CORPORATE RESOURCES

Please ask for: Iain Livingstone
[redacted]
Email: iain.livingstone@thanet.gov.uk
Date:28/06/19

Dear Mr MacDonald,

Application by RiverOak Strategic Partners to upgrade and reopen Manston Airport

Comments on the Examining Authority's Second Draft Development Consent Order

Answers to the Examining Authority's fourth written questions (ExQ4)

Please find below Thanet District Council's response to the fourth written questions of the Examining Authority.

Ec.4 Ecology and Biodiversity

Ec.4.2 Turnstone mitigation: TDC in their Deadline 8 [REP8-029] submission state: "TDC have investigated the use of the Council's Strategic Access Management and Monitoring Plan (SAMM) by the applicant to overcome Natural England's concern over the impact of the development on the integrity of the Thanet Coast and Sandwich Bay Special Protection Area (SPA). The SAMM is primarily focussed on the impact of recreational disturbance in relation to human recreational activities, with contributions required from residential development in the district to fund mitigation/survey work at the SPA to address this impact. The contribution amount is linked to the housing targets within the Draft Local Plan to create a 'per dwelling' requirement. The SAMM project is specifically targeted to mitigate a particular impact, and there is no provision in the SAMM for contributions/mitigation to mitigate the impact of the proposed development (aircraft movements and the noise associated). The SAMM is therefore not considered the appropriate mechanism for mitigating this particular impact on the SPA."

i. In the light of TDC's response what further mitigation is required in respect of turnstone to support a conclusion of no adverse effects on integrity of the Thanet Coast and Sandwich Bay SPA?

TDC has no further comment to add to its Deadline 8 submission on this issue.

ii.What is the current status of the discussions between the parties on this mitigation?

There were discussions between the Applicant, the Council and Natural England, prior to the submission of the Council's Deadline 8 Statement, regarding whether the SAMM could be an appropriate mechanism for mitigation. At the time of writing, TDC had not received any further contact from the Applicant on this issue.

Ec.4.4 Incomplete surveys: Confirm whether the worst-case assessment and proposed mitigation set out in the Environment Statement (ES) biodiversity chapter [APP-033] is sufficient to mitigate the likely significant effects of the Proposed Development or whether any further remedy is required prior to the close of the Examination.

TDC will defer to the views of KCC and Natural England on this matter.

CA4 Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations

CA.4.14 Special Category Land: Plots 185b, 185c, 185d, and 185f are identified in Part 5 of the Book of Reference: Post-Application Revision 1 [REP3-194] as being special category land under s131 and 132 of the PA2008. The ExA stated in its question CA.2.9. that it is minded to recommend that subsection 3 of s132 of the PA2008 does apply in that: (3) ... the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—(a) the persons in whom it is vested,(b) other persons, if any, entitled to rights of common or other rights, and (c) the public. Plots 185b, 185c, 185d, and 185f are identified in the Land Plans and in paragraph 10 of the revised Book of Reference [REP7a-023] as proposed to be subject to the compulsory creation of new rights pursuant to Article 22 of the dDCO and if necessary, to powers to override third party rights or powers to extinguish, suspend or interfere with any third party rights pursuant to Article 24 of the dDCO.Articles 22 and 24 of the dDCO include the power of the imposition of Restrictive Covenants.

Given that the scope, nature and effect of any Restrictive Covenants have not been disclosed by the Applicant, do parties still consider that subsection (3) of s132 of the PA2008 does apply?

TDC has no comment to make on this.

DCO.4 Draft Development Consent Order

DCO.4.5 Article 2 –definition of 'maintain': 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." At the DCO ISH [EV-029] the Applicant and TDC agreed to seek to propose a mutually satisfactory form of words and in the Summary of Applicant's Case put Orally –Draft Development Consent Order hearing and associated appendices [REP8-016], the Applicant states that: "The Applicant has agreed with TDC as to its preferred definition of maintain." This definition is set out in TDC's Comments following Issue Specific Hearings for Deadline 8 submission [REP8-029] as being: ""maintain" in relation to the authorised development includes to inspect, repair, adjust, alter, remove, refurbish, replace, improve or reconstruct to the extent assessed in the environmental statement and any derivative of "maintain" is to be construed accordingly."

