DEADLINE 6 SUBMISSION

STONE HILL PARK LTD – RESPONSE TO EXA'S SECOND WRITTEN QUESTIONS

PINS APPLICATION REFERENCE: TR020002

Responses are provided to all written questions directed to Stone Hill Park Ltd ("SHP").

Whilst SHP considers it will be most efficient for the Examining Authority if it defers its comments on questions directed to the Applicant until Deadline 7 (where it can also comment on the Applicant's responses), SHP considers it important to provide initial responses on a number of questions addressed to the Applicant at Deadline 6. SHP consider this necessary due to;

- the extremely limited time left in the examination phase;
- the Applicant's continued failure to furnish necessary information to the examination or do so in a timely manner; and
- the Applicant's tendency to provide responses that lack veracity and/or appear to mislead the examination.

Question	Question to:	Question	SHP answer / comments
G.2.1	The Applicant Thanet DC	Thanet Local Plan What is the latest position concerning the examination of the draft Thanet DC Local Plan to 2031?	The Thanet DC Local Plan is currently being examined with hearings held throughout April, and a further overspill day scheduled in May. In terms of timing, the Inspector estimated that the new Local Plan would not be expected to be adopted until early 2020. Thanet DC confirmed that the evidence base does not justify a policy safeguarding the site for aviation use. Their position as taken forward in the Local Plan is one of 'complete neutrality' over the future of the airport site to allow the DCO process to be concluded without prejudice. Thanet DC have confirmed that the proposed treatment of the site in the Local Plan (as an "omission" site or "white land") will not prejudice the future of the Manston airport site whatever that might be - any application would be determined based on the merits of the case put

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			forward. QC for Thanet DC also noted that *"if the DCO process fails it obviously opens up huge opportunities for us to plan housing growth in the long term".* The Secretary of State has directed that a Review of the Local Plan must be undertaken within six months of adoption. The Local Plan Inspector confirmed that this must take the form of a full review. This will need to consider the implications of the determination of the DCO regardless of what that decision is. The Inspector advised Thanet DC that clear milestones should be set as to when the Local Plan review and subsequent update (incorporating the necessary changes following the review) is submitted by Thanet DC to the Planning Inspectorate. The Inspector has avoided discussions on the DCO examination process and had taken a firm line against any parties submitting additional representations past the deadline. For example, the Inspector did not feel it appropriate for any of the evidence submitted to the DCO examination to be accepted to the Local Plan process.
G.2.2	The Applicant Thanet DC Stone Hill Park Ltd	Stone Hill Park Planning Application Thanet DC's response to first written questions stated that the determination period for the application (OL/TH/18/0660) was extended to 31 March 2019, which has now passed. What is the latest position?	The determination period has been extended to 31 August 2019 to allow additional sensitivity testing in response to comments raised by Thanet DC and third parties. Clearly, the ongoing DCO process has been a complicating factor that has added further delay. At the local plan hearings Thanet DC confirmed that their position as taken forward in the Local Plan is one of 'complete neutrality' over the future of the airport site. QC for Thanet DC also noted that *"if the DCO process fails it obviously opens up huge opportunities for us to plan housing growth in the long term".*

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Ec.2.2		Ecological Surveys What is the current status of the outstanding ecology surveys?	SHP considers it important that the Examining Authority is provided with a factual summary regarding of the current position as regards access to the site and lack of survey activity. SHP is concerned that the Applicant will provide a misleading and incomplete response that is not supported by the evidence. In its Cover Letter submitted at Deadline 1 [REP1-001], the Applicant enclosed (as Enclosure 1) a *"timeline for the provision of the outstanding ecological survey data required to confirm the worst case ecological impact assessment, in response to the request on page F1 of the Rule 6 letter issued by the ExA on 11 December 2018 ('Rule 6 letter')."* The Enclosure 1 set out a timeline for completion of the numerous outstanding surveys, and in section 2.2 Programme it stated *"[I]t is proposed that the survey information gathered, the assessment and any changes to the proposed mitigation are issued to the Examining Authority by May (Deadline 7), so that there is sufficient time for interested parties to comment upon it before the end of the examination."* As explained below, the Applicant will be unable to meet this commitment as a result of its own failures and inactions. We set out the factual summary of the position vis a vis survey activity on SHP land since Deadline 1 (18 January 2019); On 31.01.2019, the Applicant's consultants accessed the site to undertake Bat surveys. Based on SHP's site manager records, this is the **only** date that the Applicant or its consultants has been on site since 18 January 2019 (Deadline 1). Part of the reason for that is that the Applicant breached the conditions of the section 53 authorisation issued by the Secretary of State on 16 September 2018, such that its rights to access the land under the authorisation ceased.

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			The breach of conditions related to the Applicant's failure to reimburse SHP for the additional third party security costs that SHP was required to incur to facilitate the Applicant's access to the site at the times it had requested. These Conditions of the section 53 authorisation were considered necessary by the Secretary of State to protect the legitimate interests of the landowner. This was the second time that the Applicant had lost access rights due to non-payment of costs. We attach as Appendix Ec.2.2(i) the correspondence between SHP, the Applicant, the Applicant's legal advisor and the Applicant's environmental consultants, Wood. In summary, the correspondence explains; • the basis on which the Applicant had materially breached the terms of the section 53 authorisation such that the rights of access under the authorisation immediately ceased; • the need for a new authorisation or voluntary agreement to be in place to facilitate the recommencing of survey activity (as the landowner would not be able to rely on any protections under the s53 authorisation as it was no longer in force); and • SHP's willingness to engage with the Applicant regarding voluntary access arrangements to allow surveys to recommence. In the 72 days that have passed since SHP's email to BDB dated 20 February 2019, neither the Applicant nor its advisers, has acknowledged or responded to our email correspondence. This lack of engagement would appear to demonstrate that the Applicant has no intention of undertaking the outstanding ecology surveys. It should be concerning to all parties expending significant time and resource on this DCO examination that the Applicant does not even feel the need to show that any effort is being made.

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			In keeping with the Applicant's previous patterns of behaviour, we are concerned that the Applicant will seek to place blame for the lack of survey activity on SHP, and wrongly claim the Applicant has been refused access to the site. This would be highly misleading, but wholly consistent with previous conduct and behaviour of the Applicant. As the correspondence clearly demonstrates, the Applicant was not refused access and was simply advised that its rights under the section 53 authorisation have ceased and that a new authorisation or agreement is required. As SHP was not a party to the authorisation, even if it had so desired, it would be unable to waive material breaches of the conditions or vary the terms authorisation – only the Secretary of State would have that power. As SHP explained in section 3.4 of the covering letter to its Deadline 4 submission [REP4-064], the Applicant has continually shown in itself to be an unreliable counterparty. There have now been three separate section 53 authorisations or voluntary agreements (that provided for access to be taken over the land owned by SHP) and, in each case, the Applicant has been in material breach of the conditions of the relevant authorisation or agreement. These were conditions the Secretary of State stated were necessary to protect the legitimate interests of the landowners and the Applicant showed no concern for them. We appreciate the logistical challenge faced by the Examining Authority in reviewing all the information that has been submitted to the examination. However, we consider that it would be informative for the Examining Authority to review the contents of SHP's covering letter to the Planning Inspectorate dated 29 August 2018 which sets out SHP's explanation of why the Applicant had not previously been unreasonably refused access to the SHP land.

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			This letter, attached as Appendix Ec.2.2(ii), provides detailed evidence showing the consistent pattern of unreasonable and aggressive conduct/behaviour by the Applicant, some of which was in contravention of clear advice from the Planning Inspectorate. We have not attached the extensive enclosures submitted with the letter, but would be more than happy to do so if this would be of assistance to the Examining Authority. Similarly, we stand ready to answer any questions that Examining Authority has regarding this issue.
CA.2.17	Stone Hill Park Ltd & others	Representations from Affected Persons Provide details of negotiations with the Applicant in respect of the request to compulsorily acquire land and/or the rights over land and comment on the likelihood of reaching an agreement on this in advance of the end of the Examination on or before 9 July 2019.	SHP has attached (as Appendix CA.2.17) a detailed response that provides; • clarity on the confidentiality obligations owed by the Applicant to SHP; • an update on the current status of discussions between the parties; • comments on the likelihood of reaching an agreement in advance of the end of the Examination; and • a summary of the nature of formal correspondence with the Applicant's advisers, CBRE and BDB Pitmans.
CA.2.23	The Applicant	**Acquiring by voluntary agreement** DCLG Guidance related to procedures for the compulsory acquisition of land (2013) advises at paragraph 25 that, as a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. The ExA has made a procedural decision in the Rule 6 letter to require the Applicant to provide an updated CA Status Report at Deadline 5, to accompany the responses to these questions. The ExA notes that the updated Status Report states that, out of some 163 Affected Persons, only	(i) We expect the Applicant will continue to misrepresent the position with regard to its discussions with SHP. We would confirm to the Examining Authority that the Applicant is not under any duty of confidentiality to SHP in respect of the discussions held between the parties. We previously provided detailed evidence on this point in our submissions made at Deadline 5 (Written Summary of oral submissions put at the CA Hearing). We have also made this clear in correspondence to the Applicant. The Applicant's overall approach to negotiating with affected Persons clearly demonstrates that they have

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		those Persons related to the acquisition of the Jentex site are shown, unequivocally, to have reached agreement. Given this: i **Detail your approach to negotiation with Affected Persons including the timing and nature of negotiations held since your response to the ExA's first questions was submitted on 15 February; and** ii **set out your intended timescales for reaching agreements.**	fallen well short of what is required by the relevant guidance. Those seeking powers of Compulsory Acquisition should only do so as a last resort. At the Compulsory Acquisition Hearing, the Examining Authority advised the Applicant of the Guidance that states compulsory acquisition should only be sought if attempts to acquire by agreement fail, and queried whether sending first letters to landowners on 8 February 2018 was sufficient. We would request that the Examining Authority reviews paragraphs 10.11 – 10.13 of SHP's written summary of oral submissions put at the CA Hearing [reference to be allocated], when assessing the degree to which the Applicant complied with the relevant Guidance.
CA.2.25	The Applicant	**Acquiring by voluntary agreement** DCLG Guidance related to procedures for the compulsory acquisition of land (2013) advises at paragraph 25 that, as a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices, submitted at Deadline 5 on 29 March 2019 [REP5–index number to be allocated], states at paragraph 12.3 that: "*SHP had suggested that the Applicant lease the site for a period. Mr Freudmann inaccurately summarised the offer as being for 25 years. In fact it was for 125 years*."	In keeping with the Applicant's comments in paragraph 12.3 of its written summary of oral submissions put at the CA hearing [reference to be allocated], we expect the Applicant to completely ignore or gloss over the correspondence from 9 April 2018, which followed the letter from the Applicant's legal adviser dated 21 March 2018. We would request that the Examining Authority fully take into account the Applicant's failure to respond to SHP's letter of 9 April 2018 (this letter was appended to SHP's response to first written questions – reference still to be allocated). We note that the Applicant has accepted the error in summarising the lease offer as being for 25 years, however Mr Freudmann's explanation at the hearing that a 25-year lease was "absurd" demonstrates the lack of good faith which has characterised any "negotiations" and a contempt for the DCO process.

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		The length of the potential lease appeared from Mr Freudmann's comments to be a clear factor in RSP's decision on this offer. **If this is not the case, set out the reasons for RSP's decision on the suggestion by SHP that the Applicant lease the site.**	It is a fact that long leasehold structures are not uncommon at airports and it is established through the Applicant's own evidence that it gave no consideration to this option.
CA.2.30	Stone Hill Park	In the Written Summary of SHP's Oral Submissions put at the CAH held on 20 March 2019, submitted at Deadline 5 on 29 March [REP5-index number to be allocated] you state at paragraph 7.5, in respect of Article 25 (Application of Compulsory Purchase Act 1965): *"As a result of a reduction in time in which to exercise the compulsory acquisition powers from 5 years to 1 year in respect of SHP's land, consequential amendments are required to Article 25(1)(a)(ii) and Article 25(2)."* Suggest what changes may be necessary.	Please see revised wording below. The only required change is to replace "five" with "one" in article 25(1)(a)(ii). The amendments referred to in article 25(2) flow from the amendments to Article 21. *"25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.* *(a) in section 4A(1) (extension of time limit during challenge)(a)—* *(i) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)"; and* *(ii) for "the three year period mentioned in section 4" substitute "the **ONE** year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Manston Airport Development Consent Order 201[ ]".* *(2) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 21 (time limit for exercise of authority to acquire land compulsorily) of the Manston Airport Development Consent Order 201[ ]"."*

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			SHP would note that the Applicant's QC confirmed at the Local Plan examination hearing held on 17 April 2019 that the Applicant intended to radically shorten the period for which it was seeking to exercise any powers of compulsory acquisition. Separately, Anthony Freudmann (director of the Applicant) confirmed to SHP that the Applicant would reduce the period to 6 months from 5 years. Once again, it appears that the Applicant is making it up as it goes along, but we await sight of the Applicant's proposals set out in its Deadline 6 submissions.
DCO.2.19	The Applicant	**Article 9 - Guarantees in respect of payment of compensation, etc.** The Revised 2.1 Draft Development Consent Order submitted at Deadline 5 on 29 March 2019 [REP5-index number to be allocated] includes the Secretary of State as the approving body in Art. 9 Guarantees in respect of payment of compensation, etc. The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-index number to be allocated] states at paragraph 3.23 that: "*The report of the Transport Select Committee inquiry into small airports in 2015 is provided at Appendix 8, supporting the case that the Secretary of State would be the better body to approve the guarantee provided at Article 9. The project also affects a wider area than that of Thanet District Council, further suggesting a higher-level body would be more appropriate*." **i. Indicate on which parts of the 2015 report of the Transport Select Committee inquiry into small airports you rely on as your justification for**	i. We would respectfully flag to the Examining Authority that the report from the Transport Select Committee predated the second CPO process undertaken by Thanet District Council. Accordingly, it is unclear how this is of any relevance. This second process reached the same conclusions regarding the unsuitability of RiverOak as an indemnity partner.

