

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Former Manston Airport: proposed development consent order application by Riveroak and related s53 application
Date: 08 July 2016 14:41:01
Attachments: [REDACTED]

Richard,

Please find attached a letter and corresponding enclosures in relation to the above matter, which have today been sent to you in hard copy by recorded delivery.

Kind regards,

[REDACTED]
Herbert Smith Freehills LLP
[REDACTED]

www.herbertsmithfreehills.com

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Our ref
5567/30983750
Your ref

Date
07 July 2016

By email and by post

Dear Richard

Former Manston airport: proposed development consent order application by Riveroak and related s53 application

I am writing to you on behalf of my client, Stone Hill Park Limited ("Stone Hill").

Stone Hill is the owner of the former Manston Airport site ("Site") in Kent in relation to which Riveroak Investment Corporation ("Riveroak") submitted an application under s53 Planning Act 2008 on 1 July 2016 seeking access for surveys.

For the reasons set out below, we consider that the tests under statute and guidance have not been met in relation to this application. We therefore respectfully request that the Planning Inspectorate does not accept Riveroak's application for consideration until such time as the relevant tests have been met.

1. **THE TESTS TO BE MET IN RELATION TO ANY S53 APPLICATION**
- 1.1 As you will be aware, the Secretary of State may only authorise access to land under s53 Planning Act 2008 *"in connection with a proposed order granting development consent"* (s53(1)(b)) if it appears to him that *"the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land"* (s53(2)(a)).
- 1.2 We believe that Riveroak has yet to demonstrate that their proposal is:
 - 1.2.1 "a distinct project of real substance", or
 - 1.2.2 even one which will necessarily require a development consent order.
- 1.3 We set out in sections 2 - 5 below the reasons for this view, and the significant hurdles which Riveroak must cross before it could meet these tests.
- 1.4 In addition, DCLG Guidance (referred to Advice Note five, para A7.1) requires that:
"Applicants are expected to act reasonably, first seeking to obtain relevant... permission to access land directly before seeking authorisation under these provisions. Specifically,

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applicants should only submit requests for...access to parcels of land, where they consider they have been unreasonably refused that...access." For the reasons set out in section 6 of this letter we entirely refute Riveroak's contention that Stone Hill has unreasonably refused access.

2. **ADVICE NOTE FIVE: EVIDENCE OF A "DISTINCT PROJECT OF REAL SUBSTANCE"**
- 2.1 The Planning Inspectorate's Advice Note Five suggests, by way of example, that an applicant could demonstrate that it is considering a distinct project of real substance by providing:
- (i) Details about what stage in the pre-application consultation the applicant has reached on the project;
 - (ii) Whether the applicant has given notification under s46 of the Planning Act 2008; and
 - (iii) Whether the applicant has requested a screening or scoping opinion from the Secretary of State.
- 2.2 Riveroak's covering letter to its s53 application confirms at paragraph 3.3.4 that no pre-application consultation had yet been carried out when the application was made on 1 July 2016. We note, however, that Riveroak has since launched an informal consultation process running until 5 September. We enclose a copy of the consultation document (**Enclosure A**) which gives some very high-level details of the proposed scheme.
- 2.3 No s46 notification has yet been made, as this is not possible until formal statutory pre-application consultation is about to commence.
- 2.4 Riveroak, however, lists at paragraph 3.3 of its application letter the other matters that it believes demonstrate that this is a distinct project of real substance. We acknowledge that Riveroak has recently submitted a scoping request to the Planning Inspectorate, and that this is one of the examples given in Advice Note Five which could demonstrate a 'distinct project of real substance.' However, in itself, this is not determinative.
- 2.5 The submission of a scoping report, combined with the other matters listed in paragraph 3.3 of Riveroak's letter do not demonstrate a project which is yet sufficiently well-defined or well-advanced to justify an interference with Stone Hill's right to control access to its own privately-owned land, and its right to negotiate commercial terms in respect of such access.
- 2.6 In essence, the matters listed in paragraph 3.3 amount to no more than the holding of meetings with stakeholders and the Planning Inspectorate, and the statement that instructions have been issued to consultants to prepare for a first round of (non-statutory) consultation. That consultation has now been launched but, as can be seen from the enclosed document, the consultation amounts to little more than a high-level statement of Riveroak's aspirations for the Site.
- 2.7 It is incumbent on the Planning Inspectorate to weigh against this the significant evidence set out in sections 3 to 5 below that this is not in fact a well-defined, viable or deliverable project.



3. **TRACK RECORD OF FAILURE TO PROVIDE EVIDENCE OF A "DISTINCT PROJECT OF REAL SUBSTANCE"**
- 3.1 The process which Riveroak went through in seeking to persuade Thanet District Council to promote a compulsory purchase order to acquire the Site on its behalf casts serious doubt on Riveroak's credibility and the extent to which it has developed proposals which could be said in any way to constitute a "distinct project of real substance."
- 3.2 As you may be aware, Riveroak's original intention was to pursue a planning application under the Town and Country Planning Act 1990 rather than a development consent order ("DCO"). The decision to pursue a DCO follows Riveroak's failure to persuade Thanet District Council to promote a compulsory purchase order under the Town and Country Planning Act regime.
- 3.3 Riveroak confirmed to Herbert Smith Freehills in a meeting on 23 March 2016 that the current scheme is 'no departure' from the proposals put forward to Thanet District Council.
- 3.4 We enclose a report to Cabinet prepared by Thanet District Council officers (**Enclosure B**) which summarises the Council's dealings with Riveroak in relation to the potential promotion of a compulsory purchase order to bring the Site back into use as an airfield. It is quite clear from this report that over a prolonged period and despite numerous promptings by the Council, Riveroak failed to convince Thanet District Council that there was a real prospect of the underlying scheme going ahead. Specifically, Riveroak:
- (i) refused to provide an up to date business plan as requested by the Council (para 3.6). The Council report notes that "Riveroak have had many opportunities to provide this evidence" and that "in relation to finances generally, the figures for the scheme have not been justified to the Council and the Council has not been given an opportunity to satisfy itself that those figures are reasonable. The mechanism through which that investment would occur has not been explained or what role Riveroak would have in delivering the project" (para 4.4);
 - (ii) provided a paper which purported to address "the public interest test and, as part of this, the other tests that needed to be satisfied; the planning test, the wellbeing test, the financial test and the necessity test". However, the Council's report notes that the paper "lacks detailed evidence, which [Riveroak suggested] will be provided in the future and suggests that Council officers are better placed than Riveroak to comment on whether the planning and well-being tests are met";
 - (iii) failed to provide any legally binding financial backing for the cost of acquiring the Site via compulsory purchase, and maintained that any such upfront bond was not "economically nor commercially viable [...] and is absolutely not required by governing law" (para 3.27). The Planning Inspectorate would, I am sure, agree with the Council that some form of binding legal commitment to pay the full cost of Site acquisition is required where compulsory purchase powers are to be granted and the fact that this is not recognised by Riveroak is somewhat surprising; and
 - (iv) failed to provide the Council with any commitment that Riveroak would request the exercise of the compulsory purchase powers within a set period of time. At paragraph 3.29, it is noted that Riveroak admitted that "they would need time after confirmation of the CPO to secure and document the funding for the project". The Council report notes that "this could see the airport lying dormant for potentially five years".



- 3.5 We believe that what the Council refers to in their report as "Riveroak's track record of failing to provide necessary information" is highly relevant to the judgement that the Planning Inspectorate and Secretary of State is required to make in relation to whether any s53 application relates to a "distinct project of real substance."
- 3.6 Clearly, the Council was judging Riveroak against the tests required for promotion of a compulsory purchase order rather than the tests for access under s53 Planning Act 2008. However, evidence of Riveroak's behaviour and its failure to convince the Council that it had robust and credible plans to reopen the airfield must be a material consideration in deciding whether the test for s53 authorisation is met.
- 4. RIVEROAK'S PROPOSALS MAY NOT MEET THE CRITERIA FOR A DCO**
- 4.1 We note that on the Planning Inspectorate's register of s51 advice, a query has been raised as to: "How is Manston Airport a Nationally Significant Infrastructure Project (NSIP)?" The Planning Inspectorate's response is that: *"Whether or not the proposed Manston Airport is an NSIP depends upon whether it meets the definition contained in the Planning Act 2008. Airport development is capable of being an NSIP, depending upon its capacity and other factors, and the Applicant has told us that the scheme they propose will be an NSIP. Since no application has yet been made, we cannot say definitively whether or not this particular proposal is an NSIP."*
- 4.2 We agree with this statement. The fact that the scheme is at such an early stage of development, leaves great uncertainty as to whether Riveroak's proposals will ultimately meet the test under s23(5)(b) – ie *"that the proposed development will increase 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."*
- 4.3 Until Riveroak's proposals have been further developed and consulted upon we do not consider that they could be said to meet the test of being a "distinct project of real substance", justifying statutory access to private land.
- 4.4 It may be that after having developed their proposals with the benefit of consultation, Riveroak finds that the Site will not in fact be capable of supporting cargo movements at a level requiring a development consent order. While the proposed masterplan may (or may not) suggest that the Site can physically accommodate 10,000 cargo movements on the ground, issues such as airspace design (flight paths), transport connectivity or noise may mean that it is not possible to accommodate this level of use within limits which are acceptable to stakeholders in environmental and land use planning terms. These issues are complex and will require detailed technical consultation with the Civil Aviation Authority, Kent County Council, the Environment Agency and others.
- 5. THE PROSPECT OF COMPULSORY PURCHASE POWERS BEING GRANTED VIA A DCO IS A MATERIAL CONSIDERATION**
- 5.1 In order to carry out their proposals, Riveroak will need a development consent order which not only authorises construction of the project but also authorises compulsory purchase of the entire Site from its existing owners, Stone Hill.
- 5.2 Stone Hill has previously obtained Counsel's opinion that the likelihood of compulsory purchase being supported by the Secretary of State is "virtually inconceivable". A copy of the Opinion is enclosed (**Enclosure C**). We would draw your attention in particular to paragraphs 37 and 38. While this Opinion was given in relation to Riveroak's previous proposals before Thanet District Council, we are highly sceptical that any revised proposals



will substantially change Counsel's analysis in relation to the likelihood of such powers being granted under a DCO.

- 5.3 Since that Opinion was provided, Stone Hill has itself submitted a planning application to redevelop the Site to provide 2,500 new homes, a business park and large scale recreational facilities. The fact that Stone Hill has well advanced proposals to develop its own Site in a way which would bring significant economic, environmental and social benefits that are realistic and deliverable makes it even less likely that the Secretary of State would consider that granting compulsory purchase powers to Riveroak was in the public interest.
- 5.4 In deciding whether to entertain a s53 application, the extreme unlikelihood of the Secretary of State granting compulsory purchase powers to Riveroak under a development consent order should be a material consideration, as this relates directly to whether the project is a "distinct project of real substance". Without the grant of compulsory purchase powers, Riveroak's proposals are undeliverable.

6. NO UNREASONABLE REFUSAL OF ACCESS

- 6.1 As you will be aware, the Human Rights Act 1998 ("HRA") expressly incorporates Article 1 of the first protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms which guarantees the peaceful enjoyment of property. Any interference by the state with that must be in pursuit of the public interest, be in accordance with law and proportionate. We believe that the HRA would be breached if the Secretary of State were to make a determination of the s53 application at the current time as it would hamper proper negotiations which Stone Hill has a right to conduct, and as such is not proportionate or in the public interest.
- 6.2 You will note that Riveroak has offered to conduct private negotiations in parallel to pursuing its s53 application (see Bircham Dyson Bell's letter dated 9 May 2016). Their letter states:
- "While our client still wishes to resolve this matter consensually it feels compelled to protect its position. Consequently, if the licence is not agreed by Friday 13 May 2016, our client will submit an application to obtain rights of entry onto the Site pursuant to Section 53 of the Planning Act 2008. For the avoidance of doubt our client will still seek to resolve the matter through agreement with your client, even once the s.53 application process is set in train."*
- 6.3 The offer to negotiate privately in parallel to the s53 determination process was repeated in Bircham Dyson Bell's letters to Stone Hill and Herbert Smith Freehills on 1 July 2016.
- 6.4 However, this approach misunderstands the clear guidance set out in the Planning Inspectorate's Advice Note 5, which quotes the statement in the DCLG Guidance that: *"Applicants are expected to act reasonably, first seeking to obtain relevant... permission to access land directly before seeking authorisation under these provisions. Specifically, applicants should only submit requests for...access to parcels of land, where they consider they have been unreasonably refused that...access."*
- 6.5 The s53 process envisages that negotiations are exhausted before an application for s53 authorisation is made. The fact that Riveroak is willing to continue negotiations in parallel with pursuing the s53 application in itself indicates that such negotiations have not been exhausted and that an application is premature.
- 6.6 In any event it is quite clear that Stone Hill has acted reasonably since being first approached by Riveroak just 5 months ago (on 8 February 2016). In particular, we do not



consider it unreasonable for Stone Hill to have taken 4 weeks to reply to the draft licence and survey details received on 8 April. Riveroak themselves had taken two and a half weeks to provide this information to Stone Hill following the meeting of 23 March, and it was necessary for Stone Hill to obtain the views of its various consultants and to take legal advice before responding.

- 6.7 In our view it is Riveroak whose behaviour has been unreasonable. Substantive responses to the points in our letter of 5 May were not received until 14 and 15 June (the letter received on 15 June having been apparently sent on 23 May but not received until Herbert Smith Freehills was alerted to its existence by the letter of 14 June, at which point a copy was sent to us by email). We enclose a copy of this letter dated 23 May 2016 (**Enclosure D**) as this appears to have been missed from the application bundle.
- 6.8 In the interim, the immediate response we received was a short letter dated 9 May threatening that unless a licence was agreed within 4 days (by Friday 13 May) a s53 application would be made. Clearly, given the issues raised in our letter of 5 May (which remained unanswered until mid-June) Riveroak would have been aware that it was wholly unrealistic to suggest that a licence could be agreed by 13 May. The fact that Riveroak's solicitors were threatening proceedings at that stage demonstrates that Riveroak has not entered into these negotiations on a constructive basis.
- 6.9 Riveroak's s53 application to the Planning Inspectorate was made on 1 July 2016, barely 2 weeks after we received responses to all of the points raised in our letter of 5 May 2016. Riveroak did not enclose a proposed mark-up of the licence, but invited us to prepare the next draft.
- 6.10 Given that Riveroak themselves had taken nearly 6 weeks to respond to the points we had raised in respect of the draft licence, it seems somewhat unreasonable that they would not wait more than 2 weeks for our response and mark-up.
- 6.11 We have since responded to Bircham Dyson Bell with a detailed letter and mark-up of the licence (**Enclosures E.1 and E.2**, dated 7 July 2016). To produce that response it was necessary to get input from several members of the client team and their consultants, and to consider the impact of the scoping report and s53 application (received only recently). As we have made clear in our letter to Bircham Dyson Bell, we remain committed to private negotiations should they agree to withdraw their s53 request.

