant. The rules are of application to public bodies. SHP's position is that the Crichel Down rules are not appropriate. SHP's argument that another set of rules should be developed through this examination of a DCO is wholly inappropriate. The landowners will be paid the open market value of their land and if that includes some hope value for development then this will also be paid. Once compensation has been paid a landowner will have received 'equivalence' for its loss. There is no reason why that landowner (in this case a property developer) should then be first in line to purchase the land back, nor is there any reason for that landowner to purchase the land back on the basis of some form of novel, enhanced Crichel Down rules as argued for by SHP.

Parties should note that issues related to the Crichel Down Rules are to be examined in the CAH to be held on 4 June 2019. This Article in the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the CAH. This item will draw, in particular, on responses to Second Written Question DCO.2.49 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014] and on the wording proposed by Stone Hill Park in its response to DCO.2.49 [REP6-053].	MHQC stated that in the Applicant's Deadline 7a dDCO the suggested amendments to article 19 concerning Crichel Down rules were omitted. MHQC noted that SHP did not consider the offer to apply the Crichel down rules to be appropriate in this case and he, therefore, withdrew the Applicant's offer to apply those rules on the basis that it had been rejected by SHP. The Secretary of State should, therefore, determine the application on the same basis as every other DCO, none of which has included any provision for the application of the Crichel Down rules.
7(d) **Article 21 - Time limit for exercise of authority to acquire land compulsorily** Change the time limit in 21(1) from "*5 years*" to "*1 year*".	MHQC referred to the Applicant's amendment to article 21 of the dDCO submitted at Deadline 6. This reduced the time limit for exercise of authority to acquire land compulsorily from 5 years to 1 year. It was the Applicant's proposal that article 21 should be further amended to make it clear that the 1 year period only starts to run from the expiry of the challenge period, or final determination of any challenge to the DCO. The reason for this is to avoid the situation where a legal challenge against the future grant of the DCO frustrates the project. The Applicant suggested the following amendments: In article 21(1) substitute 'the start date' for 'end of the period of 1 calendar year beginning on the day on which the Order is made' Add new article 21(3): '*For the purposes of this article 'the start date' means the later of:*

	(a) the end of the period of one calendar year beginning on the day after the period for legal challenge in s.118 of the Planning Act 2008 expires; or *(b) the final determination of any legal challenge under s.118 of the Planning Act''*
7(e) **Article 25 – Application of the Compulsory Purchase Act 1965** Parties should note that issues related to the time limit in Article 21(1) are to be examined in the CAH to be held on 4 June 2019. This Article in the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the CAH. This item will draw, in particular, on responses to Second Written Question DCO.2.49 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014] and on Stone Hill Park Ltd's Written Summary of Oral Representation – Compulsory Acquisition Hearing 20 March 2019 [Rep5-031].	MHQC confirmed that article 25(1)(a)(ii) should be amended to refer to one year rather than five years, to ensure consistency with Article 21. This amendment was omitted in the Applicant's dDCO submitted at Deadline 7a.
7(f) **Requirement 8 - Ecological mitigation**	This issue was addressed during Issue Specific Hearing 6 on Habitats Regulations, biodiversity and other environmental matters on 5 June 2019.

Add new sub-paragraph (2): *"The details of mitigation approved under sub-paragraph (1) must incorporate a net gain of at least 10 Biodiversity Units across the Order limits and any land used for ecological mitigation purposes compared to the situation that existed prior to the commencement of the authorised development"* and, as a consequence,	
7(g) **Requirement - Interpretation** Add definition: *"Biodiversity Unit" means a biodiversity unit as defined in accordance with the methodology outlined in the document entitled 'Technical Paper: the metric for the biodiversity offsetting pilot in England' published by the UK Department for Environment, Food and Rural Affairs published in March 2012".* Parties should note that issues related to ecological mitigation are to be examined in the ISH dealing with environmental issues to be held on 5 June 2019. These proposed additions to the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the environmental issues ISH.	This issue was addressed during Issue Specific Hearing 6 on Habitats Regulations, biodiversity and other environmental matters on 5 June 2019.