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		retaining the Secretary of State as the approving body in this Article. **ii. Show how these support your position.**	
DCO.2.25	The Applicant	**Article 18 - Authority to survey and investigate the land** The ExA is considering amending Article 18(7)(a) to read "*Operation Stack has been declared by Highways England and/or Kent Police*". **Comment.**	SHP is concerned that the Examining Authority has not made any reference to other required changes to Article 18 as explained in paragraphs 3.3.-3.7 of SHP's submission [REP4-064]. Further information and context is provided in our response to question Ec.2.2 above.
DCO.2.33	The Applicant	**Schedule 1: Authorised Development** **Justify the inclusion of Work No.12 — The construction of a new passenger terminal facility with a maximum building height of 15m under 'Associated Development' rather than under the s14 and 23 list of works.**	We would refer the Examining Authority to sections 5 and 6 of Appendix 1: Rebuttal of NSIP Justification appended to SHP's Written Representations [REP3-025]. For any development to qualify under section 23 of the Planning Act 2008, they must have the requisite effect referred to in section 23(5)(b) which is *"to increase by at least 10,000 per year the number of air transport movements of air cargo movements for which the airport is capable of providing air cargo services".* Any development that does not have this requisite effect is therefore **not** part of the principal development. Section 115(1) of the Planning Act 2008 is clear that there are only **two** categories of development for which development consent may be granted. These are (a) development for which development consent **is required**, or (b) associated development. As set out section 5 of Appendix 1: Rebuttal of NSIP Justification appended to SHP's Written Representations [REP3-025], even on the most favourable interpretation, Works 2, 10, 11 and 13 in no way satisfy the NSIP criteria. Quite simply these works would have no

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			effect on the airport's ability to operate air cargo movements whatsoever. For the reasons set out in 5.3-5.6 of that Appendix 1, which is largely based on the Applicant's own evidence, Works 1 (the airside cargo facilities) would also not qualify as NSIP. The Applicant has still not provided the examination with the explanation and justification of the Works that form the NSIP development and the Works that comprise Association Development. This is despite the request made by the Examining Authority and the commitment given by the Applicant at the dDCO hearing held on 10 January 2019. The only conclusion that can be reached, is that the Applicant is unable to explain, justify and evidence their assertions. In view of the Applicant's continued failure to furnish the examination with this critical information and given the very limited time left in the examination, SHP wrote to the Planning Inspectorate expressing its deep concern that this omission was not flagged to the Applicant in the second round of written questions issued on 5 April. As set out in SHP's detailed submissions and above, there are many elements of development that the Applicant has listed as NSIP development that do not meet the required criteria under s23 of the Planning Act 2008. There are also many elements of the purported Associated Development that do not comply with the relevant guidance criteria. In order to assess whether development satisfies the criteria for associated development set out in the relevant guidance, **an assessment must first be made about development that comprises**

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			the principal (i.e. NSIP) development. This requires a clear explanation and justification of the NSIP development to be provided by the Applicant and for the evidence to be tested in the examination to ensure it satisfies the required tests under section 23. Under the guidance, associated development must be **proportionate to the nature and scale of NSIP development, the purpose of associated development should not be to cross-subsidise and associated development should be subordinate to principal development.** Without having clarity over the applicability of the claimed NSIP development, no assessment of these tests can be made. There are also further perquisites, which the Examining Authority placed on record in the hearings regarding **the need for detailed business plan and financial forecasts to be provided by the Applicant to allow an assessment of the cross-subsidy test**. As a minimum, this would require the Applicant to have submitted detailed granular evidence showing the capital costs and the ongoing revenues and costs attributable to the NSIP works and also each element of associated development works. Based on the wholly inadequate information before the examination, the Examining Authority cannot even start to make an assessment against the tests. It is clear from our review of historic and current DCO applications that the commercial nature, scope, scale, proportionality and dominant nature of the purported associated development in the Applicant's application is without precedent. This requires a detailed, robust assessment of the evidence, however the failure of the Applicant to provide information that is critical to the examination, is preventing the Examining Authority from being able to

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			adequately test the evidence and, for affected parties such as SHP, a fair chance to put their case. There can, of course, be no compelling case for the acquisition of land for an unspecified, unexplained and unquantified use for which there is no evidence of demand, let alone need. As we stand today, SHP's submissions provide the only detailed analysis on the applicability of the purported NSIP development and Associated Development that is before the examination. A summary of SHP's post application submissions on this point are summarised below; • 8 October 2018: Submission of Relevant Representations. Please refer to paragraphs 3.11, 5.5, 5.6, 5.8, 7.6 – 7.12 and 9.8 of SHP's Relevant Representations [RR-1601] • 19 January 2019: Deadline 1 Submission: Please refer to paragraphs 3.1 – 3.14 of the written summary of SHP's oral submissions at dDCO Hearing [REP1-023] which confirms the request that was made by the Examining Authority and the commitment provided by the Applicant. This can be checked via the recordings from the hearing. • 15 February 2019: Deadline 3 Submissions: Please refer to sections 5 and 6 of Appendix 1: Rebuttal of NSIP Justification, which forms part of SHP's written representations [REP3-025]. As set out in the analysis, Works 1, 2 10, 11 and 13 would not qualify as NSIP works as they do not have the effect required by section 23 of the Planning Act 2008. Further detailed analysis is also provided on the non-compliance with the associated development criteria. • 8 March 2019: Deadline 4 Submissions: Please refer to paragraphs 1.3, 3.8 and 3.9 of SHP's covering letter [REP4-064]

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			and SHP's comments on the Applicant's Response to Written Question DCO.1.1 [see page 10 and 11 of REP4-067]. • 29 March 2019: Deadline 5 Submissions: Please refer to paragraphs 2.9.3, 2.9.16 and 2.9.17 of SHP's Comments on the Applicant's Comments on the Written Representations [Rep5 - reference to be provided] and paragraphs 3.1.2 – 3.1.5 and 9.1 of SHP's written summary of oral submissions put at the Compulsory Acquisition hearing on 20 March 2019 [REP5 reference to be provided].

DCO.2.49	The Applicant
	All Parties
		Additional Articles or Requirements
		The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-index number to be allocated] states at paragraph 10.1 that:
		"*The Applicant does not agree with SHP's proposals for inclusion in the dDCO, except that it would be prepared to adopt the equivalent to the Crichel Down rules in relation to SHP's interest*."
		Provide possible drafting for inclusion in the draft DCO embedding the principles inherent in the Crichel Down rules.
			Without prejudice to SHP's position as set out in previous submissions we note below the key principles that should be incorporated in the Crichel Downs drafting;
			
			• SHP to have first right of refusal on the disposal of any SHP land that has not been developed materially in accordance with the Applicant's proposals set out in Schedule 1 of the draft Development Consent Order.
			• A requirement for the Applicant to offer back the entire SHP land to SHP in the following circumstances;
			  o a CAA EASA Certificate has not been issued to the Applicant by 1st January 2024;
			  o the airport is not operational by 1st April 2024;
			  o where any of the land is subject of a planning application that includes residential development, or any other uses not set out in the draft DCO;
			• In each case, SHP will have the right to acquire the land at the cost paid by the Applicant, less the reasonable costs (including SDLT) incurred by SHP in acquiring the land. Where only part of the land is being acquired back by SHP, the cost is to be calculated on a pro rata per acre basis.

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			The provisions have purposefully been kept simple, and developed so as to be consistent with the statements and commitments made by the Applicant in the examination. Firstly, the Applicant considered it absurd to suggest that the airport would not be developed and operational by Q1 2022. We therefore consider that the inclusion of the deadlines for the EASA Certificate and point at which the airport must be operational, provide a generous 2 year grace period. On the basis that the assessments contained in the Environmental Statement are all based on an airport being operational in Q4 2020 (39-42 months before the 1 April 2024 deadline), any delay beyond then would have a material impact on the validity of the environmental assessments in the application. Secondly, the Applicant has robustly set out its position that it has no interest in residential development or any non-airport related development. Accordingly, it should have no concern in agreeing to the related provisions. In its submissions to date, SHP has outlined the many impediments to the scheme that could delay an airport being operational to well after late 2024/2025 (please see realistic timetable/programme set out in Appendix NOPS.11 to SHP's written summary of oral submissions to the Need and Operations Hearing). Should the Applicant now turn around and claim the inclusion of the milestones are onerous or restrictive, it would be an acceptance on the Applicant's part that an airport could not be operational even two years after its latest estimate. If there was this acceptance, it would require a full reassessment of the environmental effects in its application. The Applicant cannot continue to have its cake and eat it.

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F.2.3	The Applicant	The Applicant is reminded that Regulation 5(2)(h) requires that an application be accompanied by a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded. The Applicant is further reminded that DCLG Guidance related to procedures for the compulsory acquisition of land (2013) advises at para. 9 that the applicant should be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. The Applicant is reminded that information in the public domain at http://rsp.co.uk/news/the-formation-and-funding-of-riveroak-strategic-partners/ states that: "*comprehensive details of our funding partners and investment arrangements will of course be provided to PINS as part of the DCO application, providing solid evidence of our ability to meet all of the financial obligations associated with the acquisition, reopening and operation of the airport*." The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-number to be allocated] states at paragraph 3.3 that: "…the investors wished to remain confidential…"	SHP notes that Angus Walker of BDB wrote to the Planning Inspectorate on behalf of the Applicant on 5 April 2019. Mr Walker requested that the Examining Authority considers evidence that would not be shared with affected parties in line with commitments provided by the Planning Inspectorate and Examining Authority with regard to openness and transparency. The email from Mr Walker was published on 16 April 2019, following which SHP subsequently wrote to the Planning Inspectorate on 17 April 2019 explaining why there can be no justification for deviating from the Examining Authority's previous commitment to openness and transparency.

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		i. Explain how this latter statement conforms to, and supports, a system of Examination which is designed to be open and transparent. **ii. Explain how this latter statement confirms to RSP's own commitment to provide comprehensive details of its funding partners.** **iii. Suggest ways in which the ExA may recommend to the Secretary of State on issues surrounding the availability of funding in the face of a desire for confidentiality relating to that issue.**	
F.2.13	The Applicant	The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-number to be allocated] states at paragraph 3.3 that: *"The shareholders of MIO Investments are the project's investors"* Information in the public domain at http://rsp.co.uk/news/the-formation-and-funding-of-riveroak-strategic-partners/ states that: *"We have provided all required details of our company ownership structure to Companies House"* **i. Provide a copy of the documentation provided to Companies House.** **ii. Provide a link to the Companies House website showing where details of MIO Investments are to be found.**	Should the Applicant fail to provide information on MIO Investments Ltd (the 90% shareholder in the Applicant) and provider of all the funding, we are able to partly assist the Examination by attaching copies of Belize records (the limited extent they are available) as Appendix F.2.13. Unfortunately, as a Belize Company, subject to extremely limited regulation on transparency, it is not required to disclose details of its directors, shareholders or to submit financial statements. The documentation does show; o MIO Investments Ltd was set up by a fiduciary company (Morgan & Trust Corp Belize Ltd) in Belize on 30 June 2016. o The Company has an authorised share capital of USD $10,000 (see clause 6.2 of the Memorandum of Association).

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F.2.15	The Applicant	The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-number to be allocated] states at paragraph 3.3 that: "*The shareholders of MIO Investments are the project's investors … their loans to MIO Investments had been subject to due diligence and approval by HMRC under the Business Investment Relief scheme and declared in their tax returns.*" You have provided redacted copies of three letters, each dated 1 December 2016, from Business Investment Relief, HMRC (reference numbers 0498, 0499 and 0500). Each of these letters refers to "*the proposed investment in RiverOak Strategic Partners Ltd*" not, as you state, to MIO Investments. The letters from HMRC state that: "*If any of the circumstances or the nature of the investment differ from those described by you, or other facts come to light which have an impact on whether the investment is a qualifying investment, HMRC will not be bound by this opinion.*" **Would the opinion of the HMRC remain valid if the nature of the loan has changed?**	We would also bring to the Examining Authority's attention that the financial statements of the Applicant for the years ending 31 July 2017 and 31 July 2018, show nil investment in the form of new share capital or loans. The Applicant is a dormant company with £1 of share capital. On the basis MIO Investments has not invested in or provided loans to the Applicant, it is not clear that "*the proposed investment in RiverOak Strategic Partners Ltd*" has been made in accordance with the information before HMRC.
F.2.18	The Applicant	The Applicant's Written Summary of Case put Orally - Compulsory Acquisition Hearing and associated appendices [REP5-number to be allocated] states at paragraph 3.1 that: *"the restructuring* [is] *taking longer than expected in part due to the ongoing discussions with Stone Hill Park (SHP) regarding the acquisition of the site."*	It is a fact that, on 3 December 2018, the Applicant signed Heads of Terms that included no conditionality, to acquire the land by 12 December 2018. In the period since, it is SHP's firmly held view, supported by the evidence, that the Applicant's engagement and correspondence with

Question	Question to:	Question	SHP answer / comments
		Explain how the ongoing discussions with Stone Hill Park regarding the acquisition of the site have delayed the restructuring.	SHP has been purely tactical, and aimed at allowing it to maintain a pretence to the Examining Authority that discussions are ongoing. It is doubly frustrating to find that the so-called "discussions" are now also being used by the Applicant to justify its failures to provide the required information on funding. Further evidence on the Applicant's lack of serious or meaningful engagement is set out in SHP's response to the Examining Authority's written question CA.2.17 submitted as part of SHP's Deadline 6 submission.
F.2.23	The Applicant	You have provided a redacted copy of the joint Venture Agreement at Appendix 4 to Applicant's Written Summary of Case put Orally Compulsory Acquisition Hearing and associated appendices [REP5-index number to be allocated]. This states that: "*The JVC is a private company limited by shares incorporated in England under the CA 2006 and has an issued share capital of one ordinary share of £1 which is held by ROML*." **Provide the Company Registration number for the JVC.**	We would bring to the Examining Authority's attention that the confirmation statement lodged at Companies House on 23 March 2017 shows this to be inaccurate. Unless the Companies House records are inaccurate, the single share of £1 was actually held by Anthony Freudmann rather than ROML.
ND2.5	The Applicant	**Forecasts** It is stated in the Applicant's Written Summary of Case put Orally – Need and Operation Hearing [Submitted at DL5, Ref not yet assigned] that Manston would offer "*unconstrained, state of the art freight, digitalised freight handling facilities - speciality handling (for race horses); refrigerated*	ii. Paragraph 5.2.3 of Volume II of the Azimuth Report [APP-] claims Manston would be well placed to dominate niche markets including the transport of "live animals such as breeding stock and racehorses", yet at the Need and Operations hearing, the author was unable to explain which airports handle these flights.