7. CONCLUSION

- 7.1 In summary, we have significant concerns about the lawfulness of the Planning Inspectorate entertaining Riveroak's s53 application at the present time.
- 7.2 It cannot be right for a commercial company such as Riveroak to be granted access on a compulsory basis to private land under s53 merely by:
- 7.2.1 asserting an intention to submit a DCO application for a project which they claim will meet the thresholds for a DCO project;
 - 7.2.2 asserting that access is urgently required, in order to meet its own commercially driven programme to submit a DCO application by the early next year; and
 - 7.2.3 asserting that its proposals are viable and deliverable.
- 7.3 As set out above, there is little or no evidence to substantiate these assertions – partly because Riveroak's plans are at such an early stage of development, and partly because



what evidence there is points to the fact that Riveroak's plans could not in any way be considered a "distinct project of real substance."

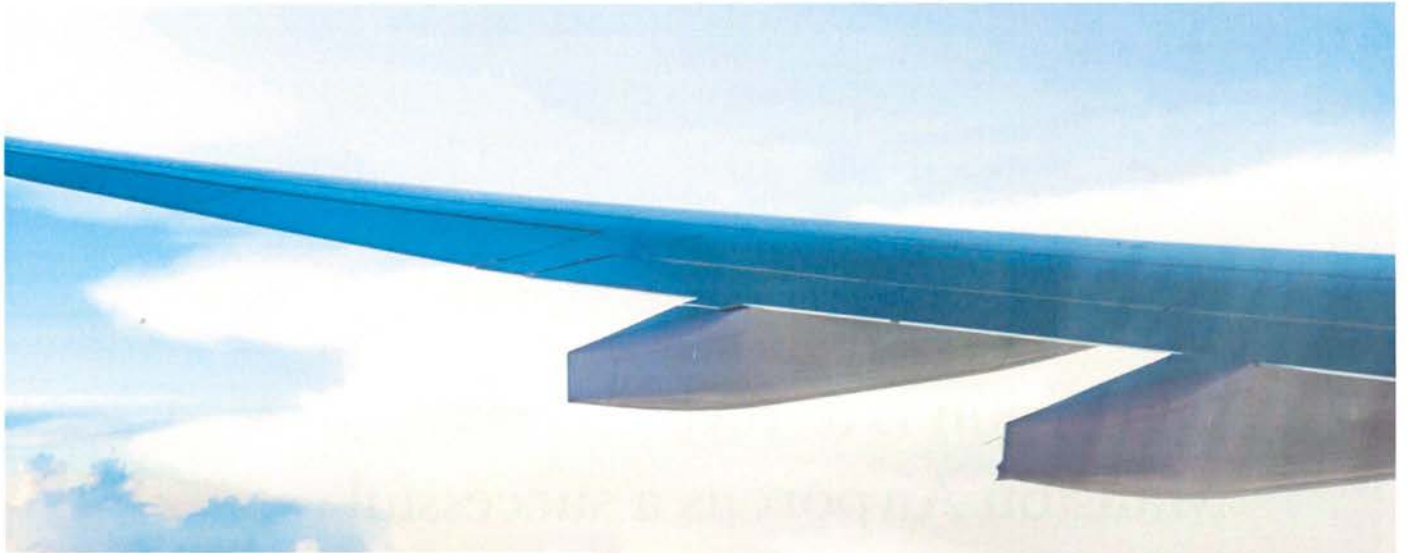
- 7.4 It is relevant to note that there is no national policy which identifies a national need to develop the Site for air cargo at the level of 10,000 movements a year or otherwise. The urgency to submit the application must, we assume, be purely commercially driven.
- 7.5 It is inequitable for Riveroak to be allowed to use the exceptionally tight programme which it has set itself for submission of a DCO application as the benchmark against which to measure the reasonableness or otherwise of Stone Hill's engagement in relation to licence negotiations.
- 7.6 It is quite clear that for a major airport proposal of the sort envisaged, a much more substantial timeframe will be required to properly develop and consult upon masterplan proposals ahead of submission of any DCO application. We therefore suggest that no weight should be attached to Riveroak's aspiration to submit an application by early next year, as this would require a purely 'tick box' approach to consultation which does not comply with the spirit of the consultation requirements under the Planning Act 2008.
- 7.7 In any case, for the reasons set out in section 6 above, it is clear that Stone Hill has not unreasonably withheld access to the Site. If Riveroak intended to submit a DCO application by early 2017, it was incumbent upon them to commence negotiations with Stone Hill at an earlier date which would have given time for commercial negotiations to take place in a more reasonable timescale.
- 7.8 For these reasons, we respectfully request that the Planning Inspectorate directs Riveroak to engage in genuine and meaningful negotiations with Stone Hill before any application under s53 Planning Act 2008 will be accepted for determination.
8. **COMMENTS ON S53 APPLICATION**
- 8.1 In the event that the Planning Inspectorate decides to progress Riveroak's s53 application immediately, we reserve the right to submit further comments in due course.

Yours sincerely



Partner
Herbert Smith Freehills LLP

Cc [Redacted] Bircham Dyson Bell




Manston Airport

Kent's international freight
and passenger airport.

A blueprint for success.





Our vision is to revive
Manston Airport as a successful
hub for international air freight,
of national significance to the
UK, which also offers passenger,
executive travel and aircraft
engineering services.



Introduction

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1 Introduction

RiverOak Investment Corporation (RiverOak) is fully committed to reviving Manston Airport as a successful hub for international air freight which also offers passenger, executive travel and aircraft engineering services. We have demonstrated this commitment across two years of campaigning to purchase and reopen the airport and our commitment has never wavered.

Manston Airport is a unique facility with an illustrious history as a Battle of Britain Airfield and a promising future as a vibrant airport. However, it needs the right commercial appetite, investment and operation to work and we believe we have assembled these important components.

The air freight market is ripe for an alternative to the overcrowded London airports system. RiverOak believes that Manston's accessibility, long runway and community support represent the strongest option available to Government to increase runway capacity in the Southeast for air freight. The airport will serve air freight operators, ease congestion, improve resilience and boost economic growth in Kent.

Given the scale of the proposed redevelopment of Manston Airport, the plans are considered to be a 'nationally significant infrastructure project' within the meaning of the Planning Act 2008. This means that RiverOak will be making an application to the Planning Inspectorate for a Development Consent Order (DCO) to be granted by the Secretary of State for Transport.

An important part of the DCO process is to consult widely with all interested stakeholders. This document sets out, in broad terms, our proposals for Manston and the work that RiverOak and its professional team will be undertaking to prove the business, economic and environmental case for reviving Manston as an operational airport.

A feedback form can be found at the back of this document and RiverOak encourages all those with an interest in the future of Manston Airport to send in their questions, thoughts and ideas.

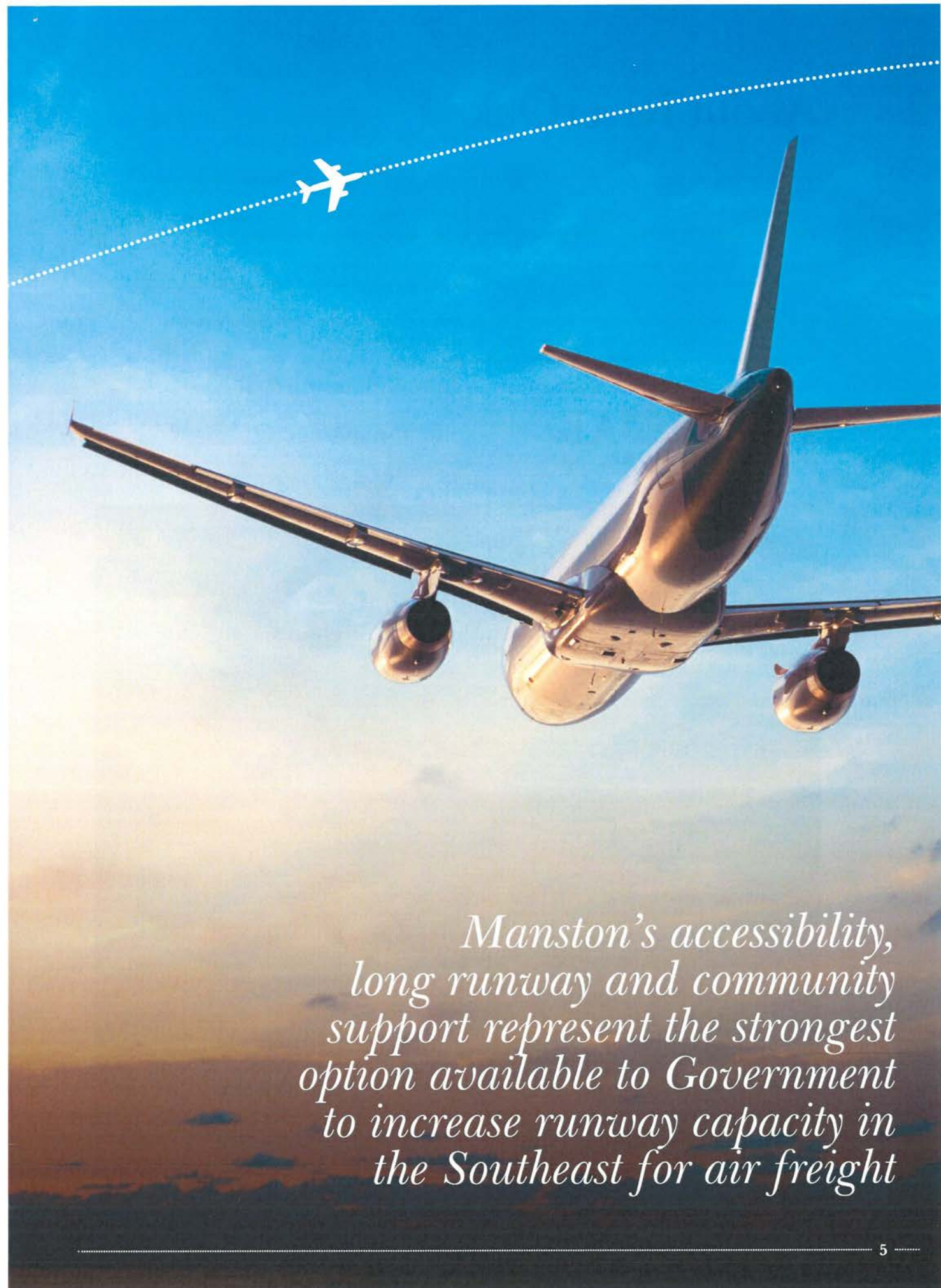
The deadline for responses is Monday 5th September 2016

We really want to hear your views. This is a chance to revive Manston Airport for future generations, preventing the loss of a vital piece of national transport infrastructure - of which there is an acknowledged shortage in the Southeast - and creating a powerful economic stimulus, not only for Thanet but the whole of Kent.

On behalf of the whole RiverOak team, we look forward to hearing from you.

George Yerrall
RiverOak Investment Corp





*Manston's accessibility,
long runway and community
support represent the strongest
option available to Government
to increase runway capacity in
the Southeast for air freight*

2

About RiverOak

RiverOak Investment Corporation LLC is an American investment group based in Connecticut in the USA.

For more than two decades, RiverOak has built its investment business and reputation on being able to find, research and invest in the types of assets that typically achieve above-average, risk-adjusted returns.

RiverOak is increasingly developing European investment opportunities and, in the UK, has been campaigning to re-open Manston Airport in Kent as a hub for international air freight for more than two years.

RiverOak has a reputation for flexibility regarding the duration of its investments. In the case of Manston Airport, RiverOak and its capital partners are looking to purchase and invest in Manston for the long term, including investing in an experienced operating team for the airport.

RIVER  **AK**
INVESTMENT CORP., LLC



3 Our proposals for Manston Airport

The objective of our masterplan for Manston Airport is to provide an integrated aviation services hub. The main feature will be a major international centre for air freight that is capable of handling a minimum of 10,000 air freight Air Traffic Movements (ATMs) per annum.

10,000 ATMs a day equates roughly to 14 return services a day.

Additional facilities proposed include:

- a base for at least one passenger carrier;
- an aircraft recycling and engineering facility;
- a flight training school;
- a fixed base operation for executive travel; and
- business facilities for aviation related organisations.

Our Masterplan, which can be found on page 8 shows how we propose to utilise the existing airport infrastructure and incorporate new facilities.

Improvements and upgrade works to the existing infrastructure will ensure these facilities can accommodate the intended number of aircraft movements. Additional facilities will include aircraft stands, cargo buildings, internal access roads and parking areas.

The design solution proposed ensures these facilities can be developed through a phased approach, enabling a sustainable development that minimises the impact on the local community. For example, the new airside development will minimise the movement of material on and off site and a proposal for a new permanent, dedicated airport access on Spitfire Way will help to reduce airport related traffic on the local road network.

We would like to hear views and comments on our proposed Masterplan now, before we have fully prepared our application and environmental assessment. Details of how you can send us your views are given at the end of this document.

Why Manston?

Manston Airport has one of the longest runways in the UK, comparable to other International airports, making it a valuable infrastructure asset. Manston first operated in May 1916, just over 100 years ago, but closed on 15 May 2014.

Manston is the only real choice for the location of a cargo airport in the Southeast of England. It already has a runway comparable to other International airports in the UK and was an operational airport until just over two years ago. Consequently, services could be reintroduced quickly to address a recognised market need.