8. THE EXA'S INITIAL dDCO: PROPOSED NEW PROVISIONS – PUBLIC BODIES	
8(a) **Historic England – Article 6 – Limits of Deviation** Insert a new sub-paragraph (3): *"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".*	Historic England (**HE**) explained that its two proposed amendments to article 6 were related to the difficulties the Applicant had encountered gaining access to the site to take recordings/surveys. It was explained that these recordings/surveys would normally be carried out prior to determination of an application so that potential harm could be fully understood. HE were concerned that Requirement 3 only provided for archaeological survey and consultation but did not provide for the finding of conservation solutions. HE considered that the requirement should go further which is why they proposed the amendment to Requirement 3 mentioned in item 8(c). As to the changes to article 6 and the limits of deviation HE wanted to make provision to limit deviation from the Masterplan where it might be harmful to archaeological remains. They stated that they were flexible about the mechanism by which this is achieved. MHQC stated that the Applicant had captured the things that HE were concerned about in a requirement rather than an article. This was because, in broad terms, articles set out powers and requirements set out controls or limitation on those powers. Thus Article 3 of the dDCO makes clear that the grant of development consent is subject to the requirements in Schedule 2. Article 6 sets out limits of deviation for the powers to carry out the authorised development in Schedule 1, in that it defines geographical limits to the exercise of those powers (they do not exist outside of particular areas). The proposal from HE was a control on the exercise of powers of powers by the Applicant. It is more appropriate as a requirement in Schedule 2. MHQC stated that at Deadline 7a a new Requirement 3(3) was introduced into Schedule 2 of the dDCO (rather than into Art 6, as suggested by HE). The wording was as follows: *(3) Before a masterplan is submitted under sub-paragraph (1) the undertaker must—* *(a) carry out an archaeological survey;* *(b) consider options for minimising impacts on archaeological assets which may involve a smaller development footprint; and*

	(c) consult Kent County Council and Historic England on the options before submitting the masterplan for approval MHQC explained that the Applicant had attempted to capture the items that HE wanted in this sub-paragraph, rather than in an article. It provides that the undertaker must carry out an archaeological survey, consider options for minimising impacts on archaeological assets in the masterplan based on that survey, and consult on minimising those impacts with Kent County Council (**KCC**) and HE. KCC and HE are then consultees on any submission for an approval of a masterplan under Requirement 3(1). TDC agreed that it would be sensible to include reference to HE as consultee in Article 6. MHQC explained that the purpose of the restriction on downward vertical deviation in article 6 was to protect the aquifer and that it was not appropriate to add HE to this article for another purpose. HE's protection of its assets could be achieved through Requirement 3 which would enable it to input on the masterplanning of the scheme both during the formulation of the masterplan and during the application process for approval of that masterplan by TDC. This was the appropriate stage to consider potential impacts. HE stated that the amendment proposed by the Applicant only partly addressed their concerns. They were concerned that a) it only referred to archaeological surveys and that historic buildings and character assessment should be included; and b) there should be a commitment to conserve nationally important heritage assets in situ where they are found to exist. MHQC confirmed that the Applicant would consider including other heritage assets in the survey. The Applicant did not agree to include a commitment to conserve. Requirement 3 allows for TDC to take into account the views of KCC and HE in making its decision on approval of a masterplan. It would be possible for the Applicant to identify areas where there is a greater of lesser potential for archaeology. The Applicant could then consider options for minimising impact under the Applicant's draft Requirement 3(3). This may mean that the Applicant can design around an archaeological find but that may not always be possible. The Applicant would not want to go further and designate areas where no development can take place. The whole purpose of Requirement 3 was that the survey findings are taken into account at the masterplanning stage.

	MHQC confirmed that the Applicant would have further discussions with HE and produce a further note of agreement or disagreement on the issue. Update: The Applicant and Historic England are currently in discussions and attempting to agree the wording of Requirement 3 and Requirement 6 of the DCO. The remaining issues are that Historic England wishes to approve any detailed design of the northern grass area due to its potential impact on archaeological finds; and that more protection should be given to non-designated heritage assets. The Applicant has also tried to engage with Kent City Council and attempted to agree the wording of Requirement 3 of the DCO. KCC has not responded to emails dated 23.05.19 and 12.06.19.
8(b) **Historic England - Article 6 - Limits of deviation** Insert a new sub-paragraph (4): *"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."*	A new requirement 3(3)(b) was introduced into the Applicant's dDCO submitted at Deadline 7(a). This provides that before a masterplan is submitted for approval under Requirement 3(1) the Applicant must consider options for minimising impacts on archaeological assets which may involve a smaller development footprint, and consult with KCC and HE on those options. Consultation at the masterplanning stage (rather than the detailed design stage) provides greater protection by ensuring that heritage assets and options for minimising impacts to them are taken into account at an earlier stage (i.e. masterplanning stage rather than detailed design) Please see item 8(a) for a summary of the Applicant's oral case which was stated at ISH8.
8(c) **Historic England - Requirement 3 - Development masterplans** Add new (4):	Requirement 3 (as amended at Deadline 7(a)) provides that before a masterplan is submitted for approval under Requirement 3(3) the Applicant must: a) Carry out an archaeological survey; b) Consider options for minimising impacts on archaeological assets which may involve a smaller development footprint; and