Question	Question to:	Question	SHP answer / comments
		storage facilities; flexible warehousing (eg to accommodate *outsized freight) and security clearance" and that this would be an offer will provide "something that has not been done in this country before*" **i. How would such an offer differ from those already available at existing UK airports?** **ii. Do other UK airports offer speciality handling for race horses?** **iii. Do other UK airports offer refrigerated storage facilities and accommodation for outsized freight?** **iv. "*State of the art freight, digitalised freight handling facilities*" implies a high level of automation and efficiency. Has the provision of such facilities been taken into account in the socio-economic forecasts?**	Therefore, in order to assist the examination, we note below a response we received from a leading global horse shipping company with a strong UK presence, when asked the following question; *"When flying horses in and out of the UK, which airports do you tend to use and what determines the choice – is it proximity to racecourses or stables?"* The response below is informative and demonstrates the importance of cost in determining choices of how freight gets from A to B (something Azimuth completely ignored in preparing its "forecasts"). It also highlights the important role played by trucking to Europe, even for shipments of horses; *"In the vast majority of cases the airport is determined by economical factors - using routes from airports that already have space on board to take our horses.* *This means in some cases we fly from other EU country airports. It really does depend on the route needed (ie. country to / from). In the case of flights that do not have an economical constraint (ie. you are happy to spend unlimited amount of cash) - then hypothetically any airport is possible to take off from, although, horses can only come into an airport where there is a vet present at the airport (official Border Inspection Post - if coming from outside the EU).*
ND.2.7		**Forecasts – Bellyhold and Pure Freight** It is stated in the Applicant's "Written Summary of Case put Orally – Need and Operation Hearing" [submitted at DL5, Ref not yet assigned] document that the applicant believes that the cost difference	ii. The Examining Authority has correctly asked the Applicant whether such research should have completed earlier to help inform the business case. We would also respectfully suggest that this type of research (to develop an understanding of the dynamics and characteristics of the air freight market), should have been undertaken

Question	Question to:	Question	SHP answer / comments
		between flying cargo on freighters as compared to bellyhold transit are not as substantial as stated by other parties. The ExA notes a commitment to undertake further research into this area. **i. When will the results of such research be available?** **ii. Should such research not have been completed earlier to help inform the business case?**	to inform the so-called "forecasts" prepared by Azimuth Associates. This requirement is even more critical, when the author of the report has accepted that she has no relevant experience. As highlighted in Appendix 2.1 to SHP's Written Summary of Oral Submissions put at the Need and Operation Hearing [Rep5- reference to be allocated], paragraph 4.1.9 of Volume II of the Azimuth Report [APP-044] states that one of the interviewees, when asked to rank issues that are important to its business, responded, "Cost is always the most important". Yet, we heard at the examination hearing that Dr Dixon's forecasts were prepared without consideration to the costs. Furthermore, Dr Dixon did not appear to understand the degree to which this admission further undermined the credibility of the Azimuth Report.
ND.2.12	The Applicant	**Forecasts - Integrator** At the Need and Operations Hearing (21/03/19) it was stated that the integrator indicated in the forecasts would be a new integrator, as opposed to attracting an existing integrator from an existing airport. Mention was made of Amazon Air and Alibaba. The ExA notes the evidence in this regard of York Aviation on behalf of Stone Hill Park Ltd, who state that Amazon has an embryonic operation in the UK with a leased Boeing 737 freighter operating to East Midlands Airport and is opening a 500,000 sq.ft. warehouse and sorting centre adjacent to this Airport, and that Alibaba has committed to establishing its main European hub at Liege Airport [Written Summary of Stone Hill Park Ltd's Oral Submissions put at the Need and Operations Issue	We would bring to the Examining Authority's attention the material error in the Applicant's forecasts (with regard to the purported E-Commerce integrator movements) that raises serious questions regarding the appropriateness of the effects assessed in the Environmental Statement. As explained in paragraphs 35 - 38 of appendix NOPS.5.2 (Altitude Aviation) of SHP's written summary of oral submissions to the Need and Operations Hearing, the "*integrator movements assumed in the Azimuth report are in no way compatible with an import-based e-commerce airline model.*" Despite the Applicant (via Chris Cain) explaining at considerable length in the hearing that the E-commerce integrator model requires freight to be imported into the UK to stock fulfilment centres to then supply consumers based in the South-East, Azimuth Report (and the further

Question	Question to:	Question	SHP answer / comments
		Specific Hearing Held on 21 March 2019, submitted at DL5 reference not yet assigned]. **i. Outline any discussions you have had with new integrators and quantify the likelihood of such operators coming to the Airport in the second year of operation, with reference to their expansion or growth in similar markets to the UK.** **ii. Would such integrators not be predisposed to a more centrally located airport where the whole of England could be reached more easily?**	explanation provided as Appendix 1 to the Applicant's written summary of oral submissions to the Need and Operations Hearing) confirms that the forecasts assume the opposite (i.e. tonnage on integrator flights was calculated as 100% outbound with a return calculation of 20%, more akin to a traditional integrator). This is wholly contradictory position and would suggest serious a material error in the split of import and exports assessed and general understanding. It is also incredible that, even in the course of preparing the Appendix 1, neither the Applicant nor Azimuth appears to understand the fundamental contradiction with the information being submitted to the examination.
ND.2.17	The Applicant	Your documents cite various evidence sourced from reports produced by York Aviation for Transport for London and the Freight Transport Association. At the Need and Operations Hearing (21/03/19) the author of these reports disagreed with your interpretation of such reports, considering that the evidence had been sourced out of context and did not take account of the conclusions of the reports. **i. What is your view on this?** **ii. Do you still maintain that the York Aviation reports support your proposal, contrary to the view of the authors of these reports?**	We would also respectfully refer the Examining Authority to paragraph 4.5 (and relevant sections of Appendix NOPS.5.1) of SHP's Written Summary of Oral Submissions put at the Need and Operation Hearing [Rep5- reference to be allocated].
ND.2.27	The Applicant	The Northpoint report [REP4-031] points to a 'window of opportunity' for freight at Manston prior to the Heathrow Northwest runway opening, where time exists for Manston to gain a foothold in the freight market and then expand thereafter. You also state that recent increases in Gatwick freight	ii. We would respectfully refer the Examining Authority to paragraphs 9.1 - 9.5 of SHP's Written Summary of Oral Submissions put at the Need and Operation Hearing [Rep5- reference to be allocated] and Appendix NOPS.11.1 to highlight the unrealistic nature of the Applicant's timetable for reopening the airport in time to benefit from the *"window of opportunity"*.

Question	Question to:	Question	SHP answer / comments
		volumes would likely return to Heathrow once the third runway opened, and in the Need and Operations Hearing (21/03/19) you stated that this was different to the proposal in this case due to the difference between bellyhold and pure freight. **i. Expand on this viewpoint, including on how you consider your scheme to be complementary to the preferred scheme outlined in the Airports NPS.** **ii. Why would the 'window of opportunity' be important if your role is complementary?**	
OP.2.1	The Applicant	At the Need and Operations Hearing (21/03/19) it was confirmed to the Examining Authority's understanding that the Aerodrome Certificate and the Airspace Change Process would both take around two years to complete after any Development Consent Order was made. **i. Is the ExA's understanding correct?** **ii. Would the period for the Aerodrome Certificate commence from the DCO being made (if made) or from the acquisition of the airport land?**	i. Aerodrome Certificate: We would refer the Examining Authority to the explanations provided in paragraphs 8.1 – 8.4 of SHP's written summary of oral submissions put at the Need and Operations hearing on 21 March 2019. We have also attached correspondence from the CAA dated 29 April 2019 (Appendix OP.2.1) that confirming CAA would adhere to established policy/practice as set out in SHP's submissions. Airspace Change Process: We would refer the Examining Authority to paragraphs 9.1 – 9.5 of SHP's written summary of oral submissions put at the Need and Operations Hearing. This provides a clear explanation as to why the process is likely to take considerably longer than two years to complete. As noted above, the CAA has confirmed (see Appendix OP.2.1) that the Certification process would not commence prior to the Applicant owning the relevant airport land. As explained in the Realistic Construction Timetable appended as Appendix NOPS.11.1 to SHP's Written Summary of Oral Submissions put at the Need and Operations Hearing, even if the DCO was made (notwithstanding the scale of evidence against it), the

Question	Question to:	Question	SHP answer / comments
			Applicant would be unlikely to be able to take ownership of the land until mid-2021 (after judicial reviews and related appeals processes had run their course). As the two year period could only commence from that date, and even ignoring the other impediments and hurdles set out in the Appendix NOPS.11.1, an airport could not therefore be operational before Q3 2023. This is 18 months after the revised date asserted by the Applicant and nearly 3 years after the date (Q4 2020) set out in paragraph 5.2.1 of Volume 1 of the Environmental Statement.
OP.2.5	The Applicant	**Scale and capacity** The Applicant's The Applicant's Written Summary of Case put Orally Need and Operation Hearing [submitted at DL5, reference not yet assigned] contains a note on airport 'associated uses' for the Northern Grass site. It concludes that it is difficult to find a close equivalent for the Manston/Northern Grass relationship in the UK and that attention is being turned to airports elsewhere for antecedents for an airport such as is being proposed at Manston. If this is of interest to the ExA, it is stated, then this will be reported on in time for Deadline 6. **Provide such evidence by Deadline 6.**	We would respectfully refer the Examining Authority to the previous commitment the Applicant made in paragraph 18 of Annex 4 of the Revised NSIP Justification [REP1-006] to provide this information at Deadline 3 (i.e. 15 February 2019). *"18. Having indicated the kind of occupiers that are likely to be attracted to the Northern Grass and their role in supporting the airport's operation, the Applicant will seek to provide to the Examining Authority further examples of this type of airport-related development from other UK airports and important cargo led airports in Europe and North America. This additional evidence will be submitted by Deadline 3."* It is literally incredible position to be in where an Applicant is still unable to explain and justify the most basic elements of its development proposals on the Northern Grass area (which extend to well over 1 million square feet). We have referred to above the Applicant's previous (unfulfilled) commitment but would also highlight that is now over a year since the Applicant submitted its first

Question	Question to:	Question	SHP answer / comments
			Application, 9 months since it submitted its second Application and nearly 4 months since the start of the examination. This information should have been included within the Application documents, and to the extent the Examining Authority had further questions, the Applicant should be capable of providing an answer in real time rather than require months to go searching for an answer. It is consistent with our view that the Applicant is making up as it goes along.
OP.2.6	The Applicant	At the Need and Operations Hearing (21/03/19) it was confirmed by the applicant that they have programmed to start the construction of the Airport in 2021, with operations beginning from quarter 1 of 2022, and that circa £180million would be spend on construction in this calendar year. At the Noise hearing (22/03/19) it was confirmed that no construction works would take place at night. **i. Is the ExA's understanding of this programme correct?** **ii. Comment on how the revised start date of operations affects the provided forecasts contained within the Azimuth Report [APP-085].** **iii. Define the night time period for the proposed construction works restriction.** **iv. Does the period of the night-time restriction include such operations as machinery start up and construction deliveries?** **v. Provide a likely construction programme for 2021, bearing in mind the proposed lack of night works and allowing for operations in 2022.**	With regard to question (v) we would respectfully refer the Examining Authority to paragraphs 9.1 – 9.5 of SHP's Written Summary of Oral Submissions put at the Need and Operation Hearing [Rep5- reference to be allocated], which clearly demonstrate the Applicant's revised forecast date for operations (Q1 2022) lacks any credibility. Appendix NOPS.11.1 referred to in paragraph 9.5 provides a more realistic timetable that shows, on a best case basis an airport could not be open before late 2024. As explained in the Appendix, this programme ignores any potential delays caused by funding issues, additional groundworks and /or planning variations as a result of survey work, any construction issues or other impediments such as CAA Airspace Change or Certification processes and /or other material issues such as DIO HRDF Beacon relocation). The indicative programme also takes no account of the fact that the Applicant has no experience of airport development.