The ExA requests comments on this revised definition from all Interested Parties.

TDC has set out its preferred definition in REP8-029 and has no further comment to make.

DCO.4.17 Requirement 4(2) – Detailed design: The ExA's second dDCO proposed to 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." and to amend the 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". Following consideration of the Applicant's oral submissions at the DCO ISH held on 7 June 2019 [EV-023] and in the Summary of Applicant's Case put Orally – Draft Development Consent Order hearing and associated appendices [REP8-016].

The ExA are minded, subject to considering any further submissions on this issue, not to proceed with this proposed amendment.

TDC has no further comment on this matter.

DCO.4.18 Requirement 7(2)(b) - Operation environmental management plan: In its Comments following Issue Specific Hearings for Deadline 8 submission [REP8-029] TDC state that: "Thanet District Council (TDC) has agreed the following amendments to the wording of Requirement 7(2)(b), with a new item added at xiv) to read: "The Lighting Strategy –to be substantially in the form to meet requirements set out in the Draft Lighting Strategy". The Draft Lighting Strategy should also be included in Schedule 10 as a certified document.""

Subject to the ExA's consideration of any further submissions made in response to this question, the ExA states that it is minded to recommend the Applicant's and TDC's revised wording to the Secretary of State.

TDC has no further submissions to make on this matter.

DCO.4.19 New Requirement 10(3) - Landscaping: First, the ExA notes that in its Comments following Issue Specific Hearings for Deadline 8 submission [REP8-029] TDC state that: "TDC will comment on the Draft Landscaping Plan to be submitted at Deadline 8 by the applicant, to ensure that our previous comments regarding the landscaping along eastern boundary of the site have been taken into account." The ExA note that the Applicant has provided two landscape plans at Appendix 1 to Summary of Applicant's Case put Orally - Landscape, Design, Archeology and Heritage hearing and associated appendices[REP-014] TDC goes on to state that: "In addition to this, TDC agrees to the inclusion of a new part to Requirement 10, at 10(3), to read: "A landscaping scheme referred to in sub-paragraph (1) must be substantially in the form of the [draft landscaping plan]." The Draft Landscaping Plan should also be included in Schedule 10 as a certified document.""

Subject to the ExA's consideration of any further submissions made in response to this question, the ExA states that it is minded to recommend the Applicant's and TDC's revised wording to the Secretary of State.

TDC has no further submissions to make on the proposed wording for Requirement 10(3).

TDC has reviewed the Draft Landscaping Plan and remains concerned about the eastern boundary. According to the detailed draft landscaping plans submitted at Deadline 8 [REP8-014], the landscape buffer to the east of the proposed airport car park will comprise mixed native screen planting maintained at 1.5m high, interspersed with heavy set trees. There does not appear to be any mound or bund proposed at this point. This does not accord with section A on page 38 of the resubmitted Design Guide [REP8-009] which shows a 1m bund with a 1m hedge and 5m high tree above this.

TDC remains of the view that even the proposed landscaping as shown in the Design Guide at this part of the site is inadequate as stated in TDC's response to LV.2.7(ii) [REP6-058]. The landscape here is very flat and open, with this boundary running midway across an existing field; there are no existing boundary features in place here. The proposed development would be highly visible in views towards the site from Manston Road west of Manston village and the proposed landscape buffer would be wholly inadequate to mitigate the landscape and visual impacts.

Notwithstanding our view that the landscaping buffer is inadequate in any event, it is also noted that whilst page 38 of the resubmitted Design Guide shows a slightly revised section, it does not provide any additional wording regarding this boundary. The Design Guide and Landscape Strategy should be specific in stating that this needs to include trees spaces around 10m apart in order to provide some screening.