"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".	c) Consult Kent County Council and Historic England on the options before submitting the masterplan for approval. Please see item 8(a) for a summary of the Applicant's oral case which was stated at ISH8.
8 (no agenda reference) **Kent County Council - Article 12 - Temporary stopping up and restriction of use of streets** In its response to ExA question DCO.1.2 [REP3-139], Kent County Council states that: *"KCC is not content with the wording of Article 12(2). The County Council requests that the wording is altered to require the applicant to seek written consent from the Highway Authority to be able to use the highway as a temporary working site."* In its response to Second Written Question DCO.2.22 [REP6-012], the Applicant contended that this Article should remain unchanged.	This item was not considered at ISH8 and will be addressed in the ExA's fourth written questions.
8(d) **Kent County Council - Requirement 16 – Archaeological remains** In response to DCO.2.42 [REP6-045]:	Requirement 3 was amended in the Applicant's revised dDCO submitted at Deadline 7a to provide further protection for archaeological remains. Requirement 3 now provides that before a masterplan is submitted for approval under Requirement 3(3) the Applicant must a) Carry out an archaeological survey;

"(1) Prior to the submission of details of the final design, parameters and quantum of development in: • The area of development proposed north of Manston Road known as the North Grass Area; • The location of the helicopter facility in the south east of the site • The area proposed for HGV access and earthworks north of the western runway were not tested through trial trenching but had significant geophysical survey results; and • The area proposed for a contractor's compound and later car parking; A programme of archaeological field evaluation works shall be carried out in that area and reported in accordance with a specification which has been submitted to and approved by the Secretary of State in consultation with Kent County Council and Historic England. (2) Where archaeological evaluation works referred to in sub-paragraph (1) identify remains that are of a significance to warrant preservation in situ, as advised to the Secretary of State by Kent County Council and Historic England, the design, parameters and quantum of development in that area will be adjusted to ensure	b) Consider options for minimising impacts on archaeological assets which may involve a smaller development footprint; and c) Consult Kent County Council and Historic England on the options before submitting the masterplan for approval. This means that prior to the masterplanning stage, the Applicant must involve KCC and HE in considering ways to minimise impacts on archaeological assets. Thereafter, the Secretary of State must consult both KCC and HE on the masterplan prior to approval and take account of their comments (Requirement 3(1) of the dDCO). This item was not considered at ISH8 and will be addressed by the ExA in fourth written questions.

the appropriate preservation in situ of the archaeological remains." The areas listed above in sub paragraph (1) could be included on a drawing that is referenced in the Requirement. Parties should note that issues related to heritage are to be examined in the ISH dealing with, inter alia, heritage issues to be held on 3 June 2019. These proposed additions to the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the heritage ISH.	
8(e) **Thanet District Council - Article 2 - Definition** The Agreed (signed) Statement of Common Ground between the Applicant and Thanet District Council [REP6-011] states under matters not agreed between the parties at 4.1.13 that: "The definition of "maintain" as set out in Article 2 is too broad and could allow significant future development without sufficient planning controls."	TDC stated that they did not think that they were far from agreement with the Applicant in terms of the definition for 'maintain'. Their concern is that the tailpiece does not match that contained in the Millbrook Gas Fired Generating Station Order 2019. Concern is the allowance for interpretation that could lead to a dispute about whether there is a worsening of environmental effects. MHQC stated that the wording of the definition of 'maintain' does not allow the Applicant to do anything that is not authorised by the DCO. It needs to be within the limits of deviation, the parameters and the approved plans etc. It is intended to deal with the situation where over the effluxion of time a building is damaged or otherwise requires repair and the undertaker, therefore, carries out works to maintain to it. It is a recognition that a building might need maintenance in 50 years' time and that that maintenance may not be an exact reproduction of the original. It seeks to avoid the need to carry out such maintenance to a design that was approved 50 years previously when there is a better, more modern way to carry out the maintenance. Such maintenance must not, however, give rise to any materially new or materially worse environmental effects from those identified in the environmental statement. The Applicant has agreed with TDC as to its preferred definition of "maintain".