Question	Question to:	Question	SHP answer / comments
OP.2.7	The Applicant	**Public Safety Zones** At the need and operations Issue Specific Hearing (21 March 2019) it was confirmed that general aviation movements would be counted in the number of flights required before public safety zones are designated. An indicative drawing has been produced. **i. Bearing in mind this answer, at what year of operation would you expect PSZ's to be required at Manston?** **ii. Has this been taken account of in the Environmental Statement?** **iii. Has the PSZ drawing taken account of the forecasts, or is it mainly based on the PSZs at other airports?**	*i.* From a review of the Applicant's written summary of its oral submissions to the Need and Operations hearing it is clear that the Applicant does not understand the requirements for PSZs. In paragraph 10.2 the Applicant states that *"it is therefore possible that PSZs may need to be introduced towards year 20."* We continue to be shocked by the ignorance the Applicant displays regarding the requirements relating to its own application and are frustrated that we are required to spend significant time and resources providing evidence to rebut false assertions made by the Applicant. In many ways we feel we know more about the Applicant's application than the Applicant. SHP's comments on the Applicant's responses to Examining Authorities Written Questions OP.1.7 and OP.1.8 [REP4-067], **explained that PSZs would be required to be put in place just after the third year of operations (i.e. Year 4 of the forecasts**). At this point, the Applicant is forecasting to exceed 1,500 movements per month (including general aviation movements), and would have a forward looking forecast showing that it would be exceeding 2,500 movements per month within 15 years of that point. This is consistent with paragraph 3 of the relevant Guidance which states that *"[T]he Public Safety Zones are based upon risk contours modelled looking fifteen years ahead, in order to allow a reasonable period of stability after their introduction."* Notwithstanding the clarity in the guidance and the information submitted by SHP at Deadlines 4 and 5, the Applicant continues to misrepresent the position on PSZs by

Question	Question to:	Question	SHP answer / comments
			incorrectly claiming that PSZs may only need to be introduced *towards year 20.* ii. SHP would note that the effects of PSZs have not been assessed at all in the Environmental Statement. iii. SHP would note that the PSZ drawing submitted by the Applicant at Deadline 5 only shows an indicative 1 in 10,000 risk contour. As the Applicant and its advisors should be aware, the 1 in 100,000 PSZ contour would extend much further based on the comparison to the airports identified by the Applicant. Whilst detailed modelling would be required to assess the 100,000 PSZ risk contour, at a minimum it would be expected to extend at least 2.5km from the end of the runway and would therefore cover a large part of Ramsgate. We would seriously question why the Applicant has failed to provide the Examining Authority with an indicative 1 in 100,000 risk contour given the significant impact it would place on occupiers within the relevant area.

APPENDICES

Ec.2.2 (i)…………………. Correspondence between SHP, the Applicant, the Applicant's advisers in relation to the s53 authorisation and access.

Ec.2.2 (ii)………………….Letter from SHP to the Planning Inspectorate dated 29 August 2018

CA.2.17…………………….SHP's response to written question CA.2.17

OP.2.1……………………..Correspondence with the CAA regarding when EASA certification process can commence

F.2.13……………………….Copies of Belize records of M.I.O. Investments Limited

Appendix Ec.2.2 (i): Correspondence between SHP, the Applicant, the Applicant's advisers in relation to the s53 authorisation and access.

The enclosed correspondence covers the period 18 - 20 February 2019

CORRESPONDENCE WITH BDB

Subject: FW: s53 Authorisation re land access rights [BDB-BDB1.FID9947610]

From: Alan MacKinnon
Sent: 20 February 2019 09:17
To: 'WALKER Angus'
Subject: RE: s53 Authorisation re land access rights [BDB-BDB1.FID9947610]

Dear Mr Walker,

I have been asked to respond to your email of 19th February as follows.

It is clear that the authorisation has ceased for the reasons set out in my email to Tony Freudmann.

It is indisputable that the condition in paragraph 10 of Annex 3 was breached and that this breach was not rectified within 7 days as required by paragraph 5.

The obligation is firmly on the Applicant to ensure that it complies with the conditions.

There is no requirement under the Authorisation for Stone Hill Park Ltd to inform the Applicant of any breach. Notwithstanding this, you will note that we wrote to Mr Freudmann twice (on 22 January and 1st February) advising that RSP had not reimbursed Stone Hill Park Ltd, yet these emails were ignored.

As the Authorisation is granted by the Secretary of State for Housing, Communities and Local Government (rather than being an agreement to which Stone Hill Park Ltd is a party), it is only the Secretary of State that could vary the terms or conditions of the authorisation. In absence of any variation being made by the Secretary of State, the drafting of the authorisation is definitive and it is clear that the rights of entry have now ceased.

As set out in my email to Mr Freudmann, Stone Hill Park Ltd remains willing to discuss a voluntary licence arrangement.

Kind regards

Alan Mackinnon

From: WALKER Angu[redacted]
Sent: 19 February 20[redacted]
To: Alan MacKinnon
Cc: Tony Freudmann; HOBBS Jessica; Nick Hilton; HALLATT Alex; Jamie
Subject: RE: s53 Authorisation re land access rights [BDB-BDB1.FID9947610]

Dear Mr Mackinnon

I am responding to your email to Tony Freudmann of yesterday's date. I understand that the invoice dated 4 January has now been paid as has the subsequent invoice sent on 22 January meaning that everything is now paid.

In our view the authorisation has not ceased because you did not fully inform 'the Authorised Persons' of the breach until yesterday, in which event the breach was remedied within 24 hours, the 'Authorised Persons' being the Applicant *and* those authorised to carry out the surveys. The rectification did take place within seven days of the breach being properly notified. Even on your own analysis the breach is hardly 'incapable of rectification' 17 days later. Please could you ensure that future notifications of alleged breaches are sent to RSP and Wood (and we would be glad to be copied in as well).

could you ensure that future notifications of alleged breaches are sent to RSP and Wood (and we would be glad to be copied in as well).

The Applicant will therefore continue to access the site under the s53 authorisation with the next visit planned for Thursday. If you wish to raise this issue with the Planning Inspectorate, feel free to do so; we would also be grateful to be copied in to any such correspondence.

Regards

Angus Walker Partner

W www.bdbpitmans.com

For and on behalf of BDB Pitmans LLP
50 Broadway London SW1H 0BL

From: Tony Freudmann
Date: 18 February 2019 at 12:41:27 GMT
To: Alan MacKinnon
Subject: Re: s53 Authorisation re land access rights

Dear Alan

I apologise for the delay in settling these invoices. They have now been paid and should arrive in your account later this afternoon. The delay is the result of an oversight on our part which is not unconnected with the sheer volume of work that we have been managing in the build up to the January hearings and their aftermath.

As the the remainder of your letter I await advice from our lawyers. I will then write further and hope that the site inspections may be reinstated without delay.

Kind regards
Tony

On 18 Feb 2019, at 12:00, Alan MacKinnon wrote:

Dear Tony,

AUTHORISATION UNDER SECTION 53 AND SECTION 54 OF THE PLANNING ACT 2008 ISSUED TO RSP ON 11 SEPTEMBER 2018 (THE "AUTHORISATION")

We refer to the above and would note that under the terms of the Authorisation (and as a result of RSP's failure to adhere to the conditions of the Authorisation), the right of entry onto the land has now ceased.

As you will be aware, the Authorisation was granted subject to *"compliance with the Conditions at Annex 3 (which are necessary to protect the Landowner's and Occupier's legitimate interests)."*

Under Condition 10, the Applicant is required to *"reimburse the Landowner within 21 days of demand for any reasonable additional security costs (including reasonable administrative costs) directly associated with allowing the Authorised*

Persons access to the Land, such amount to be calculated on the basis of additional sums (if any) incurred by the Landowner in respect of security arrangements for the Land, with a breakdown of time and amounts to be provided to the Applicant."

Under paragraph 5 of Annex 3, it states that *"[T]he Authorised Persons right of entry onto the Land pursuant to the authorisation shall immediately cease if the Authorised Persons are in breach of these conditions and that breach either:*
(a) is incapable of remedy; or
(b) has not been rectified within 7 days."

An invoice was issued to you on 4 January 2019 in respect of the additional security costs required to be reimbursed by RSP under the terms of Clause 10 of Annex 3. In line with Condition 10, RSP had 21 days (to 25 January 2019) to reimburse the costs to SHP, with Condition 5 providing RSP a further 7 days to rectify any breach of this requirement. We would note that you acknowledged receipt on 4 January 2019 and confirmed that payment would be made in the following days. However, payment was not made, and despite subsequent emails of 22 January 2019 and 1 February 2019 advising you that payment had not been received, no steps have been taken to rectify the situation. As a result, we are now 44 days on from the date of demand for reimbursement of security costs, well beyond the point when the breach is capable of being rectified under the terms of the Authorisation.

The Authorisation was issued on behalf of the Secretary of State and we would note that is not an agreement that SHP is party to. On the basis that the right to enter the land under the Authorisation has now ceased, it is not clear how SHP, as Landowner, could rely on any of the protections included within Annex 3 should RSP or any of its consultants access the land. Hence, under any scenario, a new agreement is required. In keeping with our constructive approach to date, SHP would be willing to provide access under an appropriate licence arrangement that incorporated necessary protections for SHP.

RSP's failure to comply with the terms of the Authorisation is highly frustrating, and only serves to demonstrate the strength and reasonableness of the representations made by SHP prior to grant of the Authorisation. We do not repeat the substance of our representations here, but would remind you that the breach of this Authorisation follows on from (i) the breach (by RSP) of the s53 Authorisation granted to RiverOak Investment Corporation LLC in December 2016, where SHP's land was accessed unlawfully and (ii) the multiple material failures to comply with the payment terms of the voluntary licence agreement entered into in August 2017.

We look forward to hearing from you. In the meantime, please advise your consultants of the contents of this email and arrange for payment of the outstanding invoices.

Kind regards

Alan Mackinnon

A: Stone Hill Park, Manston Road, Ramsgate, Kent, CT12 5BL
W: www.stonehillpark.co.uk<http://www.stonehillpark.co.uk/>

Subject: FW: s53 Authorisation re land access rights [BDB-BDB1.FID9947610]

CORRESPONDENCE WITH NICK HILTON (WOOD)

From: Jamie
Sent: 20 February 2019 10:32
To: nick.hilton@[redacted]
Subject: FW: s53 Authorisation re land access rights [BDB-BDB1.FID9947610]

Dear Nick,

Thank you for your email of yesterday.

We received a response from BDB Pitmans who stated that is their view that the authorisation had not ceased. The email further stated that the *"Applicant will therefore continue to access the site under the s53 authorisation with the next visit planned for Thursday."* The email from BDB Pitmans together with the email response is attached below for your information.

As the rights to enter the land have ceased under the terms of the s53 Authorisation, there is no basis on which access to the site on Thursday is authorised. We understand that it would be Wood, rather than the Applicant itself, that would seek to take access and trust that you will be undertaking your own review of the terms and conditions of the s53 Authorisation.

We have advised RSP that Stone Hill Park Ltd is willing to discuss a voluntary arrangement that would allow lawful access to the land, and there is no reason why this could not be concluded swiftly to allow surveys to resume.

Best regards,

Jamie Macnamara
Stone Hill Park Ltd

Jamie

From: Hilton, Nick <nick.hilton[redacted]
Sent: 19 February 2019 12:01
To: Jamie
Subject: RE: S53 Authorisation in respect of rights to enter land at Manston Airport site

Dear Jamie

I have received your e-mail and BDB Pitmans will respond formally in due course.

Regards

Nick Hilton
Technical Director
Wood Environment & Infrastructure Solutions UK
Direct: [redacted]
Mobile [redacted]
www.woodplc.com

From: Jamie <jamie[redacted]
Sent: 19 February 2019 10:06
To: Hilton, Nick <nick.hilton@[redacted]
Subject: RE: S53 Authorisation in respect of rights to enter land at Manston Airport site

Dear Nick,

I just wanted to check that you received the email I sent yesterday and had advised your colleagues accordingly.

Best regards
Jamie

From: Jamie
Sent: 18 February 2019 12:07
To: 'nick.hilton@woodplc.com' <nick.hilton[redacted]
Subject: S53 Authorisation in respect of rights to enter land at Manston Airport site

Dear Nick,

We have today written to RSP regarding the authorisation issued by the Secretary of State on 11 September 2018 under s53 of the Planning Act 2008 that provided authorised persons with the right to enter land at the site of the former Manston Airport for the purpose of undertaking surveys.

As a result of RSP's failure to comply with the Conditions (as set out in Annex 3 of the Authorisation), the right of entry onto the land under the Authorisation has ceased.

We trust that RSP will contact you separately regarding this, however we are writing to you in your capacity as the *"Authorised Person with management responsibility"* as set out in the Notice of Entry issued on 17 December 2018.

We would be grateful if you would acknowledge receipt of this email.

Best regards

Jamie Macnamara
Stone Hill Park Ltd

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Appendix Ec.2.2 (ii): Letter from SHP to the Planning Inspectorate dated 29 August 2018

Baldwins Wynyard Park House, Wynyard Avenue, Wynyard, TS22 5TB

BY EMAIL
Dr Richard Hunt
The Planning Inspectorate
3D Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Date: 29 August 2018

Dear Dr Hunt,

Application by RiverOak Strategic Partners Limited ("RSP") for authorisation under section 53

We write with reference to both our email correspondence of 27 July 2018, which requested the opportunity to address the misleading and inaccurate comments made in section 3 of Bircham Dyson Bell's ("BDB") letter to the Inspectorate dated 31 May 2018 (the "31 May Letter") and the Inspectorate's letter of 15 August 2018 seeking further information in respect of a s.53 authorisation request made by RSP.

In Section 1 of this letter we comment on the claims made in section 3 of the 31 May Letter, which set out the reasons why RSP considers it has demonstrated reasonable efforts in seeking to agree access to the land owned by Stone Hill Park Limited ("SHP"). Section 2 sets out our response to the information requested in your letter of 15 August 2018.

With this letter we have enclosed all relevant voluntary access / s.53 correspondence between SHP and RSP (and their respective advisers). We have assumed that the Inspectorate will have copies of all relevant correspondence to which it is a party and have only included that limited correspondence with the Inspectorate that related to RSP's unlawful use of the s.53 authorisation granted to ROIC on 16 December 2016.

