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Head Defence Airspace and Air Traffic Management (DAATM)
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1st April 2022

Dear ██████

Proposed Application for Temporary ACP – CAA Decision to consider greater than 90 day period

1. Thank you for the clarification provided in your recent letter, ref 20220302-TDA597 Request. From this we understand the MoDs specific request is:

“Exceptionally sanction the approval of the extant TDA597 for further LFEs until the permanent ACP is in place”
2. Where this is further clarified and bounded within the letter to specify the following individual activation requests:
 - a. Storm and Cobra Warrior (planned August 2022/September2022)
 - b. Cobra Warrior (planned March 2023)
 - c. Storm and Cobra Warrior (planned August 2023/September2023)
3. In assessing this request, we have considered both the background and context, where the following is a precis of our understanding:
 - a. Prior to the 27 February 2020 this type of activity was routinely conducted within that approximate area and coordinated through an Airspace Coordination Notice (ACN). This ACN outlined an airspace sharing arrangement between NATS and the MoD to facilitate these exercises. At a meeting on the 27 February 2020, NATS raised a safety concern to the CAA regarding the continued use of the ACN and its viability for use within the exercise planned for March of that year. Specific concerns were raised regarding the impact to other airspace users and the guaranteed future availability of a NATS liaison officer. The latter had been identified by NATS as a requirement, within their safety assessment as fundamental to the operation, where NATS were unable to provide assurance to the MoD of their continued availability.

NATS requested assurance from the CAA that we were content with the mitigations proposed to enable the March 2020 exercise. Post clarification of certain points including confirmation of engagement with directly affected aviation stakeholders, and assurance from NATS that a liaison officer would be available to support the March activity, the CAA was content for the activity to occur. From a medium-term perspective, the lack of plannable provision of a NATS liaison officer led to the arrangement no longer being viable. The March 2020 exercise was ultimately cancelled due to the impact of COVID-19.

- b. In response to this issue, the MoD submitted in late March 2020 a permanent change proposal to address this issue, ACP-2020-026. This ACP had an initial targeted implementation date of August 2022. This created a period from March 2020-August 2022 within which the MoD would not have been able to conduct these exercises. Accordingly, a two-phased trial, ACP-2020-0042, was submitted by the MoD and approved by the CAA on the basis this trial would help inform the design of ACP 2020-026. This is consistent with the purpose of an airspace trial. Post completion of this trial a further temporary ACP, 2021-007 was applied for and approved to account for the identified March 2022 requirement and would thus bridge the gap to the August 2022 original target implementation date. The decisions of both the temporary and trial ACP's were informed by the ongoing permanent ACP, confirming these changes were not being sought at the expense of the undertaking a permanent change. Significantly these approvals were reflective of the requirement to treat each ACP on a case-by-case basis.

Following a number of timeline change requests from the MoD, the permanent ACP-2020-026 target date has however now slipped to February 2023. Reflecting this delay a further Temporary ACP 2021-048 was submitted by the MoD for the August 2022/September 2022 exercises.

- c. The historic use of the ACN combined with the work undertaken since March 2020 supports the historic and ongoing re-equipment of access to that area of airspace by the MoD where this is not an emergent requirement, a fact highlighted within your letter
4. Considered against the specific ask however and noting the general duties of the CAA in line with Section 70 of the Transport Act, including the elements regarding National Security, it would not be appropriate to simply "sanction the approval of the TDA597 until such time as the permanent ACP is in place", rather the request must be considered against the statutory tools available to the CAA. This is due to:
- a. As noted within your letter and discussed above, this request as defined would not represent an urgent National Security requirement but is reflective of an ongoing training requirement.
 - b. Noting the clarification within the letter bounds this request to 5 specific activations, the statement as written initially could imply a pre-determination of the approval of the ACP 2020-026. Where if this approval did not occur, this could lead to a continuous expectation on the use of temporary changes. However, given clarification within the letter we have assumed that this is the actual intent of your request.
 - c. The establishment of TDA597 was the product of individual ACPs, where there are associated management processes that, although mirrored, would have been established in line with each individual ACP. The process established within previous ACPs may not be appropriate given the nature of the ask outlined within your letter. This would need to be considered holistically and

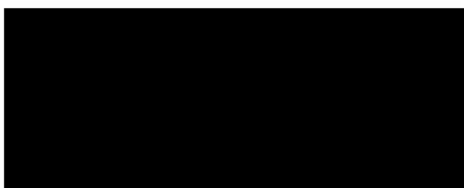
account for any changes which may have occurred in the meantime or over the course of the planned change.