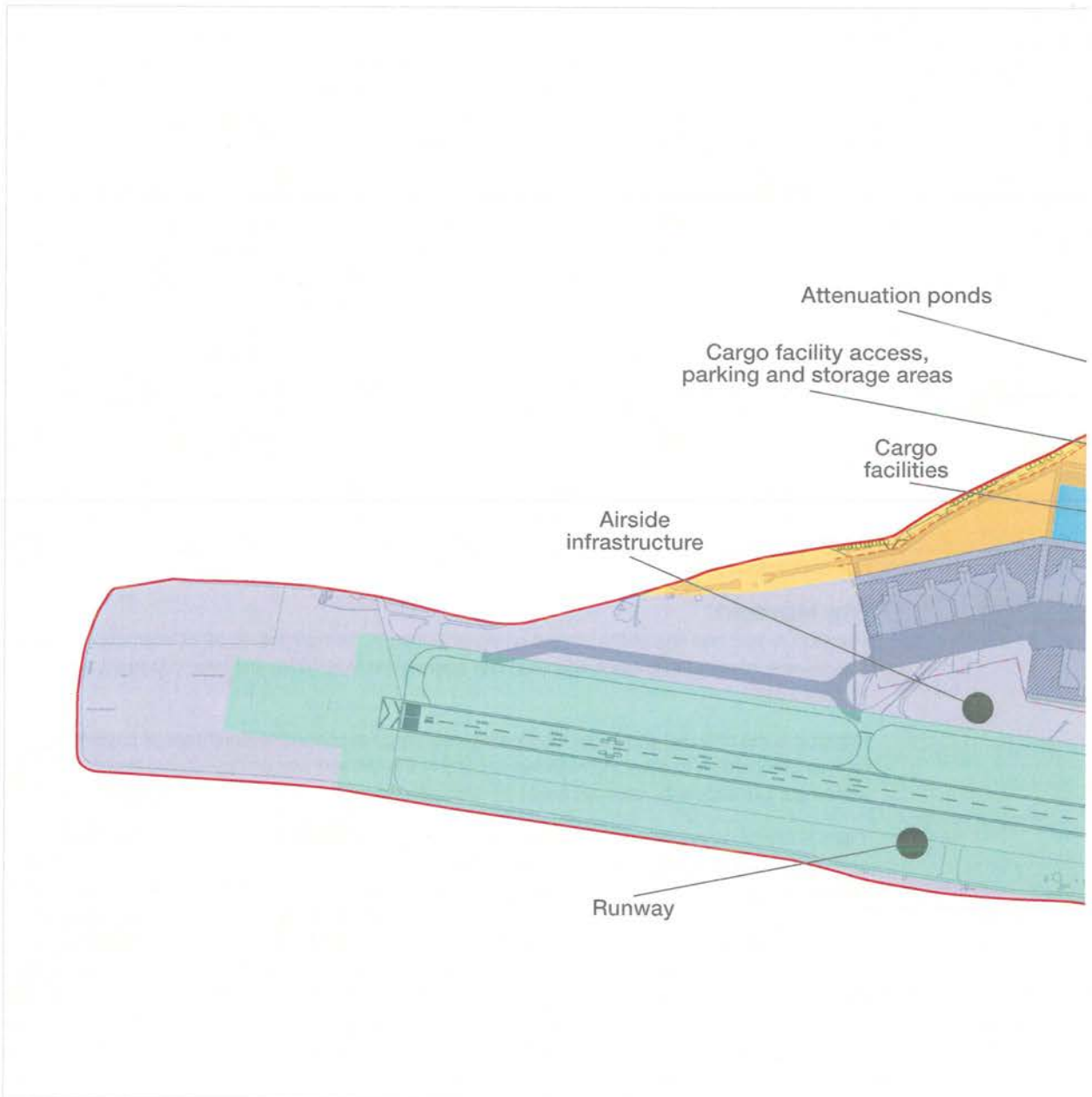
There is already considerable pent-up demand for Manston Airport. Our research shows that air cargo operators in particular are keen to be able to use a facility in the Southeast of England without the restrictions on aircraft slots that exist at other airports. Market demand is for an airport where perishable and time sensitive goods can be moved quickly to and from aircraft. Increasingly, freight carried in the hold of passenger aircraft (known as belly hold freight) is being 'bumped' (unable to be carried) with some freight forwarders reporting this occurring up to four times per shipment. This causes considerable delays and, where the shipment contains essential parts for engines or aircraft, for example, huge economic losses. The move from Boeing 747s to Airbus 380s – aircraft that carry less belly hold freight – is exacerbating this problem. These and other market and technological issues are likely to stimulate demand for dedicated air freighter transport and a cargo-based airport to serve them.

The majority of UK air freight currently routes through London but, without slots available at the London airports, Manston is the obvious choice to meet the growing demand in the air freight market.

Manston also has the benefit of being located in close proximity to European cities, such as Paris, Amsterdam, Brussels and Frankfurt which minimises flight journey times. Additionally, it is in close proximity to the Kent ports, the Channel Tunnel and excellent links with the UK motorway network – thereby providing an international gateway function for Kent and the UK.

The Freight Transport Association in partnership with Transport for London, is forecasting a shortfall in air freight capacity of some 2.1 million tonnes by 2050.

This is a vast amount of freight that will have to be diverted elsewhere and probably to airports outside the UK – to Paris, Amsterdam and Frankfurt – causing even more congestion for the Channel crossings and for the East Kent road network. In terms of value, Oxford Economics suggests that this loss of air freight to the UK would amount to £106 billion per annum with net national losses of around £3.9 billion per annum.

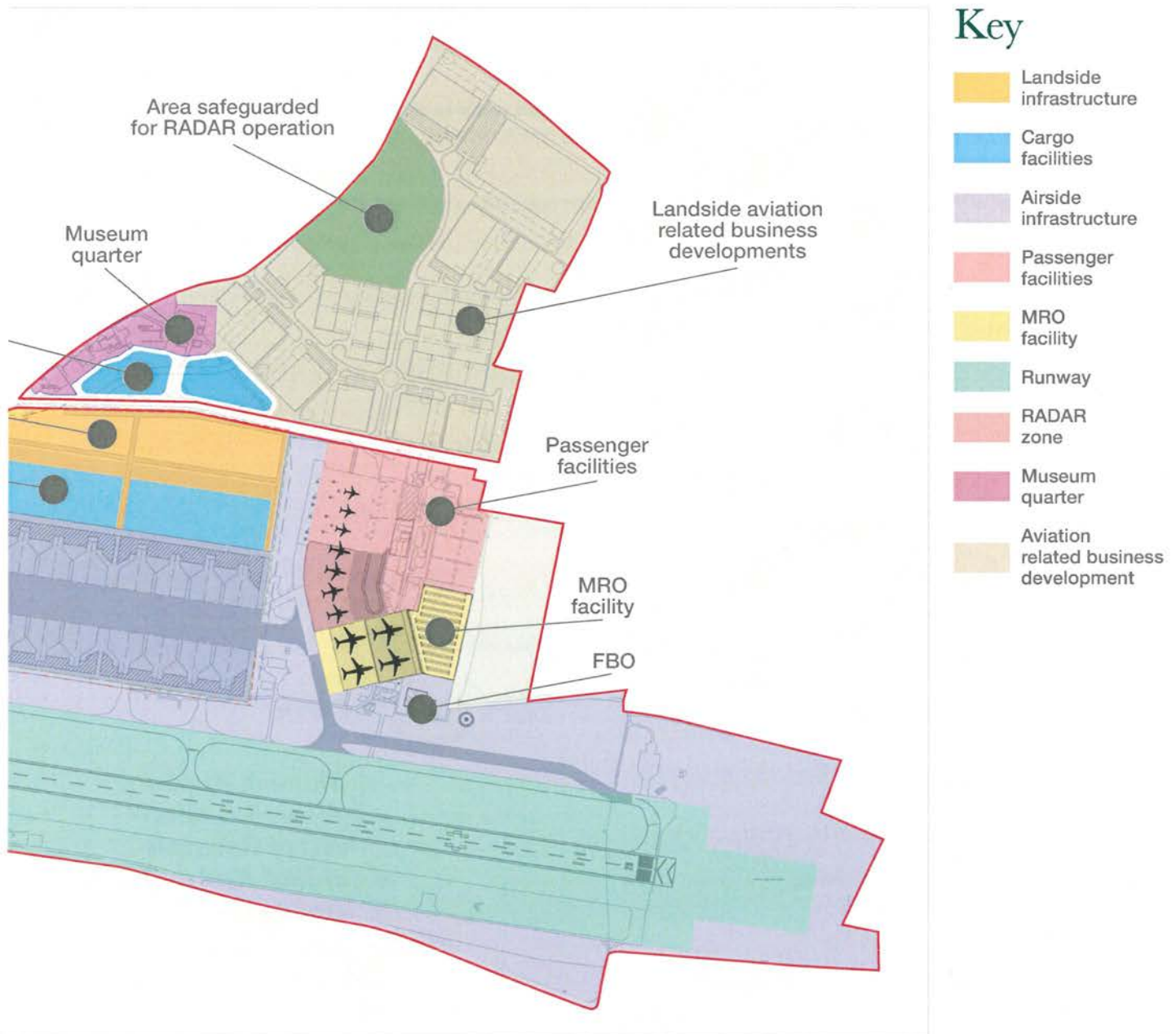


For passenger carriers, although we are not proposing to develop the passenger facilities at this initial stage, Manston Airport is likely to attract a number of long and short haul carriers when re-opened. In particular, we hope a low cost service will provide access to international destinations from the recommencement of operations.

There are many opportunities to open up markets for passenger flights including to Europe, as well as providing a service to more traditional destinations for the local catchment area. Additionally, passengers from the US joining cruise ships at Dover could arrive at Manston to enjoy a fast transit from their aircraft to their cabin, where their baggage awaits them.

A museum quarter

RiverOak is committed to celebrating the history of Manston by retaining and developing its important educational facilities. Our proposals will therefore also include the relocation and enhancement of the existing Spitfire and Hurricane Memorial Museum into a possible 'museum quarter' that would boost the visitor potential of this and the RAF Manston museum in addition to retaining a strong historical association with the site. We also propose to incorporate the old air traffic control tower as part of the museum quarter.



An accessible location

Manston Airport is 5.6 km (3.6 miles) west of Ramsgate in East Kent and is ideally situated in the Southeast of England close to London, connected by dual carriageway to the M25.

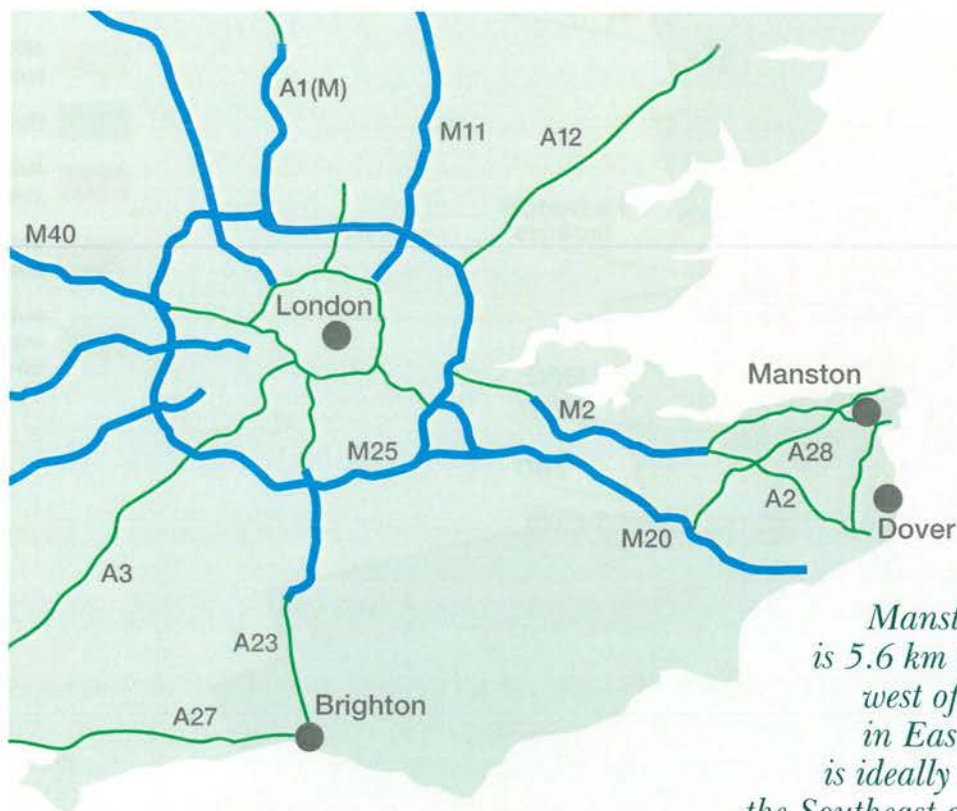
The airport site is wholly within the administrative areas of Thanet District Council and Kent County Council. Easily accessible to the M2 via the A299, which lies immediately to the south of the site, the airport has good road links - with dual carriageways from London and the Channel ports. Ramsgate New Port is 6.4km (4 miles) away from the airport. Dover Port is 33.7km (20.3 miles) away and the entrance to the Channel Tunnel is 51.5 km (32 miles) from the airport.

Minor road upgrades at the site may be required but no other major road improvements to the strategic road network will be needed. In order to accommodate the additional truck movements generated by the increased levels of cargo traffic, RiverOak is considering whether to upgrade the B2190 Spitfire Way and B2050 Manston Road junction and to dual the carriageway from the B2190 Spitfire Way/Columbus Avenue roundabout to the new airport entrance further east along Spitfire Way.

The Kent Coast railway line (from Dover to Margate and on to London) runs close to the site. The site is located close to several railway stations. It is 4km (2.5 miles) northeast of Minster; 5.5km (3.5 miles) west of Ramsgate and 7.2km (4.5 miles) to the southeast of Margate. When the new Thanet Parkway Railway Station is constructed, it will be just 1.6km (1 mile) to the south of the airport.

A shuttle bus would be laid on between the airport and Ramsgate station (and, in time, Thanet Parkway station) for passengers travelling by rail. The average journey time from Ramsgate to St Pancras is 1 hour 32 minutes, with an average of 72 trains per weekday.

As part of the DCO, a package of sustainable transportation options for airport staff and visitors will be included.



Manston Airport is 5.6 km (3.6 miles) west of Ramsgate in East Kent and is ideally situated in the Southeast of England close to London, connected by dual carriageway to the M25.

Manston is in close proximity to the Kent ports, the Channel Tunnel and has excellent links with the UK motorway network – offering an international gateway for Kent and the UK



4

How do the plans fit with national and local planning policy?

Our proposals for Manston Airport are in line with both local and national planning policy in that they propose the sustainable development of an important brownfield site and retention of an existing nationally significant infrastructure asset. The proposed scheme will also significantly improve the UK's ability to handle air cargo.

National policy

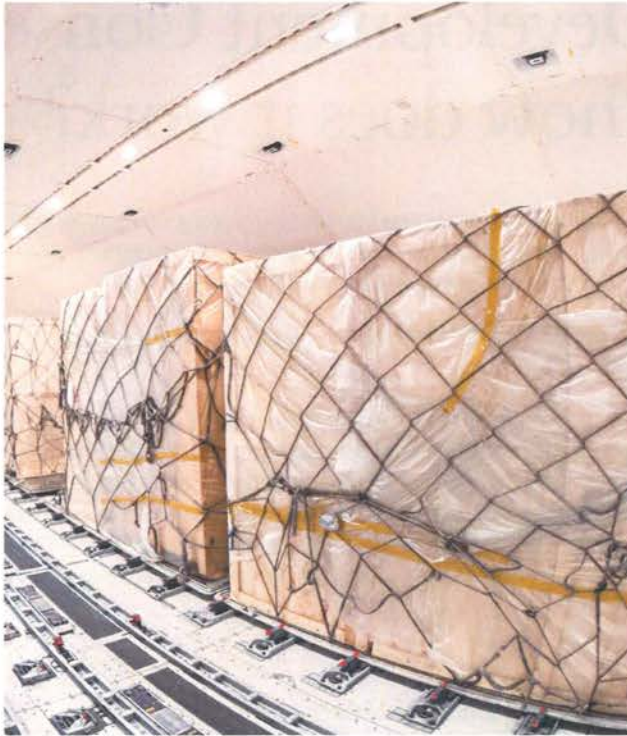
At present, much air cargo destined for the UK arrives at nearby airports in other countries and is taken by road through the Channel Tunnel to the UK. Similarly, much UK export cargo is trucked through the Tunnel to be flown out of airports in Northern Europe. In particular, trucks travel to and from Paris, Amsterdam and Frankfurt. The frequency of these journeys is increasing and it is expected that more than 2 million tonnes of air freight cargo will be moved a year by 2050 between these European destinations and the UK, potentially equivalent to some 100,000 truck movements per year.