8(f) **Thanet District Council - Requirement 17 - Amendments to approved details** The Agreed (signed) Statement of Common Ground between the Applicant and Thanet District Council [REP6-011] states under matters not agreed between the parties at 4.1.14 that: "To avoid confusion, Requirement 17 should also be amended by adding the underlined text (or wording to a similar effect) below. *"With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing where such amendments are permitted elsewhere in this Order."*	This issue was not covered at ISH8 and will be addressed in the ExA's fourth written questions.
9. THE EXA's INITIAL dDCO: PROPOSED AMENDED OR NEW PROVISIONS – OTHER PARTIES	
9(a) **Article 6: Limits of Deviation** Parties should note that issues related to heritage, design and visual impact are to be examined in the ISH	This item was not discussed at ISH8.

to be held on 3 June 2019. This Article in the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the heritage etc ISH. -	
9(b) **Article 9 - Guarantees in respect of payment of compensation, etc** Parties should note that issues related to Guarantees in respect of payment of compensation in Article 9 are to be examined in the CAH to be held on 4 June 2019. This Article in the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the CAH. This item will draw, in particular, on responses to Second Written Questions CA.2.28 and DCO.2.17 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014].	SHP stated that an escrow arrangement would be an appropriate way to deal with security under article 9. It also argued that the amount should be made available prior to any decision on the grant of the DCO being made by the Secretary of State. MHQC pointed out that the giving of security for compulsory purchase compensation in the form of article 9 in the current dDCO was very much the exception, rather than the rule for DCOs. Most DCOs have been made without the inclusion of any such form of 'guarantee' as to the availability of funds. The Applicant has gone well beyond that is normally required in this case and has drafted article 9 based on the limited precedent that exists. The range of mechanisms that might provide security in article 9 is entirely appropriate and has been used in those limits other DCOs. In response to SHP's point that it was not satisfied that there would be adequate funding to satisfy article 9, MHQC pointed out that the question was not whether SHP had confidence in the availability of funding, but whether the Secretary of State was satisfied under article 9 that there was adequate funding for the Applicant to be allowed to exercise its compulsory acquisition powers. MHQC explained that the concept that the money should to be secured prior to the DCO decision itself was wholly misconceived. Indeed, it is not clear how this could be secured before a decision on the DCO. Article 9 is included to ensure that, when the compulsory acquisition powers become available, there is adequate protection afforded to landowners. SHP suggested that a large parent company provided security in the case of the Hinkley Point C (Nuclear Generating Station) Order 2013 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. MHQC explained that in neither of those cases was there an equivalent to article 9 of the dDCO and so in neither of those cases had there been a parent company 'guarantee'.

9(c) **Article 18 - Authority to survey and investigate the land** Parties should note that issues related to surveys are to be examined in the environmental issues ISH to be held on 5 June 2019. This Article in the dDCO will also be cited in that examination. This item will draw, in particular, on responses to Second Written Questions DCO.2.25 and CA.2.31 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014].	It was agreed during ISH8 that this issue could be dealt with through the Examining Authority's fourth written questions.
9(d) **Article 26 - Application of the Compulsory Purchase (Vesting Declarations) Act 1981** Parties should note that issues related to the Application of the Compulsory Purchase (Vesting Declarations) Act 1981 are to be examined in the CAH to be held on 4 June 2019. This Article in the dDCO will also be cited in that examination. The dDCO ISH will examine this insofar as it has not been covered in the CAH.	SHP criticised the inclusion of article 26 on the basis that the threat of a General Vesting Declaration would be used by the Applicant to leverage a reduction in sale price of the Manston Airport land. MHQC stated that this may reflect a misunderstanding about the vesting declaration procedure. Once compulsory acquisition powers have been granted there are two ways of implementing those powers. This is either through the Notice to Treat (**NTT**) and Notice of Entry procedure or through the General Vesting Declaration (**GVD**) procedure. The main advantage of the GVD procedure is that it produces a quick and clean transfer of title. The NTT procedure can involve a long period of negotiation before transfer of title is achieved (albeit that possession of the land can be taken by the acquiring authority within 3 months). The GVD process was introduced in 1981 as a streamlined alternative to the NTT procedure.