In summary, it is clear that our evidence demonstrates;

- RSP's s.53 authorisation request was made prematurely having not made reasonable efforts to obtain entry to the land on a voluntary basis prior to making its application, and in so doing, disregarded the clear guidance;
- in the period since making the application, RSP has made no reasonable attempt to engage with SHP regarding its valid concerns as evidenced by the lack of constructive and proactive engagement;
- the additional conditions requested by SHP are reasonable and proportionate and have the purpose of protecting SHP from financial loss caused directly by RSP's actions - SHP has, at no point, sought to commercially benefit from voluntary licence arrangements with RSP and has been forced to effectively subsidise RSP's project by being exposed to significant costs resulting from RSP's actions over the last 17 months;
- RSP disregarded clear advice from the Inspectorate and DCLG in pursuing its aggressive and unlawful attempts to coerce SHP through claiming purported rights to access the land under s.172 of the HPA2016. This was done in a manner that has been highly prejudicial to SHP and cannot simply be set aside and treated independently from negotiations over voluntary access;

- In correspondence by, and on behalf of RSP, it is clear that many assertions and claims have been made that are highly misleading and inaccurate as evidenced throughout our comments in Section 1. In contrast, we have taken significant care in our correspondence to be factual, explain the issues in sufficient detail and provide evidence and supporting documentation to support our statements.

1. **<u>SHP Comments on Section 3 of 31 May Letter (Attempts to Demonstrate Reasonable Efforts)</u>**

1.1 In this section we provide an extract of the relevant paragraph(s) from the 31 May Letter (extract shown in italics), followed by our comments.

1.2 *"3.1 RiverOak consider that Stone Hill Park Limited (SHPL) has acted unreasonably during attempts by RiverOak to voluntarily agree a licence which would allow RiverOak to access the land at Manston Airport for the purposes of surveying the land in connection with the proposed development consent order application. This is particularly so, in the context of the Planning Act 2008, where timescales are set and relatively short, with the examination of the entire application taking only six months.*

3.2 In the context of relatively short timescales under the Planning Act 2008, it is important to note that on behalf of RiverOak, BDB first sent an email to SHPL on 10 February 2016 requesting a meeting to discuss the potential entry onto the land. Whilst we do not wish to repeat the entire history of negotiations since that initial email and subsequent meeting, we do think it worth setting out some key dates:"

<u>SHP comments on paragraphs 3.1 & 3.2:</u> it is factually incorrect for both RiverOak Investment Corporation LLC ("ROIC") and RSP to be referred to as RiverOak, and for statements to be made that have the effect of misleading readers into believing they are the same entity. It has been admitted in correspondence that these are two wholly independent entities that have never been legally connected in any way – RSP was not a subsidiary, associate or other related entity. This issue has been raised on numerous occasions and there is no justification for the continued attempts to conflate these two entities.

The first correspondence in relation to access which inferred BDB was acting for RSP, was only sent in March 2017. All correspondence prior to that date was understood by SHP and its advisers to have been sent on behalf of ROIC, a completely unconnected legal entity. As will be demonstrated in this letter, the delays in RSP securing access rights are solely down to their actions and the perplexing lack of engagement that they have shown throughout.

1.3 *"3.2.1 July 2016: after protracted unsuccessful voluntary negotiations, RiverOak applies for its first s.53 application;*

3.2.2 December 2016: PINS grant the first s.53 application, based on clear evidence that SHPL has acted unreasonably (in particularly through SHPL's actions of putting forward a draft licence on unreasonable terms and then refusing to enter into it when RiverOak agrees to enter into it — see letter from BDB to PINS dated 7 October 2016);"

<u>SHP Comments on paragraphs 3.2.1 & 3.2.2:</u> as noted above, these matters related to ROIC, rather than RSP. It is also a matter of fact that SHP subsequently granted a licence to RSP in summer 2017, after negotiations between SHP and RSP over voluntary access only **<u>first</u>** commenced in April 2017.

1.4 *"3.2.3 February — March 2017: RiverOak and its consultants access the land under the s.53 authorisation issued by PINS — all authorisation conditions are complied with;*

3.2.4 *April 2017: RiverOak applies for its second s.53 application, necessitated by the change of legal entity from RiverOak Investment Corporation (the beneficiary of the first s.53 authorisation) to RiverOak Strategic Partners;"*

SHP Comments on paragraphs 3.2.3 & 3.2.4: SHP has serious concerns regarding the s.53 authorisation granted by the Secretary of State to ROIC on 16 December 2016 (the "2016 Authorisation") and its subsequent use. The following summary demonstrates that RSP could not provide any evidence that it, or its consultants, had been specifically and validly authorised to access the land pursuant to the 2016 Authorisation and that material information was withheld from the Secretary of State, the Inspectorate and SHP, and only subsequently disclosed following action taken by SHP in March 2017.

Firstly, it is important to note that the terms of the 2016 Authorisation allowed only ROIC, or persons authorised by ROIC, to access the land for the purpose of undertaking surveys. It also placed certain obligations on ROIC that cannot be ignored. However, ROIC and RSP failed to disclose that the Applicant, being ROIC, had transferred its interests in the promotion of the DCO to RSP the day prior to the 2016 Authorisation being granted to ROIC (i.e. on 15 December 2016). The Secretary of State was clearly unaware that ROIC had transferred its interest in the project when granting the authorisation, as evidenced by the statement of reasons issued alongside the 2016 Authorisation, which included, *"[E]ntry to the land is needed now to enable the Applicant to complete its environmental surveys".*

No explanation has yet been provided as to why this information was not disclosed to the Secretary of State and Inspectorate. If it had been, it would have necessitated RSP seeking a new s.53 authorisation in its own name in December 2016. Indeed, paragraph 3.2.4 of the 31 May Letter even states that the April 2017 application was *"necessitated by the change of legal entity from RiverOak Investment Corporation (the beneficiary of the first s.53 authorisation) to RiverOak Strategic Partners."* This is effectively an admission that RSP should not have taken access under the 2016 Authorisation.

Notwithstanding the fact ROIC was no longer involved in the project, it is recognised that the decision to grant the s.53 authorisation was made in good faith on the only information available to the Secretary of State at that point. It is also noted that the facts did not come to light until after expiry of the standard 6 week Judicial Review period.

We now examine the use of the 2016 Authorisation and initially focus on the Notice of Entry issued to SHP, and the failure to evidence that individuals had been specifically and validly authorised to undertake surveys. On 23 January 2017 (see enclosure 1), BDB wrote to SHP stating;

> *"[P]ursuant to the s.53 authorisation issued by the Secretary of State on 16 December 2016, please find attached a Notice of Entry together with appendices A and B advising of access on the following days:*
> - *Tuesday 7th February;*
> - *Wednesday 8th February;*
> - *Thursday 9th February;*
> - *Tuesday 14th February; and*
> - *Wednesday 15th February."*

The language used in the email gives the clear impression that the Notice of Entry had been issued on behalf of ROIC, as it was the sole beneficiary of the 2016 Authorisation. SHP understood that BDB were acting on instructions from ROIC, for whom they acted during the

initial s.53 authorisation process. As there was no information to suggest ROIC were no longer involved in the project, and in the knowledge that powers given to the beneficiary of a s.53 authorisation cannot be assigned or transferred (i.e. they were personal to ROIC), SHP had no reason to believe that the Notice of Entry had not been authorised correctly and that obligations placed on the beneficiary were not being satisfied when access to the land was taken in early February 2017. On 17 March 2017 (see enc. 2), BDB wrote to SHP attaching a second Notice of Entry using exactly the same wording as in the email of 23 January 2017, save for the access dates being changed to 3 April – 7 April 2017.

However, by this date new information had come to light during a change of use planning inquiry that raised serious concerns. On 14 March 2017, George Yerrall confirmed, under cross-examination, that ROIC had no legal connection with RSP and that RSP was now intending to promote a development consent order in respect of the site owned by SHP. This information on the change in identity of the Applicant was only then disclosed to the Inspectorate, as confirmed in a letter from the Inspectorate to our then legal advisor, Herbert Smith Freehills LLP ("HSF"), dated 27 March 2017 (see enc. 6).

On 22 March 2017, HSF wrote to ROIC (see enc. 3) to express serious concerns that the Secretary of State was misled in granting the s.53 authorisation to a company that no longer had any intention of making an application for a DCO and flag concerns regarding the lawfulness of the site access which took place allegedly pursuant to the s.53 authorisation during February 2017 and the further access that had been sought for April 2017. On the basis that the only persons authorised to access the site under the 2016 Authorisation were ROIC and persons specifically authorised by ROIC, ROIC were asked to provide written evidence that the individuals contained in the two Notice of Entry documents sent to SHP on 23 January 2017 and 17 March 2017 had, in fact, been authorised by ROIC. No evidence to demonstrate the lawfulness of access was provided by ROIC. A separate letter was also sent to the Inspectorate on 22 March 2017 (see enc. 4).

HSF then wrote to BDB on 24 March 2017 (see enc. 5) to express serious concerns that the Secretary of State was misled in granting the s.53 authorisation to a company that no longer had any intention of making an application for a development consent order. In the letter, a number of questions and information requests were asked of BDB, which (other than the subsequent confirmation that ROIC transferred its rights on 15 December 2016) were not addressed.

After receiving no response to HSF's letter of 24 March 2017, HSF wrote again to BDB on 29 March 2017 (see enc. 7) seeking, inter alia, evidence that the eleven individuals included in the Notice of Entry that advised access would be taken in w/c 3 April 2017 had been validly authorised by ROIC, and advising that if no evidence was provided, access would be refused.

On 30 March 2017, BDB responded (see enc. 8) to HSF's letters of 24 March 2017 and 29 March 2017. The letter confirmed that ROIC had transferred to RSP all of its rights, interest and assets connected with the promotion of the DCO on 15 December 2016, the day prior to the 2016 Authorisation being granted. It claimed that this included the authorisation to undertake surveys pursuant to the 2016 Authorisation and stated that RSP had sole responsibility for the Project and ROIC would take no further part. An email from ROIC dated 30 March 2017 (see enc. 9) was also referenced, which noted RSP had *"acquired all rights and interests including rights to access the airport land..".*

As all parties should have been aware, the beneficiary of a s.53 authorisation is unable to transfer / assigns its rights (or its liabilities) to another party. Only ROIC, or those parties specifically authorised by ROIC, could gain access under the 2016 Authorisation. It is noted

that despite numerous requests, RSP and ROIC failed to provide any evidence to demonstrate the individuals had been specifically and validly authorised to access the land. It is clear to us (and this seems to have been accepted in the comments in paragraph 3.2.4 of the 31 May Letter) that the Secretary of State and Inspectorate should have been advised of ROIC's withdrawal from the project in December 2016, and not over 12 weeks later. Similarly, SHP should certainly not have received two Notices that were stated to be pursuant to the 2016 Authorisation, when no evidence could subsequently be provided that individuals had been specifically and validly authorised by ROIC, the party that was the sole beneficiary of the 2016 Authorisation.

On 31 March 2017, HSF wrote to BDB (see enc. 10) and copied the letter to ROIC, confirming that access would be granted subject to evidence being provided that confirmed that those seeking access were properly authorised. Again no evidence was provided by any party. We can only speculate that ROIC did not wish to be exposed to any of the liabilities arising from authorising persons to access the land. This raises serious concerns regarding who would have been responsible for compensating SHP for any exposure related to the failure to comply with the conditions of the 2016 Authorisation. For example, paragraph 13(b) of Annex 3 states that the Applicant shall *"ensure that those who work on its behalf hold suitable and adequate insurance in respect of public and third party liability and provide proof of said insurance to the Landowner prior to carrying out the Survey(s)."*

On 31 March 2017, BDB responded to the letter of same date by email, suggesting SHP would be exposing itself to criminal sanctions by refusing access. The email (enc. 11) includes the following statement;

> *"I also remind you that if our clients' consultants are in fact duly authorised to enter the land, your clients will be committing a criminal offence if they prevent entry under s.53(5), and they may not wish to be exposed to such a risk based on slight differences of interpretation."*

On 2 April, 2017 HSF wrote to BDB (see enc. 12) to confirm that access would not be provided to the site until satisfactory evidence of authorisation by ROIC could be presented. It reminded that a s.53 authorisation is not capable of being "acquired" by private agreement and that the 2016 Authorisation had not even been granted to ROIC on the date the "transaction" between ROIC and RSP was entered into. No response was received and RSP subsequently made its first (not second, as incorrectly stated in BDB's letter) s.53 application on 4 April 2017.

The detailed evidence presented above shows the comment made in paragraph 3.2.3 to be wholly misleading.

1.5 *"3.2.5. April — August 2017: RiverOak continue to negotiate a voluntary licence with SHPL;"*

<u>SHP Comments on paragraph 3.2.5:</u> RSP only sought to initiate negotiations on voluntary access after submitting its first s.53 application, providing evidence that its application was made prematurely.

1.6 *"3.2.6. August 2017: voluntary licence agreed and completed, despite protracted negotiations;"*

<u>SHP Comments on paragraph 3.2.6:</u> The Inspectorate should be aware that negotiations were more protracted than necessary due to the lack of proactivity from RSP and the requirement to address material inaccuracies in the draft appendices that were sent to HSF. We are happy to provide supporting evidence regarding this, if requested. It is also noted that this was prejudicial to SHP, as the delay/additional work resulted in SHP being forced to incur

irrecoverable legal costs, without recourse as it was required to err on the side of caution under threat of a s.53 authorisation being granted.