Just as the UK does not want airport hub capacity for passengers to move overseas for economic reasons, we believe that Manston Airport represents the right opportunity to create a dedicated and viable cargo airport in the Southeast rather than losing opportunities to and having to rely on provision in other countries. This would be of significant benefit to the UK economy.

Although air freight carries a small proportion of UK trade by weight, it is particularly important for supporting export-led growth in sectors where the goods are of high value or are time critical. Air freight is a key element of the supply chain in the advanced manufacturing sector in which the UK is looking to build competitive strength.

The proposed scheme for Manston Airport would be a Nationally Significant Infrastructure Project (NSIP) under the terms of the Planning Act 2008 and requires a Development Consent Order. Specifically for Manston Airport, this is because the project development increases its capacity by at least 10,000 air cargo movements per annum. For that increase in capacity, it is compulsory for RiverOak to use this consenting regime to secure the planning permission we need. In introducing the new regime for granting consent for NSIPs, the Planning Act 2008 gave promoters the ability to pursue a comprehensive, 'one-stop-shop' approach. The Act also allows the Secretary of State to confer compulsory purchase powers.





Local policy

Saved Policies in the adopted 2006 Thanet Local Plan

It is the Council's firm view that the airport should play an important part in the economic regeneration not just of Thanet but of the whole of East Kent. The Council's policy is to fully support the development of Kent International Airport (Manston Airport) and additionally, to exploit the opportunities afforded by the development of the airport to encourage further development in the adjoining business parks, thus creating a major catalyst for the regeneration of the Thanet economy.

The Council further states that the Local Plan policy framework should neither hold back the growth of the airport, nor inhibit inward investment. Indeed, the Council views the airport as a developing cluster for manufacturing and research, and high technology enterprise.

Draft Thanet Local Plan to 2031 - Preferred Options Consultation (January 2015)

The January 2015 draft Local Plan was published after the airport had closed in 2014. Nonetheless, it is clear that the Council is still very supportive of ensuring Manston Airport functions as a local regional airport.

Strategic Priority 1 in the emerging Local Plan is to create additional employment and training opportunities, to strengthen and diversify the local economy and improve local earning power and employability. To achieve this, the Council states that it will support the sustainable development and regeneration of Manston Airport to enable it to function as a local regional airport, providing significant new employment opportunities, other supporting development and improved surface access subject to environmental safeguards or as an opportunity site promoting mixed-use development that will deliver high quality employment and a quality environment.

The draft Local Plan also includes policies to safeguard the operational capability of Manston Airport. The Council fully recognises that a successful airport has the potential to be a significant catalyst for economic growth. It states very clearly in the new Plan that it can continue to support proposals that would maintain the operational part of the airport to encourage future air travel and aviation-related operation at Manston (Policy SP05).

A successfully operating airport at Manston (for handling freight and passengers) is further recognised by the Council as being important alongside the major seaport at Ramsgate and High Speed Rail, in allowing Thanet to provide an international gateway function to boost economic development across the region.

5

What is a Development Consent Order and how does it work?

The Planning Act 2008 process was introduced to streamline the decision-making process for nationally significant infrastructure projects, making it fairer and faster for communities and developers alike. The act can also confer compulsory purchase powers on the relevant Secretary of State.

The 2008 Act was amended by the Localism Act 2011, and the key stages in the process are:

Pre-application

The process begins when the Planning Inspectorate is informed by a developer that it intends to submit an application to it in the future. Before submitting an application, the developer is required to carry out extensive consultation on their proposals. The length of time taken to prepare and consult on the project will vary depending upon its scale and complexity. Responding to our pre-application consultation is the best time to influence a project, whether you agree with it, disagree with it or believe it could be improved. There will be another formal consultation opportunity in the autumn when our plans and environmental assessment are more advanced.

Acceptance

The acceptance stage begins when we submit a formal application for development consent to the Planning Inspectorate. There follows a period of up to 28 days (excluding the date of receipt of the application) for the Planning Inspectorate, on behalf of the Secretary of State, to decide whether or not the application meets the standards required to be formally accepted for examination.

Pre-examination

At this stage, the public will be able to register with the Planning Inspectorate and provide a summary of their views of the application in writing. At pre-examination stage, everyone who has registered and made a relevant representation will be invited to attend a preliminary meeting run and chaired by an Inspector. This stage of the process takes approximately three months from our formal notification and publicity of an accepted application.

Examination

The Planning Inspectorate has six months to carry out the examination. During this stage, people who have registered to have their say are invited to provide more details of their views in writing. Careful consideration is given by the panel of Inspectors ('the Examining Authority') to all the important and relevant matters, including the representations of all interested parties, any evidence submitted and answers provided to questions set out in writing and explained at hearings.

Decision

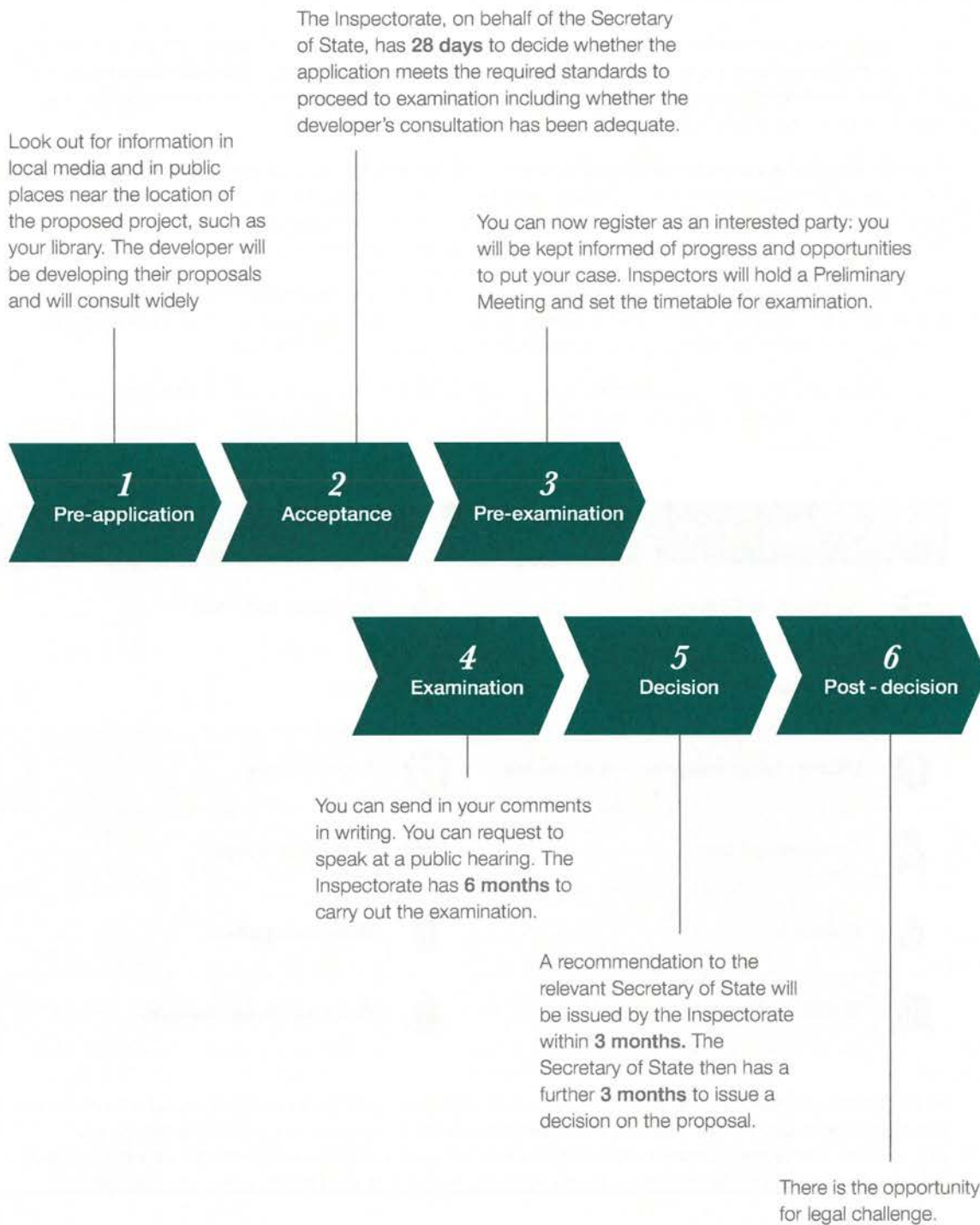
The Planning Inspectorate must prepare a report on the application to the Secretary of State for Transport, including a recommendation, within 3 months of the six-month examination period. The Secretary of State then has a further 3 months to make the decision on whether to grant or refuse development consent.

Post decision

Once a decision has been issued by the Secretary of State, there is a six-week period in which the decision may be challenged in the High Court. This process of legal challenge is known as Judicial Review.

The application process.

The six steps



6 The likely impacts of airport operations













Assessing the effects of a redeveloped and reopened Manston Airport on Thanet and the wider East Kent area covers a number of broad areas.

From an economic perspective, an airport is a proven economic catalyst and multiplier, providing not only a direct benefit from jobs at the airport site but indirect benefits through the supply chain with service contracts and jobs in the wider region connected to the airport operation. Thanet District Council fully recognises the important role of the airport in its Local Plan.

A revived Manston Airport will have considerable economic benefits for the local area and further afield. When fully operational, the airport is eventually expected to support around 4,000 jobs in Thanet and East Kent, many of which will be skilled roles. This does not take into account the additional 'spin-off' benefits that the airport will create including attracting airport-related uses to the local area.

RiverOak takes its responsibility to assess, manage and mitigate any environmental impact from Manston Airport extremely seriously and has commissioned a comprehensive Environmental Impact Assessment to understand the effects of constructing and operating a redeveloped Manston Airport.

The Environmental Impact Assessment will collect baseline data for a range of environmental and social topics and then undertake an assessment to determine what, if any, significant effects will occur as a result of the airport reopening.

Topics to be assessed are:			
	Air quality and emissions		Landscape and visual
	Biodiversity		Noise
	Climate change mitigation and adaptation		Socio-economic
	Contaminated land		Traffic and transport
	Flood risk		Waste management
	Historic environment		Water quality and resources

An Environmental Statement will accompany the DCO application, setting out all the expected environmental effects and the measures that RiverOak will implement to avoid or minimise any environmental impacts. As part of the formal pre-application consultation we will present preliminary environmental information which will include the results of the environmental assessments available at that time for comment and feedback.

7 Further reading

Further information on the policies referenced in this document can be found at:

- **Saved policies in the Thanet District Council Local Plan 2006 -**
www.thanet.gov.uk/your-services/planning-policy/thanets-current-planning-policy/thanet-local-plan-2006/
- **Draft Thanet Local Plan to 2031 – Preferred Options Consultation (January 2015)**
<https://consult.thanet.gov.uk/consult.ti/TPODLP/consultationHome>
- **Aviation policy framework -**
www.gov.uk/government/publications/aviation-policy-framework

Further reading and information is also available at www.riveroakinvestments.co.uk including links to PINS meeting minutes.

RiverOak's environmental scoping report is available on its website, and sets out the environmental impacts that it expects to assess and mitigate in some detail. The Planning Inspectorate will publish a scoping opinion in response in August, which will then be available on its website.

Updates to the project will be published on the RiverOak website as the project develops.

8 Next Steps

We have applied to the Planning Inspectorate for a 'scoping opinion' on what environmental impacts we should assess as part of the DCO application, and they will provide this in mid-August.

We have also applied for powers to enter the site for environmental surveying purposes, as the owners have not agreed to let us do so voluntarily.

We are expecting to carry out a more formal consultation in the autumn, which will include more information about the project based on further work by our consultants and taking into account the feedback from this consultation. At that consultation, we will make our 'preliminary environmental information' available i.e. information we have obtained so far and the work we have completed by that point through assessment including mitigating the environmental effects of the project.

The next step is that the DCO application will be made in early 2017. The suite of application documents will then be published on the Planning Inspectorate website and if the Planning Inspectorate accepts the application for examination, there will be an opportunity to make representations on the application.

Between one and five Inspectors will be appointed to examine the application, collectively known as 'the Examining Authority'. They will take up to six months to examine the application which will include requests for written information, answers to questions and some hearings held in the local area, the dates and locations of which will be published on the Planning Inspectorate website and in local papers.

Once the examination concludes, the Examining Authority has three months to send a recommendation to the Secretary of State for Transport, who then has another three months to make a decision.

Frequently asked questions

What kind of planning application are you making?

A project of this strategic importance and size qualifies as a "Nationally Significant Infrastructure Project" under the Planning Act 2008 and RiverOak intends to make an application using the Development Consent Order process, which is specifically designed (and compulsory) for projects of this strategic significance, rather than via a conventional planning application route.

Our application will seek full permission for the phased redevelopment of the airport. The application site, which includes the area known as the 'northern grass' comprises 47 hectares (116 acres).

As Manston no longer has an aerodrome licence, and several important buildings and facilities have been removed or rendered unusable; these will have to be reinstated and the site will also need permission from the Civil Aviation Authority to be brought back into aviation use.

Will you be seeking to make the airport site bigger?

Our proposals includes area to the north of Manston Road (the northern grass).

On the airport there will be major capital works to create new parking stands, taxiways, internal roads, hangars, warehousing, landscaping, attenuation lagoons and airport offices, some of which will be located on the northern grass.

How do you expect aircraft noise to affect local residents?

Our proposals seek to increase the capacity of the airport to be able to handle more than 10,000 cargo flight movements a year – which equates to roughly 14 return services a day (i.e. 28 flights a day on average).

Noise from airborne aircraft is always an issue at operating airports, and work is already under way to establish and publish a noise mitigation strategy, which we will put out to consultation in due course.

Work is underway to explore how the impact of aircraft noise can be minimised; this includes use of modern technologies, procedures and protocols that have not previously been employed at Manston.

RiverOak will also develop and publish a noise insulation policy in line with that provided for those living near other airports.

What about Night Flights?

Given the nature of the air freight market there may be some future demand for night flights. We have therefore asked our consultants to conduct a specific study on the potential impact of night flights and propose how it may be mitigated.



What other consent are you/will you be applying for?

The following additional consents have been identified to date. This is not yet a comprehensive list.