DCO.4.20 Requirement 13(3): In its initial dDCO [PD-015], the ExA proposed an additional subparagraph - Requirement 13(3) - which stated that: "No part of the authorised development is to commence until the construction of the entire surface and foul water drainage system is completed." In its revised dDCO submitted at Deadline 7a [REP7a-017] the Applicant proposed modifying this provision to substitute "begin operation" for "commence" and add "for that part", thus: "(3) 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." The ExA has considered the oral submissions made on this issue at the DCO ISH [EV-023] and the submission made in the Applicant's summary of oral evidence given at the DCO Hearing [REP8-016].

Subject to the ExA's consideration of any further submissions made in response to the ExA's second dDCO or to this question, the ExA states that it is minded to recommend the Applicant's revised wording to the Secretary of State.

TDC has no objection to the proposed wording for Requirement 13(3).

DCO.4.21 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."

To TDC i. Explain the reason for suggesting this amendment.

TDC considers that the proposed wording adds clarity, ensuring that this requirement cannot be misinterpreted by any party as allowing amendments to the scheme that would not otherwise be permissible under the Order. However, TDC would not maintain an objection if the ExA considered that this additional clarification is not required.

DCO.4.23 Part 2 - Procedure for discharge of requirements: First, the ExA notes that in its Comments following Issue Specific Hearings for Deadline 8 submission [REP8-029] TDC state that: "TDC agrees with the revised position of the applicant that Thanet District Council should be the discharging body for the various requirements, with the Secretary of State remaining at Articles 8, 9 and 37 of the Draft DCO." Part 2 of the dDCO sets out the procedure for the discharge of requirements including in Requirement 21.(1) time periods for serving notices and at 21.(2) provisions in respect to non-determination. These provisions were drafted before it was proposed that "the relevant planning authority" be substituted for "Secretary of State". 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."

i. Have discussions taken place on the draft wording?

TDC has agreed a form of wording with the Applicant, which is attached as Appendix 1.

ii. If not, state where any areas of disagreement exist and suggest alternative wording to overcome these.

As set out above, this wording is now agreed and there are no further areas of disagreement on this point.

F.4 Funding

F.4.24 P&L Forecast used in the RSP Business Plan for Manston: The Applicant has provided a more detailed RSP Business Plan for Manston submitted at Appendix CAH2 –15 to the Summary of Applicant's Oral Submissions at the Compulsory Acquisition Hearing on 4 June 2019 and associated appendices [REP8-011].

Given that the EBITDA margin is the only measure used to demonstrate viability indicate what status you consider should be afforded to this document by the ExA in coming to any related recommendation to the Secretary of State.

TDC has no comment to make on this.

Ns.4 Noise and Vibration

Ns.4.2 Noise insulation and ventilation for schools: In the Applicant's submission at Deadline 8 it states at page 5: "...The Applicant noted the clarifications requested surrounding uncertainties in the noise modelling. The Applicant confirmed that if a 2dB increase was applied to predicted levels as a

result of uncertainties, then a number of schools could exceed the 60dB threshold that would require the Applicant to provide noise insulation and mitigation. Such an exceedance would only be likely to occur approximately 20 years after the project commences operations. 2.35 The ExA questioned whether there would be adequate funds available within the Community Fund (CF) to provide noise insulation and ventilation to affected schools. The Applicant highlighted that all schools should be assessed on a case-by-case basis in order that the needs of individual schools can be taken into account rather than offering a one size-fits-all solution. Nonetheless, the Applicant has now committed to providing £139,000 per year for affected schools for 20 years, to be spent on noise insulation or other measures to benefit pupils, based on 1% of the per-pupil funding of the schools concerned and to be distributed to each one annually, as reflected in the revised s106 agreement. 2.36 The Applicant emphasised that it does not underestimate the importance of noise control for schools and the school's liaison committee will be a further means of engaging with schools that have not taken the opportunity to comment during the DCO examination process."

i. Given the +/-1dB uncertainty for measurements and for calculations which schools are likely to be eligible for the insulation/ventilation scheme?
ii. If schools became eligible what would the cost implications be?
iii. What is KCC's and TDC's view?