- d. The CAA is required to consider potential impact of the structure established. Conformity to a recognised process will therefore enable this to be addressed transparently.
5. ACPs 2020-0042 and 2021-007 clearly identify activations have been possible and thus the question is of the suitability of an extension beyond 90 days predicated on satisfying this request being: proportionate, of an extraordinary circumstance and is not being conducted in place of undertaking a permanent ACP.
6. This last point is critical when determining the viability of a temporary change, as the process requirements for a temporary change are scaled significantly when compared to a permanent. Critically this scaling can be considered as a factor of proportionality, based upon the temporal nature of the change. A temporary change lasting beyond the 90-day period may have disproportionate impacts which have not effectively been considered due to the process being scaled accordingly. It is for this reason extensions beyond this 90-day period are by exception.
7. Considering the following therefore:
 - a. The removal of the ACN in March 2020 was not planned and therefore left the MoD in a position of being unable to conduct this exercise. It would therefore be unreasonable to expect a permanent ACP to have been able to satisfy the requirements without a gap in availability. The addition of an unplanned permanent and temporary ACPs would likely have required identification and allocation of unplanned resource which would initially impact the ability to rapidly progress an ACP.
 - b. Although not mentioned with the correspondence it is of note this issue arose at the beginning to the COVID pandemic where resources and attention could understandably have been focused elsewhere and may have played a part in the delay of the permanent ACP.
 - c. Although not intended, the MoDs intent to move to a 'permanent solution' instead of the sharing arrangement as detailed in an ACN is designed to both be more plannable and take account of the impact to other aviation stakeholders. Ultimately this reflects a more transparent course of action than the previous ACN arrangement.
 - d. Significantly based upon previous correspondence it is understood these exercises could not be undertaken within existing Danger Areas without significantly impacting the training value, thus causing significant impact to the training of frontline Military aircrew.
 - e. The MoD have submitted and are undertaking a permanent ACP 2020-026.
8. Aware of the unavoidable nature of the situation caused by the removal of the ACN combined with the historic use and ongoing requirement of access, we would be minded to consider that this would satisfy an extraordinary circumstance and an extension of a temporary change beyond 90 days may be appropriate.
9. Noting the issue raised is to address the lack of access to airspace prior to the completion of the ACP 2020-026, we would therefore propose that the current temporary ACP 2021-048 is expanded in length, to fully include the requirements listed in para 2 of this letter. Effectively we would expect submission of a temporary change

request for the establishment of a structure and associated processes, that would last until completion of the September 2023 exercise. In this instance we would not expect change to the current proposed timeline of the ACP, but would expect the engagement to reflect the full nature of the ask. This would have the benefit of ensuring the cumulative impact and nature of the activations can be appropriately understood by impacted stakeholders.

10. The acceptance of any extraordinary circumstance is clearly predicated on the temporary process not being used to avoid a permanent change. In this instance this is clearly not the case as ACP 2020-026 was started in March 2020. We would note from your letter the August 2023/September 2023 activities are due to occur after the planned decision timeline for ACP2020-026.
11. We stipulate that given the rationale provided, the understanding of this extraordinary circumstance will not extend beyond the exercise listed above. Although the ACP 2020-026 is independent to this request there is a clear link, where the progress of the permanent ACP is an integral part of the mitigation to consider the extension. You noted within your first letter that appropriate resource would be allocated to the ACP2020-026 to ensure its timely progression. We therefore request that prior to submitting ACP 2021-048, assurance is provided that the MoD will allocate this resource.
12. As mentioned in your letter this acceptance of the extraordinary requirements does not suggest a pre-disposition of a decision regarding the ACP2020-026 but is reflective of the short notice removal of the ACN which did not provide sufficient time to investigate mitigations. However, if the permanent ACP were successful, we would expect this would satisfy the MoD requirements and the temporary structure be withdrawn accordingly. Similarly, if ACP2020-026 were withdrawn or considering the inclusion of August/September 2023 activity, significantly delayed, this would call into question any extended temporary approval where we may expect the temporary structure to be withdrawn.
13. We appreciate you are not trying to circumvent the process but are caught in the unusual position of having a pre-existing arrangement being removed at short notice, contrasted against a very real and present training requirement. For the issue as identified, we believe that the above reflects a proportionate approach to addressing the issue, whilst remaining consistent with our regulatory responsibilities.

Yours sincerely,



Head of Airspace, ATM & Aerodromes
Safety & Airspace Regulation Group