	Environmental permits To be applied for separately to the Environment Agency		Greenhouse gas emissions permit To be applied for separately to the Environment Agency
	Pollution Prevention and Control permit To be applied for separately to Thanet District Council		Drainage consent To be applied for separately to the Environment Agency
	Grid connection To be applied for separately to National Grid or UK Power Networks		Airspace change To be applied for separately to the Civil Aviation Authority
	Hazardous substances consent Deemed consent will be sought in the application		Air traffic control designation To be applied for separately to the Civil Aviation Authority
	Approval of design of buildings To be applied for subsequently to Thanet District Council		Aerodrome licence To be applied for separately to the Civil Aviation Authority

What will happen to any responses submitted through this consultation?

All completed responses will be carefully considered by RiverOak and its expert team of professionals working on the project for response either before or during the second, more formal statutory consultation, which will follow later this year.

Please note, all responses should give the name and postal address of the respondent, otherwise the response may not be taken into account.

Respondents should be prepared for their responses to be published alongside the RiverOak responses to their comments at the formal consultation stage, as RiverOak is required to include them in its 'consultation report' to be submitted to PINS, although personal details will be redacted.

When do you plan to submit your DCO application?

An application for the project is expected to be made to the Planning Inspectorate (PINS) in early 2017, once all of the preparatory studies, consultations and planning work have been completed.



9 How to respond to this consultation

A feedback form can be found at the back of this document and RiverOak encourages all those with an interest in the future of Manston Airport to send in their comments, thoughts and ideas.

You can return this form by post to:

Manston Airport Consultation Responses
Bircham Dyson Bell
50 Broadway, London SW1H 0BL

If you do not wish to post your comments to us, a copy of this document can also be downloaded from www.riveroakinvestments.co.uk and you will also find a response form on the website to enable comments to be submitted electronically. Alternatively you can email us, providing the same information as on the form, at consultationresponses@riveroakinvestments.co.uk.

Deadline

We would be grateful for any responses to this informal consultation to be received by **Monday 5th September 2016**. We cannot guarantee that responses received after that date will be taken into account, but there will be further opportunities to respond in the future.

Roadshow events

This informal consultation is the first of a series of consultation stages that will take place over the next eight months or so until an application is made to PINS in 2017.

During this informal consultation period, which will run until 5 September 2016, a number of roadshow events will be held across Thanet to enable local people to find out more about the proposals.

The event schedule is as follows:

Venue	Date	Time
Broadstairs Pavilion, Harbour Street, Broadstairs CT10 1EU	Tuesday 12 July 2016	14.00 - 20.00
Margate Sands Hotel, 16 Marine Drive, Margate CT9 1DH	Wednesday 13 July 2016	14.00 - 20.00
Herne Bay The King's Hall Beacon Hill, Herne Bay CT6 6BA	Monday 18 July 2016	14.00 - 20.00
Canterbury Canterbury Cathedral Lodge, The Precincts, Canterbury CT1 2EH	Thursday 21 July 2016	14.00 - 20.00
Sandwich The Guildhall, Sandwich CT13 9AP	Friday 22 July 2016	14.00 - 20.00
Ramsgate Comfort Inn, Victoria Parade, Ramsgate CT11 8DT	Saturday 23 July 2016	10.00 - 16.00



Riveroak Investments

Manston Airport Informal Consultation Feedback Form

Name _____

Address _____

Email address _____

Telephone Number _____

Preferred method of communication (please circle): Telephone / Email / Post

Please note, all responses should give the name and postal address of the respondent, otherwise the response may not be taken into account.

1 Do you support this project in principle?

Yes / No / Not Sure

2 Do you have any comments on the masterplan on pages 8-9 and our plans for the airport?

3 You will have an opportunity to comment on the preliminary environmental information in due course, but at this stage are there any comments you wish to make on any environmental, economic or social aspects that RiverOak need to consider in the development of their proposals?

4 Have you found the material presented useful?

Yes / No / Not Sure

5

Is there anything else you would like RiverOak and its professional team to consider as part of the development of their proposals for Manston Airport?

MANSTON AIRPORT EXPLORATION OF CPO INDEMNITY PARTNER

To: Cabinet, 11th December 2014

Main Portfolio Area: All

By: Leader of the Council

Classification: Unrestricted

Ward: All wards

Summary: To update Cabinet on the outcome of a soft-market testing exercise undertaken to identify a CPO indemnity partner for Manston Airport.

For Decision**1.0 INTRODUCTION**

- 1.1 Cabinet resolved on 31st July 2014 to carry out a soft-market testing exercise to identify a CPO Indemnity Partner – a third party who could cover the costs of compulsory purchase of the Manston Airport site. A progress report was received by Cabinet on 16th October 2014.
- 1.2 The purpose of this report is to inform Cabinet on the results of the soft-market testing. It does not address the wider options around the future of site, which will be considered separately as part of the Council's Local Plan process.

2.0 PROCUREMENT PROCESS FOR A CPO INDEMNITY PARTNER

- 2.1 Expressions of interest were invited for a CPO indemnity partner. Counterparties expressing an initial interest were invited to respond to a questionnaire, composed of:
- Organisational and contact information
 - Project questions
 - Financial questions
- 2.2 The independent viability report produced by Falcon Consultancy was also made available to respondents.
- 2.3 Four counterparties requested a questionnaire; two submitted returns. (Parties A and B). Some discretion was shown over the 31st August 2014 deadline for questionnaire submissions. This allowed additional time for any party seeking to express an interest.
- 2.4 Both respondents submitting questionnaires were offered a meeting to discuss their responses more fully.
- 2.5 A meeting took place with Party A's principals on 18th September 2014 to discuss their responses. The meeting was attended by Cabinet members, Group Leaders

and the Council's statutory officers. Following the meeting, Party A was asked to respond to a written set of questions by 24th September 2014. This Party A did in a letter of 25th September 2014. Following the response, further clarification was sought from them on some issues. A further meeting attended by Cabinet members, Group Leaders and the Council's statutory officers took place on 29th October 2014. Discussions took place subsequently with Party A's solicitors and there followed various further meetings and correspondence with Party A.

- 2.6 The Council has entered into a confidentiality agreement with Party A. The Council is therefore prevented from disclosing the information provided by Party A for consideration.
- 2.7 Party B did not take up the offer of a meeting. Party B was sent the same written questions as Party A. No response has been received from Party B. It is therefore considered that Party B has conclusively not identified an interest in being the Council's indemnity partner.
- 3.0 RELEVANT CONSIDERATIONS**
- 3.1 The objective of seeking an indemnity partner is to ensure that - if the Council determines to pursue a CPO - a viable airport comes into sustainable long-term operation as quickly as is reasonably possible without any residual cost to the Council.
- 3.2 A majority interest in the site was acquired by new owners in September 2014. The new owners state they intend to bring forward regeneration proposals for the site. The new owners have a business record that includes the Discovery Park Enterprise Zone.
- 3.3 The new ownership of the site and any proposals put forward would make it much more challenging to demonstrate an overwhelming case for compulsory purchase. This compares to the situation before September 2014 when the then outright owner had announced no specific proposals following the airport closure. Given the now increased challenge of securing a CPO, it is essential that the Council establishes thoroughly on objective grounds the financial status of any prospective partner. The assessment must have due regard to the potential scale of the project, and the need to demonstrate that resources are available to complete it.
- 3.4 Any viable indemnity partner needs to demonstrate the resources to acquire by private treaty well before the stage of seeking a CPO.
- 3.5 There are numerous local authority examples of stalled developments or developments where the partner proves not to have the financial capacity to complete the agreement. This experience in other local authorities emphasises the need to ensure a prospective indemnity partner has the resources in place to acquire the site and complete the development. Once the land transfers to the indemnity partner any redress for delay or non-completion could prove difficult to pursue. The main purpose of the CPO is for the authority to achieve a viable development, so the status of the indemnity partner to deliver the development in its entirety is highly relevant.
- 3.6 Counsel's advice is that the Council would need to underwrite any CPO acquisition to demonstrate to the Secretary of State the likelihood of completion. The availability of funds to the prospective indemnity partner is therefore a key factor.
- 3.7 The Council does not have the resources to proceed with any CPO and the subsequent development in the event the indemnity partner could not raise

investment resources. The Council's Capital Programme agreed 13th November 2014 is fully committed and already assumes prudential borrowing of £3.645m 2015-16 to 2018-19. The Council would have to borrow to fund acquisition of the airport and its subsequent development in the event an indemnity partner did not prove capable of proceeding. Assuming £20m of borrowing this would result in a revenue capital financing charge of £1.8m. The basic minimum costs (business rates; air traffic; fire and security) of operating the airport are estimated at £2m a year. These revenue costs would prove an unbearable burden for the Council's General Fund.

4.0 DUE DILIGENCE METHOD

- 4.1 Financial information was requested from Party A. Information was analysed in accordance with the Due Diligence Protocol attached at Annex 1.
- 4.2 Checks have been made with other local authorities that have recently sought and successfully identified CPO indemnity partners. Counsel's opinion has also been obtained on the CPO process and the validation of a prospective indemnity partner. The approach taken by Thanet is entirely consistent with both good practice and the process adopted by other local authorities.
- 4.3 In the event that the counterparty is able to fulfil the due diligence requirements, it would demonstrate a viable interest. Conversely if it cannot, no viable expression of interest is demonstrated. The information required is summarised in the table below.

Financial information
Last 3 years financial accounts
Auditor contact details
Financial Plan
Evidence of funds required to complete the project.
Financial Ability
Does the entity have the resources to fulfil its obligations through the contract?
Does the entity issue annual accounts?
Does the entity have a long track record, how many years has it been established?
Does the entity have a stable structure and good governance around financial decision making?

5.0 PARTY A

- 5.1 Party A is an established organisation incorporated outside the European Union. It is an investment limited liability company. Its adopted strategy is to pursue opportunistic and value-add asset purchases and operational opportunities on behalf of a diversified set of investors ranging from institutions to individuals. It does not of itself have a record of successful airport operation; some team members have experience with other organisations of airport operation and airport financing.
- 5.2 Party A proposes to approach the CPO acquisition a stage at a time. This would be inconsistent with the requirements of Circular 6/2004, sections 20 and 21.

The timing of the availability of the funding is also likely to be a relevant factor. It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years. Even more importantly, the confirming Minister would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the

compulsory acquisition within the statutory period following confirmation of the order. He may also look for evidence that sufficient resources could be made available immediately to cope with any acquisition resulting from a blight notice.'

6.0 ACCOUNTING AND INVESTOR INFORMATION

- 6.1 The information provided by Party A does not demonstrate that it has the appropriate financial status or has committed investors:
- 6.1.1 to enable it - if required - to acquire the site by private treaty prior to a CPO process being commenced
- 6.1.2 to fund the preparation of a robust case for CPO acquisition
- 6.1.3 to meet the expected compensation costs
- 6.1.4 to develop the airport and operate it viably in the long-term
- 6.2 The use of Party A as an indemnity partner on the basis of the financial information provided would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council.

7.0 BUSINESS PLAN

- 7.1 The Business Plan provided by Party A is a short term (5-year) business plan and the scope is insufficient in the light of the objective set out in 3.1. The plan does not provide for the CPO compensation cost, and this could be substantial. The business assumptions appear to be optimistic as regards revenues and the known costs of operation.
- 7.2 The viability report issued with the soft marketing questionnaire states that 'The success of Manston revival must be proved through a 20-year business plan with financial projections based on the assumption that the trigger will be realised'. A 20-year plan has been requested from Party A but this was not provided. A 20 year business plan is required for a project of this scale to demonstrate long-term viability, and that the proposed operation is sustainable in the long term. Unless these requirements can be clearly demonstrated there is no prospect of achieving a CPO.
- 7.3 The use of such an indemnity partner would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council..

8.0 INDEMNITY

- 8.1 The approach suggested by Party A is that funds would be transferred in tranches to a UK account managed by UK solicitors. The Council could then incur CPO costs to the value of funds in the account. The Council would not be obliged to proceed with further work until new funds were paid into the account by Party A.
- 8.2 The Council is not seeking a CPO on a speculative basis and would not wish to put itself in a position whereby full achievement and vesting of the site would depend on the partner's ability to generate investment in the project.
- 8.3 The use of such an indemnity partner would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council..

9.0 CORPORATE IMPLICATIONS

9.1 Financial and VAT

9.1.1 Set out in the main report

9.2 Legal

9.2.1 This report has outlined the process undertaken following the decision of Cabinet on 31st July 2014 to seek expressions of interest.

9.2.2 It has also set out how we have considered the information provided by those interested parties and a thorough consideration of that information and the assurances provided by it.

9.2.3 The conclusions made by the Council's Section 151 Officer are that the information provided does not provide assurances which would satisfy him that a valid expression has been put forward and he is therefore unable to recommend moving ahead with this proposal.

9.2.4 Although the issues here are emotive Members should exercise extreme caution before seeking to move forward with any proposal which is at odds with advice from its officers particularly where there are likely to be significant risks which would affect the Council at a fundamental level.

9.2.5 The Council has secured further legal advice as summarised in 9.2.6 to 9.2.9 below on the financial assessment necessary to support the choice of an indemnity partner.

9.2.6 The Council need to be satisfied in promoting the CPO that it is able to meet the tests of Circular 06/2004 on the likelihood of the project going ahead. The Secretary of State will not confirm a CPO unless he is satisfied that there is a likelihood of the project going ahead.

9.2.7 If a scheme is not financially viable the S151 Officer would be expected to certify (e.g. in a witness statement) that he was satisfied that the project was viable and that the local authority would meet any funding shortfall if the partner investment was not forthcoming.

9.2.8 CPO is a last resort. It is necessary to make direct contact with the owners of the land with a view to determining whether a negotiated sale is possible.

9.2.9 The approach taken to determine whether the prospective indemnity partner is suitable before embarking on any CPO appears correct.

9.3 Corporate

9.3.1 An operational airport is consistent with the Council's economic development objectives. The decision taken here would not affect the status of the site as an Airport within the Local Plan and a separate process is followed in that regard.

9.4 Equity and Equalities

9.4.1 There is no issue arising from the report and recommendations which adversely affects any specific category of Equality group.

10.0 Recommendation

10.1 That no further action be taken at the present time on a CPO of Manston Airport, on the basis that the Council has not identified any suitable expressions of interest that fulfil the requirements of the Council for a CPO indemnity partner and that it does not have the financial resources to pursue a CPO in its own right.