1.7 *"3.2.7. August 2017 — December 2017: RiverOak access the land under the voluntary licence agreements — during which time all licence conditions are complied with;"*

<u>SHP Comments on paragraph 3.2.7:</u> It is matter of fact that RSP **did not** comply with the licence conditions as we explained in section 3 of our letter to the Inspectorate of 20 February 2018 (we would not propose to fully restate this evidence in this letter but provide some more detail in paragraphs 1.12 and 1.13). To claim otherwise is disingenuous. If the purpose of the wording in the 31 May Letter is to claim RSP was in compliance prior to the expiration of the licence on 16 December 2017 (on the basis the final 4 invoices relating to reimbursement of the third party security costs were payable after this date), that would be of even more concern. It would suggest RSP was less willing to reimburse costs when it no longer had access to the site and had withdrawn from negotiations with SHP on a new licence. This reinforces the requirement for SHP to be protected from financial risk relating to RSP's conduct.

1.8 *"3.2.8 October 2017: RiverOak contact SHPL to enquire about an extension to the licence and are told that SHPL has changed legal advisors from Herbert Smith Freehills to Pinsent Masons. In a response dated 17 October 2017 (see enclosed at Schedule 5), Pinsent Masons state: "our client is not prepared to grant the additional access" and "we are currently reviewing the terms of the existing access licence". No reason for this sudden change in position is given;"*

<u>SHP Comments on paragraph 3.2.8:</u> In October 2017 RSP only sought to extend the area of land covered by the licence and did not seek to extend the termination date beyond 16 December 2017. The request was refused, as, following the appointment of new legal advisors with significant DCO experience it was apparent that RSP had misunderstood the requirements of s.23 of the Planning Act 2008 ("PA2008)" and, based on the project it had consulted on not satisfying the s.23 criteria, there was no justification for why it genuinely required access to our land. It is noted that RSP were subsequently requested by the Inspectorate (in paragraph 4.2 its letter of 20 February 2018) to provide clarification regarding the reasons that it considered its project qualified as a NSIP under s.23 of the PA2008, and that the explanation provided was deemed unsatisfactory when included in its April DCO application.

1.9 *"3.2.9 October 2017— May 2018: unsuccessful negotiations between RiverOak and SHPL continue;"*

<u>SHP Comments on paragraph 3.2.9:</u> this paragraph mis-characterises the nature of the negotiations. The lack of engagement from RSP from the date (being 1 December 2017) it first asked for the 2017 licence to be extended beyond 16 December 2017 has resulted in the negotiations lasting significantly longer than required. We cannot understand why the engagement from RSP – the party seeking the commercial benefit of an agreement - has been so lacking.

To highlight the point, there have been three particularly long periods of hiatus with no engagement from RSP (despite numerous chasers from us) on voluntary licence arrangements following correspondence issued by SHP;

- the 81 day period from 14 December 2017 (see enc. 18) to 5 March 2018 (enc. 28), when RSP sought to restart negotiations on voluntary access;
- the 34 day period between our letter of 27 April 2018 (enc. 35) and the response of 31 May 2018 (enc. 39) and;

- the 66 day (and continuing) period from SHP's letter to BDB of 25 June 2018 to today's date.

Together, these three periods account for 181 of the 272 days in the period since negotiations commenced on extending the term of the voluntary licence. A review of the content and timing of all correspondence between SHP and RSP (and our respective advisers) clearly show this and also demonstrates the lack of RSP's willingness to engage on the valid concerns raised by SHP. The voluntary licence correspondence between the parties from 1 December 2017 to today's date is included in the enclosures.

1.10 *"3.2.10 January 2018: RiverOak applies for its third s.53 application."*

SHP Comments on paragraph 3.2.10: This is factually incorrect as RSP applied for its second, not third, s.53 application, during January 2018. As noted previously, ROIC is a completely separate and unconnected legal entity from RSP.

1.11 *"3.3 Since October 2017, RiverOak has repeatedly stated that it is willing to enter into a licence with SHPL on the similar terms as the previous licence which expired in December 2017 (even though this is not a licence whose terms are fully acceptable to RiverOak). SHPL, however, has refused these similar terms and instead repeatedly state that they are unwilling to enter into a voluntary licence unless additional conditions are included in the licence. It is not clear what has caused the change of approach from SHPL as, to all intents and purposes, the situation remains the similar and it is clear that access to the land would not cause SHPL any hardship:*

(a) the land to which RiverOak is seeking access is a disused airfield and is not used for any purpose; where any occupiers are present RiverOak are making or have made separate arrangements for access outside this s.53 application; and

(b) SHPL themselves do not use the land for any purpose.

SHP Comments on paragraph 3.3: SHP has explained at length the reasons why it has asked for the inclusion of the reasonable and proportionate additional conditions (as evidenced in the enclosures). The requirement for protection from a repeat of RSP's failure to meet its liabilities is a direct consequence of both RSP's failure to comply with the payment terms of the previous licence and our well founded concern over RSP's financial position. RSP's recent Companies House filings and the refusal to share any information on its financial position only serve to increase these concerns. The request for compensation in respect of costs SHP has been forced to incur by RSP's aggressive tactics of threatening access (and intimating criminal sanctions) via s172 of the HPA2016 (see enc. 21), is also a direct consequence of RSP's actions, which were in conflict with the clear DCLG and Inspectorate advice. For BDB's letter to claim that *"the situation remains similar"* despite the highly prejudicial effect RSP's actions have had on SHP demonstrates a real lack of awareness.

For clarity, up to the point RSP withdrew from negotiations over extending the licence in mid-December 2017, it had met its payment obligations under the 2017 Licence. At that point, the only additional condition SHP had sought was that RSP first provide an explanation of how its project satisfied the criteria under s.23 of the PA2008, and in doing so demonstrate why it genuinely required access to the land. As the enclosures 13 -19 demonstrate, RSP refused to provide this explanation until requested by the Inspectorate in correspondence dated 20 February 2018. It subsequently provided its "NSIP Justification" on 5 March 2018 (para 4 enc. 28), at which point it only then requested discussions on voluntary access arrangements resume.

It was only after RSP aborted negotiations in mid-December 2017 (which coincided with the expiry of their rights to access the land), that RSP materially breached its payment obligations

in a manner that was prejudicial to SHP. Subsequently (in February 2018), RSP disregarded clear advice from the Inspectorate and DCLG in pursuing its aggressive and unlawful attempts to coerce SHP through claiming purported rights to access the land under s172 of the Housing and Planning Act 2016 ("HPA2016"), resulting in SHP incurring significant legal costs.

The additional conditions requested by SHP are reasonable and proportionate and have the sole purpose of protecting SHP from financial loss caused directly by RSP's aggressive and inappropriate actions. SHP has, at no point, sought to commercially benefit from voluntary licence arrangements with RSP.

1.12 *"3.4 In their correspondence with PINS, SHPL continues to re-state that RiverOak breached the voluntary licence agreed in August 2017. RiverOak can confirm that the breach that SHPL is referring to relates to a late payment of security costs. Over the course of the licence duration, SHPL issued invoices for security costs to RiverOak for the total amount of £43,632.00. All of these were paid on time and without dispute, save for the final four invoices totalling £10,440.00 which, through an accounting error and change of invoice personnel at SHPL, were delayed. All outstanding payments were, however, paid by 1 February 2018."*

SHP Comments on paragraph 3.4: The enclosures attached to our letter to the Inspectorate of 20 February 2018 include the multiple pieces of correspondence sent to RSP and copied to BDB over the period in question. The claims regarding non-payment being due to *"an accounting error and change of invoice personnel"* at SHP are new excuses that are not supported by a review of the correspondence.

Firstly, there would have had to be multiple accounting errors at RSP's end to explain non-payment of the multiple invoices (each of which fell due for payment on different dates), which would seem highly unlikely. Secondly, it is a fact that multiple emails sent to both Tony Freudmann (RSP) and Monika Weglarz (BDB) from SHP officers were completely ignored, much in the same way that our correspondence from 25 June 2018 onwards has been ignored. It took our final email of 31 January 2018, which advised that a statutory demand was in course of being served on RSP under section 123(1)(a) of the Insolvency Act 1986, to elicit any form of response from them.

The resulting internal and third party costs incurred by SHP, including chasing payments that were overdue by up to 40 days, seeking advice on statutory demand process for recovery, preparing statutory demand papers, was significant. SHP was not compensated for these costs under the terms of the 2017 Licence. It was wholly unfair for SHP to be prejudiced in this manner, particularly in view of the fact the only party getting any benefit from the licence arrangement was RSP. It is for this reason that SHP has sought the inclusion of a small number of very reasonable and proportionate protective conditions to ensure that it does not suffer any further financial loss as a result of RSP's failure to comply with the licence arrangements. If, for any reason, RSP decided it no longer wished to promote a DCO, we would have no confidence that it could, or would, meet any outstanding liabilities.

1.13 *"3.5 By constantly re-stating that RiverOak has breached the licence without providing details, SHPL is being disingenuous and is mischaracterising a very minor breach. It is using this minor breach, which was rectified within a reasonable period of time and as soon as it became apparent, as a reason for demanding a number of conditions which RiverOak considers are unreasonable and disproportionate. These conditions include:"*

SHP Comments on paragraph 3.5: There are multiple issues with this paragraph. Firstly, SHP has been very clear, detailed and accurate in explaining the breaches in its correspondence as

evidenced in the enclosures to, and content of, our 20 February 2018 letter to the Inspectorate (also copied to BDB), and throughout our correspondence up to and including our letter to BDB of 25 June 2018 (see enc. 46).

Secondly, the claim that SHP *"is being disingenuous and is mischaracterising a very minor breach"* is false. There were four separate breaches, all of which would be classed as material (each breach could have led to the licence being terminated had it not already expired). Thirdly, the breaches were certainly not rectified in a reasonable period. For example, the invoice raised on 30/11/2017 was due for payment within 21 days but was not paid until 01/02/2018 despite an email chaser on 20/12/2017, followed by strongly worded emails on 12/01/2018 and 31/01/2018 (with the latter advising a statutory demand, in the form attached to the email, was in course of being served). It is a fact that this invoice was not settled until 42 days **after** expiry of the 21 day period permitted under the licence despite our correspondence to RSP. Therefore, there is no basis to claim that any of the breaches were rectified *"as soon as it became apparent"*, and indeed, the evidence suggests that they were ignored.

1.14 *"3.5(a) a restriction on the duration any one notice of entry can cover - this simply adds to the administrative burden and is being used by SHPL as a form of restricting access;"*

SHP Comments on paragraph 3.5(a): restricting the duration of any single notice was not unreasonable or disproportionate for the reasons set out in section 4.3 of our letter to the Inspectorate dated 20 February 2018. In no way would access to the land be restricted and, in any event, it has subsequently been agreed that a notice can cover a period of one month under the proposed licence arrangements (see enc. 42).

1.15 *"3.5(b) a requirement for those authorised persons accessing the site to provide confirmation of the authorised surveys they are undertaking on site – under the terms of the previous licence, this information would be provided in a notice of entry supplied two weeks prior to entry onto site. Requesting this be provided once more on the day of entry is, once again, an attempt to add to the administrative burden;"*

SHP Comments on paragraph 3.5(b): requesting that authorised persons that access the land provide notification of the surveys they are undertaking as part of the normal "check-in" process could not be considered burdensome. The condition was required to address the challenge of the previous licence where a single notice was issued to SHP covering 70+ individuals for the full 19 week duration of the licence, all of whom were authorised to undertake every survey in the licence schedule. The inclusion of the condition only sought to make the licence conditions consistent with the protections afforded under s.53(4)(a) of the PA2008, which requires any authorised person *"if so required, [to] produce evidence of the person's authority, and state the purpose of the person's entry, before so entering"*. Accordingly, it could not be considered unreasonable.

1.16 *"3.5(c) a condition preventing access being taken until a bond or escrow account or other form of security has been put in place to cover costs (at one point stating this to be £60,294.45 net of VAT) -these are clearly completely disproportionate and unreasonable given the lack of fruitful negotiations;"*

SHP Comments on paragraph 3.5(c): had RSP not attempted to take access under s172 of the HPA2016, against the guidance and advice of DCLG and the Inspectorate, and had it provided timely assurances as requested regarding warrant procedure, SHP would not have been forced to incur these significant costs (see enc. 22-27). These costs directly result from the actions of

RSP in seeking to unlawfully use the HPA2016, and in doing so, threaten criminal sanctions against SHP. As a first step, RSP should have made reasonable efforts to agree voluntary access. Despite advising RSP that we would consider other options (e.g. payment of compensation being a condition of entry), RSP has not engaged in any constructive dialogue regarding our concerns, simply re-stating that all our proposals on the material points are unreasonable and that it is only willing to enter into a licence on similar terms to the previous licence. We have sought clarification from RSP on its final position on the outstanding issues, including whether it would agree to compensate SHP, even in part for legal costs in relation to RSP's attempts to unlawfully use the HPA2016. It is highly frustrating that our letters of 25 June 2018 and 27 July 2018 (enc. 46 and 47) have been ignored.

1.17 *"3.5(d) a condition preventing access being taken until a bond or escrow account or other form of security has been put in place to fund any additional third party security costs incurred by SHP -as above, this is completely disproportionate and unreasonable;"*

<u>SHP Comments on paragraph 3.5(d):</u> RSP claims that it is completely disproportionate and unreasonable for SHP to be protected from non-payment risk, despite the financial loss and significant inconvenience it has suffered as a result of RSP's actions. Despite advising RSP that we were willing to consider any reasonable proposal that addresses our concerns, including RSP paying costs weekly in advance (see enc. 40), its final position appears to be that it will in no way compensate SHP for the significant work it would need to undertake to facilitate access for RSP on the basis they have requested.

Whilst it has been set out in previous correspondence with RSP, it is worth restating why we are highly concerned regarding the financial status of RSP and the willingness / ability of RSP to settle any outstanding creditor positions. In BDB's letter to us dated 21 June 2018, it was stated that "*If RiverOak do not pay then you can withhold access until payment is made under the terms of the licence, which is sufficient protection*" (see paragraph 2 of enc. 45).