TDC has no further comment on this matter.

Ns.4.5 Smugglers Leap Caravan Park:

i. Confirm whether the caravan park homes at Smugglers Leap will be relocated if noise insulation and ventilation cannot be effectively applied?

It is noted that in Technical note: Manston Airport Noise Assessment: Examination Authority clarification item 25 of TR020002/D8/ISH6 Summary of Applicant's Case put Orally at the Biodiversity and Habitats Regulations Assessments hearing and associated Appendices [REP8-016] that the Applicant states as part of their Deadline 8 submission that:

"*The sound insulation of mobile homes is rarely investigated, so there is a lack of credible evidence regarding sound insulation which could be relied on to respond to the Examination Authority's (ExA) request. Consequently, it is anticipated that, in the event that a caravan qualifies for noise insulation and ventilation under the provisions of the NMP, detailed survey and inspection will be undertaken. Should the survey determine that noise insulation is unlikely to be sufficiently effective in the individual circumstances1, relocation would be considered on the basis outlined in the NMP.*
1: taken as a 5dB improvement in average sound reduction index (R) calculated over a frequency range of 125Hz to 4000Hz".

Further information is sought from the Applicant to explain:

a) What is the "*Average Sound Reduction Index*"? Does the Applicant mean the Apparent Sound Reduction Index?
b) How has the "*5 dB improvement of average sound reduction index*" been selected as the threshold for what is deemed "*sufficiently effective*" when considering mitigation for the park homes?

Caravan type homes typically give low sound insulation performance compared to traditional dwellings and therefore to reduce internal noise to remove the significant effect it may be impracticable to install. It is requested that Applicant gives further information on the derivation of the "*5 dB improvement of average sound reduction index*" and calculations to demonstrate how it is sufficiently effective.

The Crossrail Information Paper D9 section 2.4 states "*Given that noise insulation does not represent a viable option for mobile homes, where eligibility is confirmed appropriate alternative mitigation measures will be adopted*"

The HS2 Information Paper E23:Control of construction noise and vibration states "*…alternative noise control measures will be considered on a case by case basis for situations such as: residential homes where noise insulation does not represent a viable option including houseboats or mobile homes…*"

If noise insulation cannot effectively be applied the relocation will need to be secured.

ii. What would be the cost implications of this relocation?
iii. Do TDC believe the dDCO should secure this relocation?

It is evident from the Appellant's technical note in response to ExA clarification item 25 [REP8-016] that the Applicant does not have a clear understanding of how effective, if at all, any noise insulation and ventilation mitigation measures would be on these caravan park homes. TDC's view is that the dDCO must secure this relocation if any material harm is proven to these dwellings which cannot be mitigated.

Ns.4.6 ATM limits during the school day:

i. Should the DCO secure the limits of ATMs during the school day periods based on the analysis in Table 1 of NS.2.16 to ensure that the potential impacts are not worse than modelled?

The Noise Mitigation Plan (NMP) does not presently control the distribution of flights during the daytime period during school hours therefore if there were more than 2 aircraft in a half hour period the effect on schools would be worse than presented in the ES. In order to ensure the $L_{Aeq,30mins}$ is no worse than presented in the ES it is requested that either the NMP is updated to include this requirement for specific limits of ATMs during half hour periods within the school day or the half hour limits are included within the requirements of the DCO.

Ns.4.9 Demarcated Engine Test Area:

Provide a demarcated engine test area to be set out in a plan attached with the NMP and demonstrate that this is to be located away from noise sensitive receptors and at a location to be agreed with TDC.

At the time of writing, TDC has not been provided with such a plan and so cannot make any further comment at this time.