This item will draw, inter alia, on responses to Second Written Question CA.2.29 including Stone Hill Park's comments on the Applicant's Response contained in Stone Hill Park Ltd's Comments on the Applicant's Response to ExA's Second Written Questions [REP7-014].	Section 1 of the Compulsory Purchase (Vesting Declarations) Act 1981 (**the Vesting Declarations Act 1981**) applies the GVD procedure to all acquisitions by a Minister or a local authority pursuant to a compulsory purchase order. Where the GVD procedure does not automatically apply, for example in relation to subsequent legislation such as the Planning Act 2008, it is necessary to specifically apply the GDV procedure in the Vesting Declarations Act 1981. The (now lapsed) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 clearly contemplated such application and so included a 'model provision' applying the Vesting Declarations Act 1981. Section 134(7)(cza) of the Planning Act 2008 also clearly contemplates that the GVD procedure will be applied. The use of the GVD procedure does not provide any opportunity to 'leverage' a reduction in sale price, as suggested by SHP. It simply provides a mechanism for implementing compulsory acquisition powers and has the effect of transferring title in the land on a given vesting date. The GVD procedure is available for nearly all compulsory acquisitions and is merely a different way of implementing acquisition powers. The application of the GVD procedure to this DCO is entirely conventional and does not create some additional 'right' for the Applicant. As stated above, it is just a procedural mechanism for implementing the compulsory acquisition powers under a DCO. SHP referred to previous correspondence with the Applicant's team. This had given rise to the concern that the use of the GVD procedure would allow the Applicant to pay 90% of its valuer's estimate of the land and then take possession with the remainder of the compensation to settled to be settled later. MHQC responded by clarifying that this particular provision (concerning advance payments) applied to both the NTT and GVD procedures and exists under section 52 (right to advanced payment) of the Land Compensation Act 1973. Under this provision, a Claimant can claim an 'advance payment' of compensation and the acquiring authority has to pay 90% of its estimate of compensation. It makes no difference under this procedure whether the acquisition was by GVD or NTT. This is the standard procedure for advance payment available in compulsory purchase cases. SHP suggested that the use of the GVD procedure would allow early possession of the land which would not be available under the NTT procedure.

	MHQC responded by stating that the Notice of Entry procedure that could be used in connection with the NTT procedure would allow the Applicant to take possession of the land. Title would not pass but the Applicant could still take possession of the land (under the same three month timescale that would be available using the GVD procedure). The advantage of the GVD procedure to the Applicant would be that it would be given full title to the land without the need to negotiate a transfer under the NTT procedure. The GVD procedure also allows the transfer of the full, clean title in its entirety on a given vesting date. Contrary to the situation where the NTT procedure is used, there is no threat of missing unknown rights or interests in land if the GD process is used. A note on the differences between NTT and GVD is provided as Appendix ISH8-56 to this document.
9(e) **Article 29 - Temporary use of land for carrying out the authorised development** This item will draw, inter alia, on Stone Hill Park Ltd's Written Summary of Oral Representation - Compulsory Acquisition Hearing 20 March 2019 [REP5-031].	This issue was not considered during ISH8 and it is anticipated that it will be addressed in the ExA's fourth written questions.
This Agenda item will examine both Part 2 and the wider question of which body should be the discharging authority for a range of other Requirements. This item will draw on, inter alia, the Applicant's response to Second Written Question DCO.2.45 [REP6-012], Appendix DCO.2.45 in Appendices to Answers to Second Written Questions [REP6-014] Kent County Council's response to DCO.2.2. [REP6-045], Natural England's response to DCO.2.9 [REP6-048] and Thanet	This issue was not considered during ISH8 and it is anticipated that it will be addressed in the ExA's fourth written questions.