As set out in our letter to BDB of 25 June 2018 (see enc. 46), SHP's ability to withhold access until payment is made offers no protection. Under the terms proposed by RSP (and the draft conditions), it would take c.4 weeks for security costs to be reimbursed to SHP after the services have been provided by the 3rd party security contractor - an invoice would first be sent to SHP (payable by SHP), following which SHP would then issue its own invoice (with supporting information) to RSP, with RSP having 14 days to settle the invoice and a further 7 day remedy period before there was a termination event under the licence. As SHP would be liable for settling all invoices raised by the security contractor, SHP would therefore be afforded no protection for at least 4 weeks of security costs already incurred. SHP would again be exposed to significant financial risk, which is not acceptable for the following reasons;

- <u>RSP's track record of non-payment under the 2017 licence:</u> please refer to our comments in paragraphs 1.12 and 1.13 above;
- <u>RSP's financial position:</u> the only available information on RSP is the filings made at Companies House on 11 April 2018, which show RSP filed dormant company accounts for the year ended 31 July 2017. The accounts declared that RSP was dormant, had shareholder funds totalling £1 and had made no accounting transactions in the period from incorporation to 31 July 2017. As you will appreciate, this provides zero comfort that RSP has the financial strength to meet any outstanding liabilities under a new licence agreement. The inadequate funding statement provided as part of RSP's DCO application, where RSP fail to disclose its anonymous investors despite previous assurances to do so, provides no comfort.
- <u>Refusal to provide additional information:</u> RSP has refused to provide any financial information or even show us the courtesy of confirming whether or not RSP is still a

dormant company. It has also refused to disclose any information on the identity of the anonymous investors. This is not a reasonable position to take for any party seeking to enter into an agreement where they have payment obligations, particularly given RSP's previous failure to adhere to its payment obligations.

- Previous invoices settled by Freudmann Tipple Ltd: it is also of concern that previous invoices were settled by an unconnected company owned by RSP Director, Tony Freudmann, who, based on Companies House filings, was a director of companies that were the subject of insolvency proceedings, where creditors were unable to recover significant sums owed to them.
- If, for any reason, RSP decided it no longer wished to promote a DCO, SHP could have no confidence that RSP would be willing, or able, to meet any outstanding liabilities under a new licence agreement.

In view of the above, it is entirely reasonable for SHP to seek the inclusion of a reasonable and proportionate protective condition to ensure that it does not suffer any further financial loss as a result of RSP's failure to comply with the licence arrangements. We have reiterated to RSP that we are willing to consider any proposal that adequately addresses our valid concerns, however RSP has refused to engage with us at all on these points as clearly demonstrated in the correspondence between the parties.

1.18 *"3.5(e) the request of an undertaking from BDB to cover the costs of all legal and professional fees incurred by SHPL in relation to RiverOak's attempts to access land pursuant to sections 172 and 174 of the Housing and Planning Act- RiverOak believes that its attempted use of the powers under the Housing and Planning Act were entirely reasonable and were taken only due to SHPL's unreasonable and protracted actions in relation to the purported negotiations for a voluntary licence. RiverOak also notes that SHPL proposes no cap to these costs, which is, again, entirely unreasonable given that this is a cost that should be borne by SHPL."*

SHP Comments on paragraph 3.5(e): It can be easily demonstrated that these actions were not taken *"due to SHPL's unreasonable and protracted actions in relation to the purported negotiations for a voluntary licence".*

Firstly, it is a matter of fact that RSP stopped engaging with SHP on 14 December 2017 (enc. 18) and then launched its attempts to take access under HPA2016 on 13 February 2018, having made no attempt to engage with SHP in the interim period. Secondly, the stated reason RSP stopped engaging with SHP was RSP's refusal to provide any clarification regarding the reasons that it considered its project qualified as a NSIP under s.23 of the PA2008 (and in so doing provide justification as to why it genuinely required access to SHP land). In paragraph 4.2 of the Inspectorate's letter of 20 February 2018 to BDB (seeking further information in respect of RSP's s.53 authorisation request), this exact information was requested by the Inspectorate. This clearly demonstrates that SHP's actions in requesting this information was not unreasonable. Furthermore, the timeline on negotiations, with the long periods of non-engagement from RSP, shows that it was not our actions that were protracted.

Instead, the actions taken by RSP were a blatant attempt to coerce SHP into allowing access to the site without RSP having to make any reasonable efforts to agree access voluntarily. In its letter dated 13 February 2018 (enc. 21) purporting rights to access our site under the HPA2016, RSP used the threat of criminal sanctions and civil action against any persons who obstructed RSP or its contractors. It is always a very serious matter when parties make such threats, even when the foundation of the claims made are baseless and wrong. In order to protect itself and its employees/officers, SHP were required to seek legal advice from Pinsent Masons and Leading Counsel and these costs escalated significantly as a result of the failure

of RSP to provide the undertakings sought within the timescales requested. The claim regarding lack of a cap on the costs is strange, as these costs would only increase as a result of further direct and aggressive actions by RSP that would require SHP to seek further advice.

RSP seem to believe that its aggressive and unwarranted actions that caused these costs to be incurred can now simply be set aside and treated independently from negotiations over voluntary access and/or any decision by the Inspectorate over its s.53 authorisation request. On any objective basis, it is entirely reasonable for SHP to seek recovery of these costs as they directly related to RSP's attempts to commercially coerce SHP into allowing unrestrained access in a way that would be highly prejudicial to SHP and was against the repeated advice from the Inspectorate that the s.53 of PA2008 was the route to follow should it consider it had been unreasonably refused access.

1.19 *"3.6 In addition to SHPL's clear unreasonableness as demonstrated above, RiverOak asks the Inspectorate to also look at SHPL's unreasonableness in the light of their general behaviour and their obvious contempt for the proposed development. Examples of this include:"*

<u>SHP Comments on paragraph 3.6:</u> In this paragraph, the Inspectorate is asked by RSP to consider SHP's behaviour and the examples in no way support the assertions made. This contrasts with the specific, evidenced examples of RSP's unreasonable behaviour that SHP has provided to the Inspectorate. We address each of the examples presented by RSP below.

1.20 *"3.6(a) allowing another third party access to the land to carry out surveys. In Summer 2016, SHPL allowed Avia Solutions, an airport consultancy which had recently been appointed by Thanet District Council to report on the viability of the use of the land as an airport, onto the site to carry out their studies. Avia Solutions had been appointed on 25 July 2017 and access had been granted by 17 August 2017, less than four weeks later, which demonstrates that there could not have been any protracted negotiations, or in fact not really any negotiations."*

<u>SHP Comments on paragraph 3.6(a):</u> SHP is able to provide access to its land to whoever it chooses, however, we would note that granting access for a single day site visit to a subsidiary of a GE Capital, is very different to granting unrestricted access for a 5 month period on a 24 hour per day basis to a company such as RSP with anonymous investors and uncertain financial position, particularly where SHP is exposed to significant additional 3rd party costs and RSP's previous actions in relation to access have been highly prejudicial to SHP (resulting in SHP incurring significant costs that it has been forced to absorb).

1.21 *"3.6(b) SHPL has sent numerous letters to PINS urging PINS not to grant a s.53 authorisation to RiverOak accusing RiverOak of acting unreasonably. As demonstrated above, this is clearly not the case. RiverOak remains willing to enter into a voluntary licence on the similar terms as the previous licence. It is the additional conditions that SHPL is attempting to include in the licence that are clearly unreasonable, and show SHPL's actions to be the same."*

<u>SHP Comments on paragraph 3.6(b):</u> It is not in dispute that SHP has sent correspondence to the Inspectorate. The purpose of the correspondence is to provide the Inspectorate with a factual summary of the position, supported by comprehensive evidence, and demonstrate that RSP has not made reasonable efforts to agree a voluntary licence. In our correspondence we provided specific and evidenced examples of RSP's unreasonable behaviour and conduct to demonstrate that its aggressive actions are not isolated, but form a pattern of behaviour. We also highlight the many inaccuracies and misleading claims in RSP's correspondence. It is claimed by RSP that the additional conditions requested by SHP are unreasonable. As we have set out previously, these conditions are proportionate, reasonable with the sole purpose of

protecting SHP from further financial loss resulting from RSP's actions. It is astounding for RSP to claim that our decision to invest time in robustly defending ourselves to the Inspectorate, against the false and misleading claim that RSP has been unreasonably refused access to our land, is in itself, a demonstration of our unreasonable conduct.

1.22 *"3.6(c) SHPL refuses to provide any reasoning as to why these additional conditions are needed."*

SHP Comments on paragraph 3.6(c): This is misleading and inaccurate on any objective analysis. In our correspondence with both the Inspectorate and BDB, we have set out in detail the reasoning behind why additional protections are required, providing specific examples of the issues and concerns that we have, and suggesting proposals to address them. Notwithstanding this, in RSP's letter of 21 June 2018 (see paragraph 1 of enc. 45), it was apparent that RSP/BDB had not taken the time to understand the difference between internal and third party costs incurred by SHP (to facilitate access on the expansive basis requested by RSP). A detailed explanation was provided in our letter of 25 June 2018 (enc. 46) to which we have not yet received any acknowledgement or response. Whilst we do not think the Inspectorate would welcome us referencing every part of our correspondence where the reasoning for the conditions has clearly been explained, we would be willing to do so if requested. We would also note that our approach of providing detailed explanations of the rationale for the conditions and the status of negotiations over land access, contrasts with the approach taken in RSP's correspondence with both SHP and the Inspectorate to date.

1.23 *"3.6(d) For all intents and purposes, negotiations have now been ongoing for 28 months. If SHPL was willing to allow RiverOak access, it would be reasonable to expect that such access would have been properly and fully granted by now."*

SHP Comments on paragraph 3.6(d): The statements are misleading and incomplete. In terms of the factual position, it is worth noting;

- RSP first started negotiations regarding land access 16 months ago in April 2017 (and only after making its first s.53 application on 4 April 2017);
- RSP was granted a licence by SHP in August 2017 – it was then in material breach of the licence as a result of its failure to comply with the payment conditions;
- Negotiations over extending the termination date of the licence commenced on 1 December 2017 and RSP only has itself to blame for any delays, which are due to its lack of engagement and its aggressive actions in ignoring advice from the Inspectorate regarding use of HPA2016 in a manner that was prejudicial to SHP. Throughout the period, RSP's lack of constructive engagement has been perplexing, as evidenced by both its unwillingness to address SHP's valid concerns in any way and the long periods where RSP has refused to engage as summarised in paragraph 1.9 above.

1.24 *"3.7 It is exceedingly clear that SHPL simply does not wish RiverOak to succeed with their application for the proposed development and are therefore refusing access to their land in an effort to thwart progress by sustaining negotiations indefinitely and unreasonably. We enclose our latest response to SHPL at Schedule 5. Given the onerous pre-conditions set by SHPL to agreeing a new licence we do not expect these negotiations to be fruitful."*

SHP Comments on paragraph 3.7: It is not in question that SHP believe its plans to regenerate the site are in the best interests of the local community, whereas we consider RSP's aviation proposals lack any credibility. This is an assessment, supported by the highly regarded, experienced aviation industry experts that have reviewed the potential of Manston on behalf of TDC and SHP, namely, AviaSolutions, York Aviation and Altitude Aviation Advisory. We

recognise that the purpose of s.53 of PA2008 is to support those wishing to promote development consent orders and SHP is aware that if it did not act reasonably, then there would be grounds for the Secretary of State to grant a s.53 authorisation. Therefore, SHP has always acted reasonably and proactively and has not sought to sustain *"negotiations indefinitely and unreasonably"*, as can be demonstrated by the timing and nature of our correspondence as set out in the enclosures.

Whilst it is our strong view that the project RSP has consulted on does not meet the test under s.53(2)(a) of the PA2008, we understand that this test no longer applies as an application for an order granting development consent has now been accepted by the Commission. Whilst it is deeply frustrating to us, it is our understanding that there is no opportunity at this stage under the s.53 legislation to challenge the deeply flawed and inaccurate evidence provided to the Inspectorate in RSP's DCO application regarding current capability (2.3 NSIP Justification), which we assume has been accepted at face value. This will be a matter for the examination, however, taking just one example from the NSIP Justification paper, RSP's highly misleading claim that the fire station has no roof can easily be disproven by photographic evidence. Furthermore, the claim is even contradicted in other parts of RSP's DCO application (e.g. paragraph 6.7.2 of the Statement of Reasons notes the fire station building has a *"corrugated metal roof"*).

In all dealings with RSP on access matters, SHP has erred on the side of caution in ensuring its actions and requests are both reasonable and proportionate. This is in stark contrast to the approach taken by RSP. The requirement for any additional conditions all stem from the direct actions by RSP (in relation to access), which have forced SHP to expend significant resources unnecessarily and at significant cost. In view of RSP's behaviour, it is wholly unreasonable for RSP to expect SHP to accept this financial burden and ongoing financial risk where it is the only party that has any benefit from an agreement.

1.25 *"3.8 On the basis of the detailed information provided to the Inspectorate we ask that the s.53 application is granted."*

SHP Comments on paragraph 3.8: the fact that RSP asked the Inspectorate to grant the s.53 authorisation whilst negotiations were ongoing, is a further example of the lack of good faith on RSP's part and prematurity. In view of RSP's actions since the date of the letter, particularly in the last 9 weeks where it has refused to engage with us (or even show us the courtesy of acknowledging our correspondence), it is clear that RSP has had no interest in making reasonable efforts to agree voluntary access.

2. SHP response to information requested in the Inspectorate's Letter of 15 August 2018

2.1 Whilst we are confident that the evidence presented will clearly demonstrate that RSP's authorisation request should be declined, we have reviewed the Inspectorate's draft conditions and would comment as follows.