SE.4 Socio-economic Effects

SE.4.14 Tourism: An Interested Party has submitted an infographic produced by TDC concerning the Thanet Visitor Study 2018 [AS-205]. The IP's accompanying commentary considers that the information shows significant interdependencies between Ramsgate, Broadstairs and Margate, shows the importance of Ramsgate as a key part of a touring itinerary for the wider tourism industry in Kent and that coastline/beach and recreational activities - predominantly outdoors pursuits - account for 83% of all key influencers.

Taking the above into account, what effects do you consider the proposal would have, whether positive or negative, on the tourism industry in Ramsgate and the wider Thanet area?

The Thanet Visitor Study 2018 does not affect TDC's stance in that whilst the proposed development may bring further tourists to the area, the amenity impacts from the construction and operation of the proposed development may adversely affect the tourism industry in Ramsgate and the wider Thanet area and weigh against any proposed benefit.

Tr.4 Transportation and traffic

Tr.4.5 Passenger flight movements: Appendix ISH7 –30 of Summary of Applicant's Case put Orally - Traffic and Transport hearing and associated appendices [REP8-017] at Table 2.13 shows that, as a result of the amended passenger traffic generation, there would be 98 more vehicle movements in the pm peak than that modelled in the original TA. Appendix ISH7 –43 of Summary of Applicant's Case put Orally -Traffic and Transport hearing and associated appendices [REP8-017] provides a Transport Assessment Update, which at Paragraph 1.1.3 states: "As part of the scoping of the TA Addendum with KCC, two changes to the traffic generation methodology were agreed which affected the overall traffic generation'. Paragraph 1.1.4 goes on to set out: 'The purpose of the TA Update is to assess and present the implications of the changes to the traffic generation based on the DCO (original) TA spreadsheet model". Paragraphs 2.2.6 to 2.2.8 state: "Further to this, it is noted that a review of the spreadsheet calculations identified two errors which resulted in an overestimation of overall traffic generation. With regards to the peak hour periods, there are the following changes: In the AM peak hour there are 141 fewer trips than the revised traffic generation in the Revised TA; and In the PM peak hour there is a marginal increase of 11 vehicles compared to the revised traffic generation in the Revised TA. The overestimation of the AM peak hour traffic is comparable to the traffic generation for departure and arrival flights which would affect the AM peak hour. On this basis, the DCO TA has been robust and has assessed a situation equivalent to departure/arrival flights affecting the AM peak hour. This assessment of the PM peak hour has been based on the V7 traffic generation. The addition of 11 extra two-way trips is marginal and would not affect the overall outputs".

i. Given that the Transport Assessment Update (Appendix ISH7 –43) is reviewing the original TA based on the changes to the traffic generation methodology and not the revised TA, why was an increase of 11 extra two-way trips considered and not the 98 extra two-way trips as set out in Table 2.13 of Appendix ISH7 –30?
ii. What effect would the additional 98 extra two-way trips have on the junction assessments in the Transport Assessment Update (Appendix ISH7 –43)?
iii. Further, what effect would this have on the noise and air quality assessments?
iv. What are the views of KCC and TDC on this matter?

TDC will defer to the view of KCC Highways as the local highways authority on the effects of the Transport Assessment update in terms of questions i and ii above. TDC considers that the additional 98 extra two-way trips would not impact further on air quality. Unfortunately TDC has not had sufficient time to be able analyse the effect on the noise assessment.

Tr.4.6 Passenger flight movements PM peak restrictions: In a similar manner to the am peak restrictions, to ensure that there will be no unacceptable impacts on the local highway network, the ExA is considering whether a further restriction in the dDCO is required for passenger arrival and departure flights during the pm peak period in the form of an additional Requirement to read: "There shall only be: one passenger flight arrival between the hours of 16.00 and 17.00; two passenger flight departures between the hours of 18.00 and 19.00; one passenger flight departure between the hours of 19.00 and 20.00; and no passenger departure flights between the hours of 20.00 and 21.00."

i. What is the Applicant's response?
ii. What are the views of KCC and TDC?