District Council's response to DCO.2.3 i, ii and iii [REP6-058]. The ExA notes, in addition, that the Agreed (signed) Statement of Common Ground between the Applicant and Thanet District Council [REP6-011] states under matters not agreed between the parties at 4.1.15 that: "TDC consider that provisions for discharging requirements at paragraphs 18(2) and 18(3) of dDCO Part 2 allowing automatic approval of requirements submitted but not determined within a period of 8 weeks should be removed."	
THE EXA'S INITIAL dDCO: PART 2 – PROCEDURE FOR DISCHARGE OF REQUIREMENTS	
10 **Procedure for discharge of requirements** This Agenda item will examine both Part 2 and the wider question of which body should be the discharging authority for a range of other Requirements. This item will draw on, inter alia, the Applicant's response to Second Written Question DCO.2.45 [REP6-012], Appendix DCO.2.45 in Appendices to Answers to Second Written Questions [REP6-014] Kent County Council's response to DCO.2.2. [REP6-045], Natural England's response to DCO.2.9 [REP6-048] and Thanet	MHQC confirmed that the Applicant's position is that the role of the Secretary of State in articles 8 (consent to transfer benefit of Order), 9 (guarantees in respect of payment of compensation, etc.) and 37 (removal of human remains) should be retained in subsequent drafts. The Applicant proposed that the TDC or KCC, as appropriate to their functions, should be responsible for the discharge of requirements. MHQC also confirmed that, if the Applicant's proposals were to be reflected in the ExA's second dDCO, Part 2 of Schedule 2 to the dDCO would need to be amended to accord with Appendix 1 of the Planning Inspectorate's Advice Note 15: Draft Development Consent Orders. The ExA asked for an explanation of the decision for the Secretary of State to be retained in his decision making capacity in relation to article 37. MHQC explained that article 37 was an article which was either precisely, or very closely in the form of one of the Model Provisions in the now lapsed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. It replaced procedures that would otherwise take place under the Burial Act 1853. Normally, under that Act, certain procedures have to be complied with where human remains are found (e.g. getting a faculty from the local diocese etc.). The reason why

District Council's response to DCO.2.3 i, ii and iii [REP6-058]. The ExA notes, in addition, that the Agreed (signed) Statement of Common Ground between the Applicant and Thanet District Council [REP6-011] states under matters not agreed between the parties at 4.1.15 that: "TDC consider that provisions for discharging requirements at paragraphs 18(2) and 18(3) of dDCO Part 2 allowing automatic approval of requirements submitted but not determined within a period of 8 weeks should be removed."	this type of provision is common in DCOs is that it produces a more streamlined process than was thought appropriate in 1853. MHQC committed the Applicant to provide a more detailed explanation of the article in a revised Explanatory Memorandum and some text on why the Secretary of State is a more appropriate party to deal with procedures under this article than the local planning authority. In brief, therefore, section 25 of the Burials Act 1857 makes it an offence for a body or any human remains that have been interred in a place of burial to be removed unless (a) a Court grants a 'faculty', (b) the body or remains are removed in accordance with the approval of the Care of Cathedrals Measure (No.1), or (c) the body or remains are removed under a licence of the Secretary of State. This latter licensing function is administered by the Ministry of Justice. Article 37(14)/(15) disapplies section 25 of the 1857 Act, but replaces it with the procedure set out in the article. The procedure set out in article 37, provides a more streamlined and efficient process for dealing with unexpected human remains than that set out in the 1857 Act and is appropriately applied in this case so that the undertaker can deliver the Manston airport DCO Project in an efficient manner and the intention of the 2008 Act is not undermined.
Finally, the ExA asked about the inclusion of more monitoring provisions in the dDCO	In response to the request of the Examining Authority the Applicant is considering existing airport monitoring regimes such as Stansted and London City Airport which can be adapted and improved for the purposes of the Manston development. The Applicant will propose appropriate amendments to the dDCO at Deadline 9.

ISH8 Appendix Index

ExA Action No.	Appendix No.	Document
53	ISH8 – 53	Change of text for the Explanatory Memorandum to justify the inclusion of the Secretary of State as the discharging authority in Article 37
56	ISH8 – 56	Commentary on any differences in procedures for acquiring title and for valuing and payment of compensation using notice to treat and vesting declarations.