Contact Officer:	Paul Cook Director of Corporate Resources and S.151 Officer
Reporting to:	Madeline Homer, Acting Chief Executive

Annex List

Annex 1	Due Diligence Protocol
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Background Papers

Title	Details of where to access copy
None	

Corporate Consultation Undertaken

Finance	Paul Cook, Director of Corporate Resources and S.151 Officer
Legal	Steven Boyle, Legal Services Manager and Monitoring Officer

FORMER MANSTON AIRPORT SITE:

DEFENCE AGAINST POTENTIAL

COMPULSORY PURCHASE ORDER



OPINION

**Herbert Smith Freehills
Exchange House
Primrose Street
London EC2A 2EG**

Ref: 11/30287314_1

FORMER MANSTON AIRPORT SITE:
DEFENCE AGAINST POTENTIAL COMPULSORY PURCHASE ORDER

OPINION

Background

1. The site of the former Manston Airport in Thanet, Kent ("the site") comprises 320 ha of land bounded by Manston Road to the north and west, Hengist Way (A299) to the south, and agricultural land to the east. The site lies within Thanet district, for which the local planning authority is Thanet District Council ("TDC").
2. Prior to its use as an airport, the site was used as open farmland. Its aviation use originated from military operations associated with the First World War. Military use continued and intensified during the Second World War as a base for air squadrons. During the 1950s the site was used by the US Air Force as a strategic airbase in connection with US Cold War operations. This use ceased in the 1960s and was replaced by the introduction of commercial use (freight and passenger) alongside a retained military presence by the RAF. This dual function continued, with intensification of the commercial use over the next 30 years, leading to a new civilian terminal opening in 1989 to coincide with the site's rebranding as "Kent International Airport" and providing the commencement of commercial flight to European destinations.
3. Despite the growth of the airport over the previous decade, it was recognised during the 1990s on commercial grounds that any potential long-term expansion would be limited. In 1993 the Department of Trade and Industry identified the site as unsuitable for development as a major airport due to its close proximity to neighbouring towns (which would result in noise disturbance issues). In 1999 the RAF withdrew operations, vacating RAF Manston. The site became a purely commercial enterprise which led to its rebranding as "London Manston Airport."
4. The Government's White Paper on "The Future of Air Transport" published in 2003 identified potential for the former airport to play a role in meeting local demand. In

2009 the former owners undertook a separate assessment setting targets for growth to 2031 through the "Kent International Airport Masterplan". Despite the intentions of the White paper, and the Masterplan, the airport failed to meet the growth targets and faced a continued trend of decline, beginning with the former airport's main operator (FlyBe) withdrawing its operations at the site in 2011.

5. As a result of estimated daily losses running at £10,000, a 45 day consultation on the closure of the airport ran from 19th March 2014. This was followed by the withdrawal of the KLM's scheduled service to Amsterdam (the final passenger service) on 10th April 2014, and the closure of the airport on 15th May 2014.
6. Following the closure of the airport, TDC explored whether there were grounds for a Compulsory Purchase Order (CPO) of the site. On 31st July 2014 TDC's Cabinet resolved to carry out a soft-market testing exercise to identify a CPO Indemnity Partner who could cover the costs of a compulsory purchase of the former Manston Airport site.
7. The site was acquired by the current owners ("the Owners"), whom I advise, in September 2014 with a view to delivering a strategic employment-led mixed use development. Whilst no planning application has yet been made, I am instructed that it is intended to make such an application within the next 9 months. The masterplan options that I have seen show that the proposed development will include clusters of housing, substantial areas of commercial (employment) floorspace, some other commercial, community and retail facilities, a new grass runway (for a possible heliport/flying school), sports facilities (including a possible 10,000-seat football stadium), a school, and areas of parkland and new tree and woodland planting. The Owners are also considering whether the local Spitfire museum could be relocated onto the site.
8. On 11th December 2014, TDC's Cabinet unanimously agreed with officer's recommendation set out in a report ("the CPO report") entitled "Manston Airport Exploration of CPO Indemnity Partner", which was as follows:

10.1 Recommendation

10.1 That no further action be taken at the present time on a CPO of Manston Airport, on the basis that the Council has not identified any suitable

expressions of interest that fulfil the requirements of the Council for a CPO indemnity partner and that it does not have the financial resources to pursue a CPO in its own right.

9. The CPO report identified, at paragraph 3.1, that:

The objective of seeking an indemnity partner is to ensure that – if the Council determines to pursue a CPO – a viable airport comes into sustainable long-term operation as quickly as reasonably possible without any residual costs to the Council.

10. Paragraph 3.5 further identified

the need to ensure a prospective indemnity partner has the resources in place to acquire the site and complete the development.

11. There was in fact only one bidder, called in the CPO report Party A and now known to be RiverOak Investments ("RiverOak"), who had "identified an interest in being the Council's indemnity partner" (para 2.7). The report concluded in clear terms that Party A was not a suitable partner. Section 8 is important:

8.0 INDEMNITY

8.1 The approach suggested by Party A is that funds would be transferred in tranches to a UK account managed by UK solicitors. The Council could then incur CPO costs to the value of the funds in the account. The Council would not be obliged to proceed with further work until new funds were paid into the account by Party A.

8.2 The Council is not seeking a CPO on a speculative basis and would not wish to put itself in a position whereby full achievement and vesting of the site would depend on the partner's ability to generate investment in the project.

8.3 The use of such an indemnity partner would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council.

12. The CPO report also included the following advice:

9.2.3 The conclusions made by the Council's Section 151 Officer are that the information provided does not provide assurances which would satisfy him

that a valid expression has been put forward and he is therefore unable to recommend moving ahead with this proposal.

9.2.4 Although the issues here are emotive Members should exercise extreme caution before seeking to move forward with any proposal which is at odds with advice from its officers particularly where there are likely to be significant risks which would affect the Council at a fundamental level. ...

9.2.6 The Council will need to be satisfied in promoting the CPO that it is able to meet the tests of Circular 06/2004 on the likelihood of the project going ahead. The Secretary of State will not confirm a CPO unless he is satisfied that there is a likelihood of the project going ahead. ...

9.2.8 CPO is a last resort. It is necessary to make direct contact with the owners of the land with a view to determining whether a negotiated sale is possible.

13. The approach to funding described in the CPO report is confirmed by a Media statement issued by RiverOak on 17th December 2014 and entitled "RiverOak Investments addresses key questions about Manston CPO" ("the Media statement"). Having explained (in a question and answer format) that RiverOak will indemnify TDC for all of the costs of the CPO process, the statement goes on to say this:

Under the terms of the indemnity, the Council will not be required to take any particular step until it has first received sufficient funds from RiverOak. The indemnity therefore prevents situations where the Council has incurred a liability which it needs to try and sue RiverOak to recover. ...

RiverOak will open an escrow bank account which will always hold sufficient funds to meet any pending bills and which can be monitored by the Council.

14. In response to the question "If a CPO is successful, where do you see Manston airport in 10 years' time?", the Media statement responds as follows:

- *1,300 direct jobs plus at least 1,000 indirect jobs*
- *120,000 tonnes of cargo a year with an emphasis on perishables*
- *Packing, storage and distribution of perishables*
- *100 aircraft a year recycled in facilities developed jointly with a major aircraft manufacturer*
- *50 aircraft a year repaired/maintained*
- *Growing business jet traffic*
- *Light aircraft training*
- *A resident airline carrying 1.5 million passengers a year to leisure destinations*

15. The site's Civil Aviation Authority operating licence has been surrendered and much of the key equipment associated with the operation of the airport has been removed and/or sold.
16. The recent comprehensive review of the need for additional airport capacity in the UK by the Airports Commission, chaired by Sir Howard Davies, has not identified any role for Manston in meeting that need.
17. Nevertheless, local campaigns to restore the site to use as an airport have continued. Sir Roger Gale MP is a particularly vocal campaigner and following his representations to the Department for Transport, DfT commissioned PwC to review TDC's decision not to make a CPO. PwC's final report dated 22nd June 2015 ("the PwC report") has just been published. So far as the scope of PwC's instructions is concerned, the PwC report states on page 6 that:

the scope of our work has not included the provision of any opinion on whether TDC's due diligence was sufficient, nor on the reasonableness or otherwise of TDC's conclusions. Further our scope of work has not included any consideration of the viability (financial or otherwise) of Manston Airport, nor of the potential CPO process which was considered by TDC.

18. It is perhaps not surprising therefore to find that all the PwC report does is to state the matters which TDC could have taken into account in coming to their view as to whether to promote a CPO with RiverOak (the only bidder) as an indemnity partner. It certainly does not find, or imply, that the recommendation in the CPO report, or Cabinet's decision to accept this, was wrong or otherwise materially flawed.
19. TDC is now controlled by UKIP, who were elected partly on the basis that they supported the restoration of the site as an airport. On 21st May 2015, at an Extraordinary Council meeting, it was resolved that:

Council recommends to Cabinet that it reviews its position in relation to the Manston Airport site, taking account of all the surrounding circumstances relating to an indemnity partner for a possible Compulsory Purchase Order.

20. On 14th July 2015, TDC, having noted the above resolution, further resolved as follows:

To authorise that specialist legal and finance advice be obtained to determine whether RiverOak are a suitable indemnity partner in relation to a CPO for Manston Airport and to provide advice on the indemnity agreement and CPO process generally.

21. In terms of planning policy, substantial representations dated March 2015 were made by GVA, behalf of the Owners, in relation to the Preferred Options Consultation on the Draft Thanet Local Plan to 2031. For the reasons set out in GVA's representations, the Owners consider the Draft Plan to be unsound, in particular because without evidence or proper justification it is predicated on a commercial airport operating at Manston Airport.
22. GVA's representations include a description of the development of the site proposed by the Owners, and an analysis of its deliverability, from which it is concluded that the development is likely to be deliverable. They also include an analysis of the need for employment and housing land in the area, which supports the the Owner's development proposals; and an analysis of the prospects of a future airport use, in relation to which GVA conclude that there is no real prospect of such a use recommencing and being sustained.
23. Also, as set out in GVA's representations, the Owners have a substantial track record of delivering successful strategic employment/mixed use sites and regeneration schemes across the UK including in Kent: in particular, Discovery Park in Sandwich and Wynyard Park in Wynyard.
24. My understanding is that TDC's response to these representations is yet to be published.
25. TDC's Local Plan therefore remains at an early stage of preparation.

Relevant law and policy guidance

26. Section 226 Town and Country Planning Act 1990 provides that:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area [...]

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or

(b) [which] is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects –

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.

27. ODPM Circular 06/04 also identifies a requirement, which through decisions of the courts in relation to rights enjoyed by landowners under the Human Rights Act 1998 and the European Convention on Human Rights has in effect become a legal test that has to be met if a CPO is to be made or confirmed, for there to be "compelling case in the public interest" for the acquisition, and that any proposal for which the land is proposed to be compulsorily acquired is deliverable (including financially deliverable). Relevant excerpts from the Circular are set out below.

JUSTIFICATION FOR MAKING A COMPULSORY PURCHASE ORDER

16. It is for the acquiring authority to decide how best to justify its proposals for the compulsory acquisition of any land under a particular power. It will need to be ready to defend such proposals at any Inquiry (or through written representations) and, if necessary, in the courts. The following guidance indicates the factors to which a confirming Minister may have regard in deciding whether or not to confirm an order, and which acquiring authorities might therefore find it useful to take into account.

17. A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

18. The confirming Minister has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interest in land it is proposed to acquire compulsorily. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. But each case has to be considered on its own merits and the advice in this Part is not intended to imply that the confirming Minister will require any particular degree of justification for any specific order. Nor will a confirming Minister make any general presumption that, in order to show that there is a compelling case in the public interest, an acquiring authority must be able to demonstrate that the land is required immediately in order to secure the purpose for which it is to be acquired.

19. If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The Human Rights Act reinforces that basic requirement.

Resource implications of the proposed scheme

20. In preparing its justification, the acquiring authority should provide as much information as possible about the resource implications of both acquiring the land and implementing the scheme for which the land is required. It may be that the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

21. The timing of the availability of the funding is also likely to be a relevant factor. It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years. Even more importantly, the confirming Minister would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the compulsory acquisition within the statutory period following confirmation of the order. He may also look for evidence that sufficient resources could be made available immediately to cope with any acquisition resulting from a blight notice.

Impediments to implementation

22. In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or licence.

23. Where planning permission will be required for the scheme, and has not been granted, there should be no obvious reason why it might be withheld. In particular, this means that, irrespective of the legislative powers under which the actual acquisition is being proposed, the provisions of section 38(6) of the 2004 Act require that the scheme which is the subject of the planning application should be in accordance with the development plan for the area unless material considerations indicate otherwise. Such material considerations might include, for example, the provisions of the local authority's Community Strategy or supplementary planning guidance (as defined in PPS12) which has been subject to public consultation as required by regulations.

PREPARING AND MAKING AN ORDER

24. Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. ...

Appendix A – Orders made under section 226 of the Town and Country Planning Act 1990

Confirmation

16. Any decision about whether to confirm an order made under section 226(1)(a) of the 1990 Act will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

- (i) whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area ...
- (ii) the extent to which the proposed purpose will contribute to the achievement of the promotion of the economic, social or environmental well-being of the area;
- (iii) the potential financial viability of the scheme for which the land is being

acquired. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. ...

- (iv) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its re-use.

...

Assessment of proposed CPO against relevant law and policy guidance

28. It is plain to me, on the basis of the information available to date, that the grounds for making a CPO to reinstate a commercial airport use, with RiverOak as the CPO indemnity partner, are extremely weak. There are a number of principal reasons for this.

29. The first reason is that there appears to be ample evidence that a commercial airport/aviation use is not viable at the site. This evidence includes not only GVA's representations on the draft Local Plan (see paragraph 22 above) but the recent history of the use and closure of the site for commercial aviation purposes.

30. In point of fact, those instructing me understand that RiverOak is not proposing to run a commercial airport from the site, but an aircraft "tear down" facility (essentially a scrap yard for planes) and freight facilities. Whilst the Media statement (see paragraph 14 above) includes a list of claimed job numbers and activities anticipated to be taking place at the site in 10 years' time, this appears to be entirely aspirational, and I have seen no evidence to date that demonstrates that this is, in reality, likely to be achievable.

31. On the contrary: the evidence presently available strongly points to the conclusion that there is no reasonable prospect that a commercial aviation use of the site would in fact take place at the site, even if the site were to be acquired compulsorily.

32. Second, and equally fundamentally, it is not apparent from policy or other material (such as a need assessment) that the reintroduction of a commercial airport/aviation use at the site is necessarily desirable or even appropriate. This in my view calls into

question whether the purpose underlying any CPO could be justified as being in the public interest, regardless of whether the reintroduction of such a use is feasible or realistic.

33. Third, as set out in the CPO report, the approach to the indemnity proposed by RiverOak (to transfer funds to TDC in tranches – what might be described as a 'pay as you go' approach) would leave TDC with a high risk that, even if a CPO were confirmed, the reinstatement of aviation-related use could by no means be guaranteed. This was a critical factor in TDC's decision not to make the CPO, and in my view rightly so. I find myself in full agreement with the analysis in the CPO report, and the conclusion that was drawn from this.
34. Fourth, there is no evidence that I have seen that, even if it were to assumed that the reintroduction of a commercial aviation use at the site would be deliverable, such a use would bring significant economic, social and/or environmental well-being benefits to TDC's area. As I have said, the list of jobs and activities included in the Media statement is purely aspirational, and in any event the extent to which these (even if delivered) would bring well-being benefits to TDC's area is not evident.
35. It is by contrast apparent from the GVA material to which I have referred that the mixed use redevelopment which the Owners propose at the site would bring such benefits, and that the proposed development as a whole would meet identified needs for additional employment floorspace and housing in the area.