TDC will defer to the view of KCC Highways as the local highways authority as to whether it believes these further restrictions are required. TDC would support such restrictions should KCC and the ExA be satisfied that these are required in order to avoid unacceptable impacts on the highway network.

Tr.4.41 Permitted Development Rights: The Summary of Applicant's Case put Orally - Traffic and Transport hearing and associated appendices at Appendix ISH7 –32 [REP8-017] at Paragraph 4.1 states: "The Applicant explained that highway improvements that are part of the mitigation package could be associated development, however, this does not mean that they have to be 'associated development' secured via the DCO. The only appropriate circumstances warranting their inclusion in the DCO might be if they did not otherwise have consent. Since such improvements are within or adjacent to the highway boundary, they benefit from permitted development rights and hence have planning permission. As noted in the Applicant's answer to Tr.3.8, under Class A of Part 9 of the Town and Country Planning (General Permitted Development) Order, the highway authority can undertake the works under permitted development rights. The proposed highway improvements do not fall within any of the thresholds for 'EIA development' within Schedule 1 or Schedule 2 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and article 3(10) of the Town and Country Planning (General Permitted Development) Order 2015 does not apply to remove permitted development rights".

i. Is this accepted by KCC and TDC?

TDC agrees that permitted development rights would only exist for the highway improvements if these improvements were undertaken by a highway authority and are within or adjoining the highway boundary. As the Applicant notes in section 4 of its Written Summary of Oral Submissions put at Issue Specific Hearing 7 on Traffic and Transport [REP8-017], it would need to either enter into a section 278 agreement or agree an appropriate contribution to the relevant highway authority. However, unless the ExA is confident that either can be agreed in principle within the time remaining in this Examination, there is a risk that the required highway improvements may not be deliverable.

The position would be complicated further in the event that third party land is required adjacent to the highway in order to carry out the improvements. Unless it is clear that such land, or appropriate rights

over that land will be acquired, there will remain uncertainty as to whether any improvements which are required in order to make the development acceptable can actually be delivered since this will be outside the control of the Applicant.

In such circumstances, if the proposed development relies on these junction improvements as mitigation to make the development acceptable in planning terms, the DCO should not be granted if there is no guarantee that the mitigation can be delivered to make it acceptable.

Tr.4.48: Revised draft Section 106 AgreementThe Applicant has provided a revised draft Section 106 Agreement [REP8-006]. Schedules 5, 8 and 10 refer to maps. i. Provide these maps. The revised draft Section 106 Agreement in Schedule 10, Paragraph 3 states: "In the event that the above junction improvements are not necessary, the payments may be put towards other highway improvements as the County Council deems necessary provided that such improvements are required for the purpose of mitigating the effects of the Development".

ii. To the Applicant, KCC and TDC: Do you consider this to be compliant with CIL Regulation 122?

In order to comply with CIL Regulation 122, any such payments must not only be necessary to make the development acceptable in planning terms but also both directly related to the development and fairly and reasonably related in scale and kind to the development. As currently drafted, it is not clear that this would be the case since this alternative phrasing lacks a precise project, and so TDC consider that it is not compliant with CIL Regulation 122.

iii. What is KCC's view on this matter? The Section 106 Agreement is in draft.

iv. Will it be agreed and signed by all parties and submitted to the ExA before the end of the Examination?

TDC first discovered the draft s106 as part of the Applicant's deadline 7a submissions, when it was included as part of the appendices to a response on Transport matters [Appendix Tr.3.1 Part B within REP7a-003]. The Applicant had not contacted TDC prior to this point (or indeed subsequently to the deadline 7a submission) either to draw TDC's attention to the existence of the draft s106 or to discuss or attempt to agree to the wording. On learning of its existence, TDC reviewed the draft and made various comments directly to the Applicant, raising some significant concerns about items within the draft.