Appendix ISH8 – 53

MANSTON AIRPORT DEVELOPMENT CONSENT ORDER APPLICATION

APPLICANT'S PROPOSED AMENDMENT TO EXPLANATORY MEMORANDUM DESCRIPTION OF ARTICLE 37

1 Article 37 (Removal of Human Remains)

The Applicant will substitute the following replacement explanation of article 37 into the Applicant's next draft of the draft Explanatory Memorandum:

1.1 *Article 37 requires the undertaker, before it carries out any works which will or may disturb any discovered human remains in the specified land, to remove those remains in accordance with the procedure set out in the article (effectively replacing the licence regime under the Burial Act 1857). This procedure sets out various notification requirements and the process for removing and interring the remains either at the request of a relative or personal representative of the deceased person, or by the undertaker. This article includes the provisions as to the identification of human remains, processes for re-interment, and the requirement for the undertaker to pay reasonable expenses of removing and re-interring or cremating any remains so discovered.*

1.2 *The purpose of the article is to provide an appropriate procedure to be followed in the event unexpected human remains are found anywhere within the Order limits. This is important because of the effect of the Burials Act 1857. That section makes it an offence for a body or any human remains that have been interred in a place of burial to be removed unless (a) a Court grants a 'faculty', (b) the body or remains are removed in accordance with the approval of the Care of Cathedrals Measure 2011 (No.1), or (c) the body or remains are removed under a licence of the Secretary of State. The latter licensing function is carried out by the Ministry of Justice.*

1.3 *Article 37(14) disapplies section 25 of the Burial Act 1857, but replaces it with the procedure set out in the article.*

1.4 *The procedure set out in article 37, provides a more streamlined and efficient process for dealing with unexpected human remains than that set out in the Burial Act 1857 and is appropriately applied in this case so that the undertaker can deliver the Manston Airport DCO project in an efficient manner so ensuring that the intention of the 2008 Act is not undermined.*

2 Justification for retention of SoS as certifying body in relation to article 37

2.1 The explanation above clarifies the purpose of article 37 of the dDCO. It is intended to replace but replicate the function of s.25 of the Burial Act 1857 where the Secretary of State has the licensing role. It is appropriate that the Secretary of State is given the power to make directions under article 37(12), in effect retaining his decision making power in the replacement procedure.

3 Further proposed amendments to article 37

3.1 The Applicant has identified a typographical error in sub-paragraph (14) which should refer to section 25 of the Burial Act 1857. This will be corrected in the Applicant's next draft dDCO.

3.2 The Applicant has reconsidered the necessity for sub-paragraph (15) and believes that it will not be required in the circumstances of the current application. The Applicant will remove this sub-paragraph from its next draft DCO.

Appendix ISH8 – 56

MANSTON AIRPORT DEVELOPMENT CONSENT ORDER APPLICATION

NOTE ON DIFFERENCES BETWEEN GENERAL VESTING DECLARATION AND NOTICE TO TREAT/NOTICE OF ENTRY PROCEDURES

	General vesting declaration	**Notice to Treat/Notice of Entry**
Act	Compulsory Purchase (Vesting Declarations) Act 1981 ('GVD Act')	Compulsory Purchase Act 1965 ('CP Act')
Earliest date for vesting of title in acquiring authority	Minimum of 3 months after execution of general vesting declaration (s.4, s.8 of GVD Act).	No assured timetable. Upon agreement of transfer with landowner or on execution of deed poll. Can take years.
Timescale for obtaining permanent possession	Minimum of 3 months after execution of general vesting declaration (s.4, s.8 of GVD Act).	Minimum of 3 months after service of Notice of Entry (s.11 of CP Act). Notice of Entry can be served on the same day as the Notice to Treat.
Availability of 'advance payment' to landowner	90% of acquiring authority's estimate of compensation under s.52 of the Land Compensation Act 1973	90% of acquiring authority's estimate of compensation under s.52 of the Land Compensation Act 1973
Advantages of use for Acquiring Authority	- Captures all land interests and rights required in a single document - Captures interests and rights of unknown owners e.g. where title incomplete or uncertain - A unilateral instrument that avoids the need to negotiate with multiple owners - Allows acquiring authority to unilaterally prescribe its precise requirements - May lead to acquisition of less land, supported by rights, which	- Negotiation between the service of Notice to Treat and transfer can result in less land take than originally planned (dependent on agreement of land owner) - The only means by which minor tenancies and long tenancies which are about to expire can be acquired - Avoids requirement of cost and publication of notice in local newspaper (part of general

	may serve to reduce the compensation liability and impact on landowners - Assures consistency of land interests and rights acquired from different owners - Removes necessity for extended periods of negotiation of transfers with multiple landowners - Timetable for vesting of title is assured - Failure to agree on compensation with landowner does not delay vesting of interests and rights in land - Acquisition of all property, rights and easements by single GVD from multiple landowners means rights and covenants acquired will benefit all property interests acquired	vesting procedure under s.6 of GVD Act)