Conclusions

36. The specific questions on which I am asked to advise are as follows:
 - (i) the likelihood of the Secretary of State confirming a CPO promoted by TDC on the basis, and for the purposes, envisaged by TDC and RiverOak;
 - (ii) more particularly, is an indemnity agreement which provides for funding for the project to be provided in tranches, or on a 'pay as you go' basis, likely to be able the Secretary of State to conclude that the CPO ought to be confirmed;
 - (iii) whether costs might be awarded against TDC in favour of the Owners if any CPO was not confirmed.

(i) Prospects for confirmation

37. It is in my view virtually inconceivable that the Secretary of State would confirm a CPO for the acquisition of the site on the basis, and for the purposes, as set out above.

38. That is because the requirements of the Circular are not met in the following principal respects:

- (i) There is no evidence that commercial aviation use of the site is necessary or justified in the public interest (06/04 paras 17, 19);
- (ii) There is no evidence that such use would enhance economic, social or environmental well-being (1990 Act, s.226(1A); 06/04 Appx A para 16(ii));
- (iii) There is no evidence that such a use would be viable or (therefore) deliverable – indeed, there is positive evidence to the contrary (06/04 para 22; Appx A para 16(iii));
- (iv) There is therefore no evidence that there is no reasonable prospect that the scheme for the purposes of which any CPO would be made would be likely to proceed;
- (v) That conclusion is strongly reinforced by the highly unsatisfactory nature of the proposed arrangements for RiverOak’s indemnity to TDC, which involves the transfer of funds in tranches, and which was rightly rejected by TDC in December 2014 as a basis for proceeding with a CPO for the reasons given in the CPO report. This proposal would leave a high level of risk that, if a CPO were confirmed, even the currently proposed use would not in fact proceed;
- (vi) The same thing applies to the more limited use which it appears that RiverOak is currently proposing, namely an aircraft “tear down” facility with some freight operations;
- (vii) There have been no negotiations to date with the Owners with a view to acquiring the site by agreement (06/04 para 24);
- (viii) There is no development plan support for the purpose for which any CPO would be made (06/04 Appx A para 16(i)). The emerging Local Plan is the subject of substantial objection on behalf of the Owners which TDC has yet to consider;

(ix) The Owners have their own proposals for redevelopment of the site for purposes that would bring significant economic, environmental and social benefits and that are realistic and deliverable (06/04 Appx A para 16(iv)).

39. In each of the above respects, and on the basis of current evidence, any CPO which was brought forward with the objective of acquiring the site for re-use as a commercial airport or other commercial aviation facility would conflict substantially with the guidance in Circular 06/2004, and would result (if confirmed) in an interference with the human rights of the Owners without adequate (or indeed any) justification.

40. In short, it is clear to me that there is nothing that even begins to approach a compelling case in the public interest that could justify the compulsory acquisition of the site.

41. In those circumstances, in my view the prospects for the confirmation for such a CPO by the Secretary of State are very remote.

(ii) The proposed indemnity agreement

42. I have already covered this. The way in which payments to TDC would be made in tranches would give no certainty whatever that the scheme, even if commenced, would be likely to proceed to completion. This is flat contrary to the advice in Circular 06/2004 and would provide a wholly inadequate basis for confirmation of any CPO.

(iii) Costs

43. The Secretary of State's power to award costs against promoting authorities and in favour of objectors to CPOs derives from section 5(3) of the Acquisition of Land Act 1981, which applies subsections 250(4) and (5) of the Local Government Act 1972.

44. Paragraph 57 of the Government's Planning Practice Guidance is concerned with awards of costs in CPO cases. It includes the following:

Costs will be awarded in favour of a successful remaining objector unless there are exceptional reasons for not making an award. The award will be made by the Secretary of State against the authority which made the order.

Normally, the following conditions must be met for an award to be made on the basis of a successful objection:

(a) the claimant must have made a remaining objection and have either:

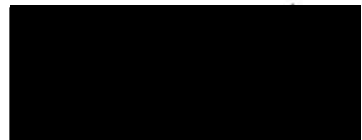
- attended (or been represented at) an inquiry (or, if applicable, a hearing at which the objection was heard); or*
- submitted a written representation which was considered as part of the written procedure; and*

(b) the objection must have been sustained by the confirming authority's refusal to confirm the order or by its decision to exclude the whole or part of the claimant's property from the order.

45. The Owners would clearly be a "remaining objector" for the purposes of this advice, assuming that it made an objection to the CPO and sustained this through the inquiry process.

46. It follows in my view that the making of a successful objection to the CPO would be very likely to result in an order that TBC should pay the Owners' costs of pursuing its objection.

Landmark Chambers
180 Fleet Street
London EC4A 2HG



22nd July 2015

[REDACTED]

From: [REDACTED]
Sent: 15 June 2016 18:23
To: [REDACTED]
Subject: RE: Letter of 14 June: former Manston airport [HS-London_11.FID1151940] [BDB-BDB1.FID9912138]
Attachments: Letter - HSF.DOCX

[REDACTED]

Please find attached a copy of the letter that was sent on that date.

Regards,

[REDACTED]

[REDACTED]
Senior Associate, Government and Infrastructure
[REDACTED]

W www.bdb-law.co.uk

For and on behalf of Bircham Dyson Bell LLP
50 Broadway London SW1H 0BL

British Legal Awards 2015 'Property Team of the Year'
Legal 500 UK Awards 2015 'Public Sector Firm of the Year'

-----Original Message-----

From: [REDACTED]
Sent: 15 June 2016 18:17
To: [REDACTED]
Subject: Letter of 14 June: former Manston airport [HS-London_11.FID1151940]

Dear [REDACTED]

Thank you for your letter of 14th June (attached). It refers to a letter dated 23 May. I have not received a letter from you of that date. Could you please send me a copy by email as soon as possible.

Kind regards

[REDACTED]

[REDACTED]

Partner
Herbert Smith Freehills LLP

[REDACTED] www.herbertsmithfreehills.com

[REDACTED]
Herbert Smith Freehills LLP
Exchange House
Primrose Street
London EC2A 2EG

Your Ref

Our Ref
APH/ADW/164652.0001

Date
23 May 2016

Dear [REDACTED]

Access to former Manston Airport site for the purpose of surveys on behalf of RiverOak

Thank you for your letter of 5 May which was received by [REDACTED]. I await responses from RiverOak's environmental consultants in relation to a number of the issues raised and will report on these as soon as possible. However, I take the opportunity to respond to the remaining matters below:

1. RiverOak has not yet submitted a scoping report to the Planning Inspectorate. The report is expected to be submitted in June 2016. The scoping opinion will be available on the Planning Inspectorate's National Infrastructure website once it is released and we will be happy to provide you with a link to the site at that stage. There are environmental surveys that will certainly be needed and will not be scoped out by the upcoming scoping opinion. Many of these are time or season sensitive. For these reasons, and for the avoidance of doubt, RiverOak considers that the lack of a scoping opinion at this stage should not delay its access to the land to carry out environmental surveys.
9. RiverOak is confident that it will be in position to collate a considerable proportion of the information that will eventually feed into the environmental statement for inclusion in the preliminary environmental information. There is no requirement for preliminary environmental information to form a complete assessment of the environmental impacts of a scheme but it will enable the consultees to assess the likely impacts even if not all the surveys or studies have been completed.
10. RiverOak would be content to agree a reasonable daily rate. However, this daily rate should reflect the fact that many of the areas that our client want to access are totally deserted and that, consequently, there is no possibility of any damage to, or interference in, any operations at the site. The amount that RiverOak pays to your client should also be comparable to the cost of making a s.53 application (which if successful would mean your clients did not receive any payment).

14347897.2

50 Broadway London [REDACTED]
SW1H 0BL United Kingdom
DX 2317 Victoria www.bdb-law.co.uk



13. RiverOak personnel (some of whom have an intimate knowledge of the site) may be required to assist consultants in reaching the right area of the site in order to carry out surveys. However, RiverOak is content to limit the access by the personnel to one person per visit with that person to be identified.
14. This is agreed.
15. This is acceptable.
16. This is acceptable as long as this is a reciprocal arrangement to include survey information that has not yet been published by Stone Hill Park Limited. Our client does not wish to rely on the planning application for Stone Hill Park being submitted before it receives the survey information. At our meeting your clients indicated that they would be content with such an arrangement.
17. We are happy for you to propose an amendment to that effect and anticipate that there will be a form of words that will prove acceptable to both parties.
18. This is noted and agreed though our clients would be expected to be copied into such correspondence.
19. We will use as much of the information provided within Stone Hill Park Limited's Environmental Statement as is possible. However, waiting for the information to be provided will add further delay to the urgently needed access to the site. Additionally, it must be acknowledged that the two schemes that are proposed for the site are very different and that the scope of the environmental assessments for the two schemes will necessarily differ as a result.
20. We are content to provide an undertaking for [REDACTED] in respect of Herbert Smith Freehill's fees for negotiation of the necessary licence whether or not the matter proceeds to completion with a further [REDACTED] to be dependent upon completion of the licence.

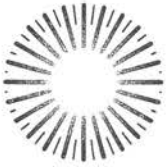


BIRCHAM DYSON BELL

21. We were aware that the quotation had been published by Save Manston Airport. However, [REDACTED] words have been erroneously reported. [REDACTED] is fully aware of the provisions of the Planning Act 2008 and the comments that he made were entirely consistent with the current situation and with the provisions of the Planning Act. Any errors were on the part of the Save Manston Airport group and should not be attributed to RiverOak.

Yours sincerely

[REDACTED]
Senior Associate
For and on behalf of Bircham Dyson Bell LLP
[REDACTED]



HERBERT
SMITH
FREEHILLS

Enclosure E.1

[REDACTED]
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Primrose Street
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[REDACTED]
www.herbertsmithfreehills.com

Our ref
5567/30983750
Your ref

Date
07 July 2016

Dear [REDACTED]

Access to former Manston Airport site for the purpose of surveys on behalf of Riveroak

Thank you for your letters of 23 May (received 15 June) and 14 June, responding to the matters set out in my letter of 5 May 2016.

I note that you have since submitted (on 1 July 2016) an application to the Planning Inspectorate requesting authorisation under s53 Planning Act 2008 to access my client's site. We believe that such an application is entirely premature, and we will be writing to the Planning Inspectorate accordingly. From comments made in your letters of 14 June and 9 May it appears that your intention is to carry on parallel negotiations with my client, while asking the Planning Inspectorate to determine your s53 application. Your rationale for this is that your client must 'protect its position'. This does not accord with our interpretation of the s53 process. It is not a compulsory purchase process where negotiation is encouraged in parallel to the making of an application for compulsory powers. Instead, the guidance is clear that applications must only be made where it can be shown that the land owner has (through the course of negotiations already conducted) unreasonably withheld consent. Applications under s53 are intended to be used only as a last resort. If you do not consider that negotiations have been exhausted (and certainly we do not) then we respectfully request that you withdraw your application for s53 authorisation and engage in constructive and genuine negotiations with my client.

The responses below are therefore made on the basis that you choose to withdraw your s53 application and resume private negotiations.

In response to the numbered points in my letter of 5 May, to which you have responded in your two subsequent letters, I make the following points:

1. We note that you have now submitted a scoping report to the Planning Inspectorate in relation to your potential DCO application. Given that your scoping report was only submitted to the Planning Inspectorate on 30 June, my client's consultants are still in the

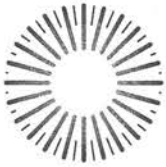
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process of reviewing it to obtain a clearer understanding of the surveys that you wish to carry out. We accept that it may not be necessary to await the issuing of a scoping opinion by the Planning Inspectorate. However, it is only reasonable for my client to have time to consider the proposed scope of the surveys as set out in the recent scoping report.

2. Noted.
3. You state in your letter of 14 June that without access for an initial walkover survey you cannot be specific about which buildings you wish to enter on the site, as you do not know which buildings may be of historical or ecological significance. However, now that my client's environmental impact assessment is publicly available, following submission of Stone Hill Park Limited's planning application for redevelopment of the site, I would expect Riveroak to be able to be more specific on this point. Are you able to confirm whether this is the case? In any event, however, my client is obviously concerned to control any proposed access to buildings, in consideration of the interests of its tenants. It is not within my client's power to grant access to any buildings on the site currently leased to third parties. We have therefore carved out access to buildings and structures in the enclosed revised draft licence.
4. We note that you feel you will only be able to clarify the scope of protected species surveys after you have carried out an 'extended Phase 1 Habitat survey'. However, it is important that my client retains some control over the subsequent surveys carried out. This is particularly important to ensure that Riveroak's surveys do not clash with surveys that my client will be carrying out for the purpose of its own development proposals. Drafting to deal with this is included in the revised draft licence enclosed. In any event, following the publication of my client's environmental impact assessment I assume that Riveroak's consultants are in a better position to define the ecological surveys that they believe will need to be carried out. Could you confirm what effect Riveroak's review of Stone Hill Park's planning application has had in this regard?
5. Noted. We have included a mechanism in the draft licence whereby separate programmes of surveys for Phase 1 and Phase 2 are agreed with my client in future.
6. Noted. We have explicitly restricted access to Amec Wheeler Foster employees in the draft licence enclosed.
7. Thank you. In the draft licence enclosed we have inserted an obligation to share method statements and risk assessments.
8. We remain puzzled by the timing issues described in our letter of 5 May, but this does not impact upon the drafting of the licence.
9. While we remain somewhat sceptical in relation to this issue, we accept that it is not a matter which affects the drafting of the licence.



10. My client considers that a daily rate of [REDACTED] is reasonable in the circumstances. I have drafted this daily rate into the draft licence.
11. Noted. We are happy to accept a mutually agreed fixed programme of surveys, but would still like 2 days' notice of the names of those accessing the site on any particular day. Drafting has been inserted accordingly.
12. Thank you. We have provided for this in the drafting and would be grateful if in your next draft you would define the surveys (to the level of detail possible) in Schedules 1 and 2, which we have inserted into the draft licence.
13. It is not acceptable to my client that Riveroak staff should be allowed to access the site to assist with surveys. We do not understand why this should be necessary as Amec Foster Wheeler are the appointed environmental experts and are no doubt able to conduct a proper site survey without assistance. If you still feel that access by Riveroak staff is necessary, please provide specific examples of why this is the case.
14. Thank you. I have inserted drafting accordingly.
15. Thank you. I have inserted drafting accordingly.
16. Thank you. I have inserted drafting accordingly. As stated above, Stone Hill Park's planning application has now been submitted and the environmental impact assessment submitted with that application is now publicly available. Therefore the issue of reciprocal survey information being provided by my client in advance of publication should not be at issue.
17. I have inserted drafting to deal with the interface with Operation Stack into the draft licence.
18. In the event that my client writes formally to its tenants in relation to access for surveys we will consider providing copies of such letters to Riveroak.
19. I would be grateful to understand the extent to which Riveroak considers that the information in Stone Hill Park Limited's environmental statement has enabled it to refine or limit any of the surveys originally proposed.
20. It is not acceptable to my client that any element of our fees should be dependent on whether completion of the licence is achieved, as this is to a considerable extent outside their control. I would respectfully ask that you reconsider your position with regard to the undertaking requested for [REDACTED] which does not seem to me to be an unreasonable sum for such negotiations.
21. Noted.