TDC has since received the Deadline 8 draft of the s106 as part of the wider Deadline 8 submissions. There has again been no direct contact from the Applicant either to draw attention to this or to discuss its content. TDC has since made further comments directly to the Applicant, including raising concerns about:

- The proposed contributions to an as yet undefined Education, Employment and Skills Plan, which TDC considers would not be CIL Regulation 122 compliant;

- The proposed SAMM contributions, which as stated in TDC's deadline 8 submissions [REP8-029], is not considered to be the appropriate mechanism for mitigating this particular impact on the SPA; and

- The proposed Controlled Parking Zone contributions.

Mindful of the limited time remaining before the close of the Examination, taking into account the number of significant issues which are not yet agreed even in principle or in terms of detailed drafting, TDC is not confident that the s106 can be agreed and signed within the required timescale. TDC considers that the timescale is extremely challenging and that having a signed s106 within this timescale cannot be relied upon.

Tr.4.51 Car Park Management Strategy: Appendix ISH7 –52 of the Summary of Applicant's Case put Orally - Traffic and Transport hearing and associated appendices [REP8-017] includes a revised Car Park Management Strategy. i. Is KCC content with the changes proposed, especially with regard to: blue badge and electric vehicle spaces (Section 2.4); and staff car park management (Section 3.3)? ii. Do any subsequent changes need to be made to the Airport Surface Access Strategy? The revised draft Section 106 Agreement [REP8-006] includes provision for an annual contribution to TDC towards Controlled Parking Zones. iii. Why is this not referred to in the revised Car Park Management Strategy?

iv. How much will this be, how will it be calculated and when will this be confirmed?
v. What are the views of KCC and TDC on this matter?

TDC questions the extent to which a CPZ contribution is necessary given the proposed overprovision of parking on site, although it is noted that the Applicant may charge both passengers and staff to park on site [Appendix ISH-52, section 3.3 [REP8-017]].

TDC's view is that for a Controlled Parking Zone where all on-street parking is controlled, with parking only permitted in designated bays and the remaining street covered by double yellow line restrictions, the approximate cost would be £260 per metre. This includes line painting, bay marking, legal consultation, order implementation, public notices and signage. TDC has not seen any information from the Applicant as to either the general area or specific streets in which a CPZ would be proposed.

Comments on the Examining Authority's Second Draft Development Consent Order

<u>Interpretation: Airport-related</u>

TDC notes that the definition of "airport-related" still does not reflect the wording proposed by TDC in its Deadline 7 submission [REP7-016]. In particular, TDC considers that airport-related development should be required to "demonstrate both a direct relationship to operations at Manston Airport and a requirement to be located at Manston Airport in order to support those operations". The current wording simply required such development to be "directly related to, or associated with, or supportive of operations at Manston Airport". TDC considers this is too broad and could be argued to include development which either does not have a direct relationship to operations at the airport and/or which is not required to be located at Manston to support those operations.

<u>Requirement 19</u>

As is noted on p14 of the Summary of Applicant's case put orally - Draft Development Consent Order Hearing [REP8-016], the following additional wording has been proposed by the Applicant in discussion with TDC:

> '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).'

TDC is satisfied with this additional wording.

Part 2: Procedure for the Discharge of Requirements

In our response to question DCO.3.17 [REP7a-045], TDC proposed an alternative form of wording regarding the discharge of requirements (as Appendix 1 to that submission). The current form of wording set out at Requirement 21 is unacceptable to TDC for the reasons previously stated, in particular due to the automatic approval for non-determined requirements after 8 weeks.

Section 106 Agreement

The Applicant is proposing a Section 106 agreement, but this is not referenced within the dDCO. TDC considers that if such an agreement is proposed in order to make the development acceptable, it should be referred to within the dDCO as appropriate.

Other matters

TDC would draw the ExA's attention to its comments on the dDCO in its Written summary of oral representations put at Issue Specific Hearing 4,5,6,7 and 8 [REP8-029], which still stand. In addition to the points noted elsewhere in this submission, it is noted that the current dDCO does not yet reflect the comments made in relation to the definition of "maintain"; the requirement for a Lighting Strategy in Requirement 7 and Schedule 10; and the need for the landscaping plan to be listed in Schedule 10.

Comments on any further information requested by the ExA and received to Deadline 8

Register of Environmental Actions and Commitments

It is noted that the updated REAC (p48 of tracked version) [REP8-018] includes a new commitment to providing an Emissions Mitigation Assessment although it is unclear how any mitigation arising from that assessment is then secured. The REAC needs to be strengthened in this respect.

As noted in paragraph 4.4.15 of TDC's Local Impact Report [REP3-010], Requirement 7 of the draft dDCO refers to an Operation Environmental Management Plan (OEMP) in which air quality management is a single chapter. Currently, the Requirement does state that the OEMP requires approval from either the Secretary of State or the relevant local planning authority. Moreover, Requirement 7 (2)(a) states the OEMP must contain chapters or separate action plans 'addressing' a list of aspects but the draft dDCO defines 'address' as "any number or address for the purposes of electronic transmission". Therefore it is unclear whether the OEMP will provide sufficient mitigation and how that would be controlled. It is envisaged

that a Section 106 agreement would secure funding for a continuous air quality monitoring stations and the use of dispersion modelling to ensure the proposed mitigation measures are effective. As set out in section 4.13, TDC considers that the OEMP should be a Document to be Certified, with TDC being the relevant approval body.

If further clarification is required then please do not hesitate to contact me on the information at the top of this letter.

Yours sincerely

Iain Livingstone
Planning Applications Manager
Thanet District Council

APPENDIX 1 - DCO.4.23 Part 2 - Procedure for discharge of requirements - Agreed Wording

Schedule 2 Part 2

1.— Applications made under requirements

(1) Where an application has been made to a relevant planning authority for any consent, agreement or approval required by a Requirement (including consent, agreement or approval in respect of part of a Requirement) included in this Order the relevant planning authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with—

(a) where no further information is requested under paragraph 1(2), the day immediately following that on which the application is received by the authority;

(b) where further information is requested under paragraph 1(2), the day immediately following that on which further information has been supplied by the undertaker; or

(c) such longer period as may be agreed in writing by the undertaker and the relevant authority.

(2) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(3) Where an application has been made under paragraph 1(1) the relevant planning authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(4) If the relevant planning authority or a requirement consultee considers further information is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(5) If the relevant planning authority does not give the notification mentioned in sub-paragraph (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

2.— Fees

(1) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a Requirement, the fee for the discharge of conditions attached to a planning permission contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 35 days of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within 8 weeks from the date on which it is received, unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application; or

(c) a longer period where a longer time for determining the application has been agreed pursuant to paragraph 1(1)(c)

3.— Appeals

(1) The undertaker may appeal if—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by—

(i) a Requirement and any document referred to in any Requirement; or
(ii) any other consent, agreement or approval required under this Order,
or grants it subject to conditions to which the undertaker objects;

(b) the relevant authority does not give notice of its decision to the undertaker within the period specified in paragraph 1(1);

(c) having received a request for further information under paragraph 1(3) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) having received any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The procedure for appeals is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 1;

(b) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);

(b) the undertaker must on the same day provide copies of the appeal documents to the relevant planning authority and the requirement consultee (if applicable);

(c) as soon as is practicable after receiving the appeals documents the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and notify the appeal parties

of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;

(d) the relevant authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

4.— Outcome of appeals

(1) On an appeal under paragraph 3, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(5) Any consent, agreement or approval given by the appointed person pursuant to this paragraph is deemed to be an approval for the purpose of part one of this Schedule as if it had been given by the relevant planning authority.

(6) The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid.

(9) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance or any guidance which may from time to time replace it.

5.— Interpretation of Schedule 4

(1) In this Schedule—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971; and

“requirement consultee” means any body named in a Requirement which is the subject of an appeal as a body to be consulted by the relevant authority in discharging that Requirement.