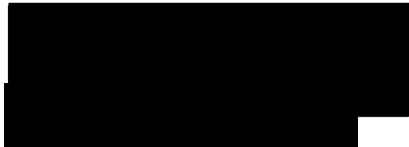


HERBERT
SMITH
FREEHILLS

Date
07 July 2016
Letter to
[REDACTED]

For ease of reference, I have inserted footnotes into the draft licence enclosed, explaining how the key changes relate to the numbered points above. In addition, you will see that I have inserted some other standard conditions attached to s53 authorisations which seem appropriate to this private licence negotiation.

We remain committed to agreeing access by private negotiation, and believe that the enclosed mark-up should take us very close to agreement. We hope, therefore, that your client will therefore reconsider pursuing a s53 application in favour of reaching a licence arrangement.



Partner
Herbert Smith Freehills LLP

DATED

2016

STONE HILL PARK LIMITED

- and -

RIVEROAK INVESTMENT CORPORATION

HSF Draft: 7 July 2016

LICENCE TO ENTER AND CARRY OUT
ENVIRONMENTAL AND/OR GROUND
CONDITION INVESTIGATION UPON
PREMISES KNOWN AS

Manston Airport, Manston Road, Manston, Ramsgate, CT12 5BQ



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THIS LICENCE is made on the

day of

2016

1 Definitions

In this agreement the following expressions shall have the following meanings:

- 1.1 Buildings and Structures Means any buildings or structures within the Property which are leased by the Licensor to third parties
- 1.2 DCO Application Means the Licensee's proposed application under the Planning Act 2008 to redevelop the Property for air cargo and related uses
- 1.3 Intrusive Surveys Means any surveys authorised by this Licence which are intrusive in their nature (such as works to search and bore) but for the avoidance of doubt excluding any walkover surveys¹
- 1.1.4 the Licensor **STONE HILL PARK LIMITED** (Company No. 09223403) whose registered office is Innovation House, Innovation Way, Discovery Park, Sandwich, Kent, CT13 9FF
- 1.2.5 the Licensee **RIVEROAK INVESTMENT CORPORATION** (Company No. [] whose registered office is at []
- 1.6 Licensee's Agent Amec Foster Wheeler, acting on behalf of the Licensee
- 1.3.7 Licence Period Means the period of 6[—] months from and including the date of this Licence
- 1.4.1.8 Daily Payment Means the amount of [REDACTED] exclusive of plus VAT
- 1.9 Operation Stack The provision of parking facilities on the Property to alleviate pressure on the arrangements known as 'Operation Stack'
- 1.5.1.10 Property Means the property known as Manston Airport, title number K803975, excluding Buildings and Structures, and shown edged red on the Plan annexed to this Licence²

¹ A standard s53 authorisation definition

² The terms of the leases granted to the occupiers of the site do not allow us to grant access to a third party. For this reason, access to buildings and structures must be excluded from this licence

<u>1.11 Phase 1 Survey Works</u>	Means <u>the surveys described in Schedule 1; and "Phase 1 Survey" means one of these listed surveys; of the property including, but not limited to, the taking of samples of soil, surface water and study of species</u>
<u>1.12 Phase 2 Survey Works</u>	<u>Means the surveys described in Schedule 2; and "Phase 2 Survey" means one of these listed surveys;</u>
<u>1.61.13 Survey Works</u>	<u>Means the Phase 1 Survey Works and the Phase 2 Survey Works</u>

2 Interpretation

2.1 In interpreting this Licence, and for the avoidance of doubt:

- 2.1.1 where any party to this Licence consists of more than one person any reference thereto shall be deemed to refer to each such person and any agreement, covenant and undertaking by that party shall take effect as a joint and several agreement, covenant and undertaking;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 any gender includes any other;
- 2.1.4 the headings are for convenience only and do not affect interpretation; and
- 2.1.5 any reference to a statutory provision includes any modifications, re-enactment or extension to it and any subordinate legislation as from time to time may be in force.

3 Licence

~~3.1~~ Subject to ~~this clauses 34~~ and ~~clause 5~~, the Licensor gives to the Licensee's Agent, ~~its workmen, contractors, consultants, agents and employees~~ the right to access the Property, with or without apparatus and equipment, in order to carry out the Survey Works.

3.2 The Licensee's Agent's right to access the Property pursuant to this Licence shall:

3.2.1 cease immediately if there is a breach of the terms of this Licence³; and

3.2.2 shall be suspended temporarily (but with immediately effect) and the Licensee shall remove all apparatus and equipment on the Property within 2 hours, in the event that the Licensor notifies the Licensee that the Property is required by the Department for Transport for Operation Stack⁴.

³ This is a standard provision of s53 authorisations.

⁴ As agreed in relation to point 17 of our exchange of letters.

4 Licensee's obligations

4.1 The Licensee agrees ~~and undertakes to~~ ensure that access to the Property by the Licensee's Agent for the purpose of the Survey Works is only in accordance with the terms of this Licence and satisfaction of the obligations set out in this clause.

4.2 ~~Before entering the Property t~~The Licensee will ~~give not less than two (2) days' notice to the Licensor of the following:~~

4.2.1 agree with the Licensor a programme for the Phase 1 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 1 Survey Works to be carried out⁵;

4.2.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

the date(s) and times when access is required in connection with the Survey Works and this Licence grants access only to those named individuals, in accordance with the terms of the agreed programme.

4.3 In the event that following the carrying out of the Phase 1 Survey Works, the Licensee provides evidence that it is necessary to carry out Phase 2 Survey Works in order to prepare an environmental impact assessment in relation to the DCO Application, the Licensee will:

4.3.1 agree with the Licensor a programme for the Phase 2 Survey Works which will prescribe the date(s), times, purpose, areas within the Property, and equipment/apparatus to be used, in respect of each Phase 2 Survey to be carried out;

4.3.2 give not less than two (2) days' notice to the Licensor of the name of the individual(s) who is to access the Property together with the contact details of a named individual who will manage the access;

and this Licence grants access only to the named individuals, in accordance with the terms of the agreed programme.

4.4 The named individual(s) to whom access will be granted under this Licence shall be employees of the Licensee's Agent only and for the avoidance of doubt, no access shall be permitted to employees of the Licensee pursuant to this Licence⁶.

4.34.5 The Licensee will not ~~enter or~~ permit entry by the Licensee's Agent upon the Property pursuant to this Licence without first ~~confirming~~ providing evidence to the Licensor that there is in place public and third party liability insurance in connection with the Survey Works, and the Licensee will (subject to the provision of written evidence of such requirements) pay on

⁵ This type of detail is standard for s53 authorisations.

⁶ As stated in point 13 of our letter of 7 July, we see no need for this access by Riveroak staff.

demand the reasonable and proper cost of any additional insurance premiums payable by the Licensor which may have become payable because of the Licence⁷.

4.44.6 The Licensee will ensure that all Survey Works undertaken upon the Property are carried out under the supervision of a competent person and by personnel who are trained competent and experienced in the methods and use of equipment required for the Survey Work.

~~4.54.7 The Licensee undertakes to ensure that its workmen, contractors, consultant, agents and employees will be the only persons permitted access to the Property and the Licensee agrees to procure that all persons upon the Property pursuant to this Licence will comply with the Licensee's obligations in this Licence. The Licensee will provide the Licensor with method statements and risk assessments in respect of all Phase 1 Surveys prior to accessing the Property for the first Phase 1 Survey, and shall provide the Licensor with method statements and risk assessments in respect of all Phase 2 Surveys prior to accessing the Property for the first Phase 2 Survey⁸.~~

4.64.8 The Licensee undertakes to cause as little damage as is possible and upon completion of the final survey, or if earlier on expiry of this Licence, shall make good any damage caused to the reasonable satisfaction of the Licensor and remove any apparatus or equipment taken onto the Property by the Licensee's Agent in connection with the Survey Works on completion of the same.⁹~~ensure that once the Survey Works have been completed the Property is left secured and in no worse state than existed prior to the beginning of the Licence Period.~~

4.74.9 The Licensee undertakes to not use the Property other than for the purpose of carrying out the Survey Works.

4.84.10 The Licensee undertakes not to make any alterations of any nature whatsoever to the Property other than as permitted under the Survey Works.

4.11 The Licensee undertakes not to cause any unreasonable nuisance damage disturbance annoyance inconvenience or unreasonable interference to the Licensor or to adjoining and/or neighbouring property and/or to the owners occupiers or users of such adjoining or neighbouring property.

4.12 The Licensee shall ensure that at all times all measures are taken as are reasonably necessary to maintain the same level of security in respect of the Property which would exist but for the undertaking of the Survey Works¹⁰.

4.13 The Licensee shall ensure that there is no interference with the existing use of the Property other than to the extent reasonably necessary to carry out the Survey Works¹¹.

4.14 The Licensee shall ensure that prior to the carrying out of Intrusive Surveys, a photographic record is produced of the condition of the part of the Property in respect of which the Intrusive Surveys are carried out¹².

⁷ Amended to more closely accord with standard s53 provisions

⁸ As agreed in relation to point 7 of our exchange of letters.

⁹ This is standard in s53 authorisations.

¹⁰ This is standard in s53 authorisations.

¹¹ This is standard in s53 authorisations.

¹² This is standard in s53 authorisations

4.15 The Licensee shall ensure that the use of photography, images and other information gained through or informed by the Survey Works shall be limited to the preparation of an environmental impact assessment and pre-application consultation in connection with the Licensee's DCO Application¹³.

4.16 The Licensee shall ensure that, within 10 days of the completion of each of the Phase 1 Surveys and the Phase 2 Surveys, the Licensor is provided with copies of all survey data collected by the Licensee's Agent.¹⁴

4.17 The Licensee shall procure that any person accessing the Property pursuant to this Licence shall produce on demand identification and confirmation that they are an employee of the Licensee's Agent, and shall inform the Licensor each day when leaving the Property.

4.94.18 The Licensee undertakes to ensure that ~~not to do any~~ act matter or thing is done which would or might constitute a breach of any law, statute, regulation, rule, order, byelaws, or notice which might vitiate any insurance effected by or on behalf of the Licensor in respect of the Property.

5 Licensor's undertakings

5.1 The Licensor agrees and undertakes to allow the Licensee's ~~Agent, the Licensee's Consultant and employees and authorised agents and sub-consultants~~ access to all such parts of the Property as are agreed by the Licensee and Licensor in the programmes referred to in clauses 4.2.1 and 4.3.1 above as being reasonably necessary for the Survey Works ~~at all times during the Licence Period~~ PROVIDED THAT in agreeing a programme the parties shall take into account and seek to avoid any interference that the Survey Works might cause to surveys being carried out by the Licensee for the purpose of their own proposed redevelopment of the Property¹⁵.

6 General

6.1 The Licensee acknowledges that it shall be wholly responsible for the conduct of the Survey Works and all persons upon the Property at the direction of the Licensee or the Licensee's Agent and that the Licensor shall not have any responsibility for the Survey Works or the acts of omissions of any persons upon the Property at the direction of the Licensee or the Licensee's Agent whether or not acting pursuant to any such direction.

6.2 The Parties acknowledge and confirm that no relationship of landlord and tenant is intended to be created between them by this Agreement

6.3 ~~Any~~The notice to be given ~~referred to in clause 4.2 above to the Licensor pursuant to this Licence~~ may be given by email by sending it to Paul Barber [insert email address] {———} at the Licensor or to any other person as the Licensor may inform the Licensee of from time to time.

¹³ As agreed in respect of point 14 of our exchange of letters.

¹⁴ As agreed in respect of point 16 of our exchange of letters.

¹⁵ See point 4 of our letter of 7 July.

7 **Contracts (Rights of Third Parties) Act**

7.1 It is intended that ~~a person that is not a party to this Agreement~~ the Licensee's Agent shall ~~not~~ be entitled to enforce ~~its~~the ~~provisions~~ of this Licence by virtue of the Contract (Rights of Third Parties) Act 1999.

8 **Payment and Indemnity Costs**

8.1 In consideration of the grant of this Licence and on the date of the completion of the Licence, the Licensee agrees to pay to the Licensor (within 10 days of demand) the Daily Payment in respect of each day (or part thereof) that the Licensee's Agent accesses the Property pursuant to this Licence.

8.2 The Licensee shall indemnify the Licensor against:

8.2.1 the costs of restoring any part of the Property which has been damaged and has not been restored to by the Licensee's Agent to the Licensor's reasonable satisfaction following the completion of all Survey Works; and¹⁶.

8.1-18.2.2 all losses suffered by the Licensor due to termination of its arrangements with the Department for Transport in relation to Operation Stack in the event that such termination arises due to the Licensee's Agent failing to vacate the property in accordance with clause 3.1.2.

9 **Costs**

On completion of this Licence the Licensee shall pay the Licensor's reasonable legal costs in the amount of [£xxx]

10 **Confidentiality**

10.1 The Licensor agrees to keep confidential and not discuss or communicate the details of this Licence with any third party (other than the Licensee's Agent) without the Licensee's prior written consent and to ensure that the Licensee's Agent does the same.

11 **Governing Law and Jurisdiction**

11.1 The parties irrevocably agree that any dispute or claim arising out of or in connection with this Licence or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and that the courts of England and Wales shall have exclusive jurisdiction to settle and dispute or claim that arises out of or in connection with this Licence or its subject matter or formation.

¹⁶ As agreed in respect of point 15 of our exchange of letters.

SCHEDULE 1

Phase 1 Survey Works¹⁷

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁷ Further to point 12 of our letter, please insert details of the Phase 1 Surveys– inserting the level of detail you are willing to be bound by in terms of scope

SCHEDULE 2

Phase 2 Survey Works¹⁸

The following surveys, to the extent reasonably required to prepare an environmental impact assessment in respect of the DCO Application:

¹⁸ Further to point 12 of our letter of 7 July, please insert details of the Phase 2 Surveys you may wish to carry out – inserting the level of detail you are willing to be bound by in terms of scope

IN WITNESS whereof the parties have set their hands on the date first above written

SIGNED on behalf of

RIVEROAK INVESTMENT CORPORATION

.....

Authorised Signatory

SIGNED by/on behalf of

STONE HILL PARK LIMITED

.....

Authorised Signatory