In respect of the draft authorisation attached to the letter of 15 August 2018 we would note that the following amendments are required to ensure the terms are consistent with the terms of the August 2017 Licence;

- Definition of "Authorisation Period": In view of the lack of engagement we are getting from RSP, we would request that we are provided the opportunity to review and comment on RSP's response to paragraph 3.1 of the Inspectorate's letter to BDB dated 15 August 2018. As the Inspectorate noted, to date RSP has only sought rights of entry for the period up to 15 September 2018.

- Authorised Surveys: can we be provided with a copy of the surveys sought to the extent these differ from that set out in the s.53 application documents previously circulated.
- Operation Stack: the definition refers to *"Licensor"* rather than *"Landowner".*
- The following new paragraph would need to be added at the start of General section (i.e. as new paragraph 3) to make consistent with 2017 Licence, *"This Authorisation is personal to the Applicant and is not transferrable or assignable and the rights granted may only be exercised by the Applicant and Authorised Persons, subject to the Conditions."*
- Paragraph 5: in view of the Applicant's previous misuse of the s.53 Authorisation granted to ROIC in 2016, the following would need to be added at the end of this clause to make it consistent with the previous licence terms *"and shall procure that no other Authorised Person shall enter the land otherwise in accordance with the terms of this Authorisation."*
- Paragraph 11: for the reasons set out in paragraphs 1.12, 1.13 and 1.17, appropriate conditions are required to provide SHP with comfort that it will not be exposed to the risk of non-payment or additional work in chasing outstanding payments and/or taking formal action in line with that it was forced to take in January 2018. The second part of the paragraph would also need to be amended to extend the payment obligations to cover reasonable administrative costs (in the opinion of the Landowner as these would be internal rather than 3rd party costs).
- Paragraph 12: in view of the Applicant's previous abuse of the s.53 Authorisation granted to ROIC, and to make consistent with the terms of the 2017 Licence, Paragraph 12 would need to amended to *"Before any person may enter the Land to carry out an Authorised Survey(s) the Applicant or the Applicant's Solicitor must give Notice to the Landowner, such Notice to include the following"* and new paragraphs 12.1 and 12.2 added as follows
    - *"evidence of the person's authority on behalf of the Applicant and the purpose for entry;"*
    - *"confirmation that the Applicant has authorised the persons listed;"*
- Paragraph 12(e): the conditions would need to be amended to state that each notice had a maximum duration of no more than one month.
- Paragraph 14: in view of the Applicant's previous abuse of the s.53 Authorisation granted to ROIC, the terms would need to be amended to include the following *"The Applicant shall, and shall procure that any Authorised person shall,".*
- Paragraph 14(i): please delete "existing".
- Paragraph 16(b)(i): reference is made to paragraph 13 rather than paragraph 14(g).
- Paragraph 17(b): "Peron" should be "Person".
- Paragraph 18: the current drafting is overly narrow as it only provides for access to be suspended in the event that *"the site is about to be used for lorry parking by Operations Stack and in the Landowner's reasonable opinion, Operation Stack would be obstructed by the carrying out of the Authorised surveys OR the carrying out of Authorised surveys concurrently with the lorry parking would give rise to health, safety or security risks."* It could therefore be argued by RSP that this only deals with the scenario where lorries are actually being parked on site, and could not restrict access where any works were being done on site to facilitate the parking services, even where such works were obstructed by the carrying out of Authorised surveys or gave rise to health, safety and security risks. Accordingly, in view of the lack of protections afforded to a Landowner by a s.53 Authorisation and RSP's history of unreasonable conduct (in particular the inappropriate threatening of criminal sanctions relating to access), this paragraph would need to be amended to;

  "The right to access the Land pursuant to this Authorisation shall be suspended temporarily (but with immediate effect) and the Authorised Persons shall remove all apparatus and equipment on the Land within 2 hours, in the event that the Landowner notifies the Applicant that the site is about to be used for any matters that relate to Operation Stack, and in the

Landowner's reasonable opinion, the carrying out of the Authorised surveys would cause an obstruction OR the carrying out of Authorised surveys would give rise to health, safety or security risks."

The other conditions that would need to be included in any authorisation (also referenced in Section 1 above) are a direct consequence of RSP's previous actions, and are reasonable, protective and proportionate with the purpose of ensuring;

- SHP is not materially prejudiced or exposed to the financial risk of a repeat of RSP's failure to comply with the payment terms of the previous licence. RSP's stated position is that it will not agree to any provision that protects SHP from the risk of non-payment by RSP. RSP will not agree to any form of bond, escrow or security arrangement, it will not agree to pay the weekly costs in advance, it will not agree to provide any information on the financial standing of RSP (or confirm whether RSP remains a dormant company), nor it will put forward any other proposal that could provide SHP with the comfort that it has sought to alleviate its concerns regarding RSP's funding and financial position. An appropriate condition (in line with the options listed above) would need to be included in Paragraph 11 of any s.53 authorisation to ensure SHP is not prejudiced by a repeat of RSP's past failures to comply with payment obligations;
- SHP is compensated appropriately for the significant work it would have to undertake in facilitating access arrangements including dealing with notices, arranging 3rd party security to facilitate access, invoicing, accounting and other administrative matters related to providing such access over the period in question. It would appear that RSP's final position is that it would not agree to compensate SHP **in any way** for any significant internal costs it has, and would continue to incur. However, it is further worth noting that, on 25 June 2018 (see enc. 46) we provided BDB and RSP with a detailed explanation of the difference between SHP's internal costs and the external third party costs and sought clarification of RSP's final position, however neither this letter or the chaser letter sent on 27 July 2018 have been acknowledged. Accordingly, RSP's position is not reasonable and any conditions attaching to a s.53 authorisation would need to provide SHP with a mechanism to be compensated for reasonable internal costs associated with facilitating access via an amended Paragraph 11 of the draft conditions. The Inspectorate will be aware from a review of the enclosures of the significant internal management time that SHP has expended over the last 8 months on negotiating licence arrangements, dealing with a premature s.53 authorisation request etc. for which we have not asked to be compensated for. This further demonstrates the degree to which we have limited our requests for costs to be recovered from RSP;
- SHP to be compensated in respect of costs it has been forced to incur by RSP's wilful and aggressive tactics of threatening access (and criminal sanctions) via s172 of the HPA2016, which were in conflict with the clear DCLG and Inspectorate advice. RSP's stated position is that it will not agree to compensate SHP for any of the 3rd party legal and professional fees it was forced to incur to protect itself and officers in relation to RSP's attempts to utilise purported rights under sections 172 and 174 of the HPA2016. As noted in paragraph 1.18, it would not be competent for RSP's actions (which were against clear guidance) to be set aside and treated independently from the negotiations over voluntary access. They are reflective of a pattern of behaviour and a new condition would need to be included in any s.53 authorisation to provide appropriate compensation to SHP for the costs incurred in defending itself against RSP's unwarranted actions in relation to access.

We note that, in its letter to BDB of 15 August 2018, the Inspectorate requested comments on the revised conditions attached as Annex A. In view of our concern that any comments (if incorporated in draft conditions) could have a prejudicial impact on SHP, we would respectfully request the

opportunity to review and comment on any further comments BDB or RSP make on the draft conditions.

2.2 The Operation Stack arrangements remain fully in place and SHP require to retain full operational capability and flexibility to restrict access to the site, as and when required (acting reasonably at all times), to satisfy the requirements of any agreement in place.

2.3 With regard to paragraph "3. Any further comments", in order to avoid repetition we would respectfully refer the Inspectorate to the detailed comments made in Section 1 above and our previous letter to the Inspectorate dated 20 February 2018.

In summary, it is clear that our evidence demonstrates;

- RSP disregarded clear guidance in making a premature s.53 authorisation request having not made reasonable efforts to obtain entry to the land on a voluntary basis prior to making its application;
- in the period since making the application, RSP has made no reasonable attempt to engage with SHP regarding its valid concerns;
- the additional conditions requested by SHP are reasonable and proportionate and have the purpose of protecting SHP from financial loss caused directly by RSP's actions. It is worth emphasising that SHP has, at no point, sought to commercially benefit from voluntary licence arrangements with RSP and has been forced to incur significant costs as a result of RSP's actions over the last 17 months – it is wholly unfair that SHP has been forced to effectively subsidise RSP's project in this way;
- RSP has disregarded clear advice from the Inspectorate and DCLG in pursuing its aggressive and unlawful attempts to coerce SHP through claiming purported rights to access the land under s.172 of the HPA2016;
- in correspondence with SHP and the Inspectorate, it is clear that many assertions and claims have been made that are highly misleading and inaccurate as evidenced in our comments in Section 1 above. In contrast, we have taken significant care in our correspondence to be factual, explain the issues in sufficient detail and provide evidence and supporting documentation to support our statements. In view of the differences in approach, we would request that the Inspectorate does not simply accept at face value comments made regarding "demonstrating reasonable efforts" in any response it receives from RSP (or BDB) to its letter of 15 August 2018.

3. Conclusions

3.1 In summary, based on RSP's continued refusal to engage with us, it appears that negotiations have reached a point where the parties will be unable to agree and that RSP's final position on the outstanding conditions is as set out in our letter to BDB of 25 June 2018.

3.2 As the totality of the correspondence demonstrates, SHP has remained willing to engage constructively on an extension to the existing licence arrangements on an entirely reasonable basis. This contrasts with the approach adopted by RSP – the party seeking all the benefits of a new licence agreement - which has neither been constructive nor proactive (i.e. RSP has been wholly unwilling to address any of our substantive and valid concerns, which all directly resulted from RSP's actions).

3.3 In view of the evidence presented above, we trust that should the Inspectorate be required to move to make a decision on the authorisation request, that it would decline the request and that the recent decision to accept RSP's DCO application for examination would have no bearing on the decision.

3.4 Notwithstanding this, it is also clear that any grant of a s.53 authorisation that did not fully take into account RSP's conduct / actions to date and afford SHP with necessary, reasonable and proportionate protections and compensation, would be in breach the Human Rights Act 1998, which expressly incorporates Article 1 of the first protocol of the European Convention for the Protection of Human

Rights and Fundamental Freedoms. This places certain obligations on the State not to, inter alia, interfere with the peaceful enjoyment of property or deprive a person of their possessions. Any interference by the State must be in pursuit of the public interest, be in accordance with law and proportionate.

We would be happy to assist the Planning Inspectorate by providing any additional information or clarification it requires.

Yours sincerely,

On behalf of

Stone Hill Park Limited

Appendix CA.2.17: SHP's response to written question CA.2.17

Examining Authority's Question: Provide details of negotiations with the Applicant in respect of the request to compulsorily acquire land and/or the rights over land and comment on the likelihood of reaching an agreement on this in advance of the end of the Examination on or before 9 July 2019.

Discussions Prior to 17 July 2018

SHP provided a detailed response, enclosing relevant correspondence, in its answer to written question CA.1.17 [Reference still to be allocated]. SHP would also refer the Examining Authority to paragraphs 10.7 – 10.13 of SHP's Written Summary of Oral Submissions put at the Compulsory Acquisition Hearing [Reference to be allocated], which further explains inter alia;

- the Applicant's failure to respond to SHP's letter of 9 April 2018;
- the Applicant's failure to consider alternatives before resorting to compulsory acquisition;
- the lack of good faith shown by the Applicant, characterised by its claim that a 25-year lease was "absurd", when the evidence clearly shows that the proposal set out in SHP's letter of 15 March 2018 was for a 125-year lease;
- the Applicant's failure to engage with landowners until 8 February 2018, demonstrating the lack of any meaningful effort to acquire by agreement – this failure becomes clearer when it is understood that the Applicant had initially intended to submit its application in December 2017.

Negotiations after 17 July 2018.

In its answer to written question CA.1.17 SHP provided an outline of discussions held with the Applicant from 17 July 2018 until early February 2019.

In summary, SHP's response;

- *provided evidence to demonstrate that the Applicant was using CBRE to engage with SHP as a box ticking / file building exercise rather than any meaningful attempt to engage constructively on acquiring the land by voluntary arrangement. The level of the offers to acquire fell so far below the value of the site and the compensation obligations associated with the DCO that they materially fail to constitute reasonable attempts to acquire by agreement;*
- *explained the nature and scope of discussions held between the Applicant's directors and SHP, that culminated in the Applicant signing Heads of Terms to acquire the site for a headline price of £20million, and agreeing to provide SHP with the benefit of a restriction preventing any future residential development on the site;*
- *explained that the discussions were not held on a "without prejudice" basis, and were therefore capable of being shared with the examination;*
- *outlined SHP's concerns that RiverOak (in its various guises and including the Applicant) had demonstrated itself to be an unreliable counterparty and that SHP had no confidence that the Applicant has the ability, willingness or sufficient funds to acquire the land; and*
- *explained that SHP had acquired the site as a failed commercial airport in 2014, has committed considerable resources into delivering a mixed use residential led regeneration. It further explained that Independent advice secured by TDC in 2016 agreed with SHP's view that airport*

uses were unviable leading Council planning officers to recommend allocation of the site for mixed use development, which would likely be more advanced now if RSP's proposals did not exist.

In contrast to the transparency provided by SHP, the Applicant elected not to share pertinent information with the examination and instead provided a highly selective and misleading response to the ExA's question CA.1.16 (i) at Deadline 3 [REP3-195].

In SHP's response to this written question CA.2.17, we provide further clarity on the confidentiality obligations owed by the Applicant to SHP, an update on the current status of discussions between the parties, comment on the likelihood of reaching an agreement in advance of the end of the Examination and summarise the nature of formal correspondence with the Applicant's advisers, CBRE and BDM Pitmans.

Confirmation on Status of Confidentiality Provisions

At the Compulsory Acquisition hearing held on 20 March 2019, the Applicant wrongly asserted to the Examining Authority that discussions between the Applicant and SHP were still covered by a confidentiality clause between the parties.

In doing so, the Applicant successfully neutered attempts by the Examining Authority to probe the Applicant's written offer of £20m for SHP's land and the contradictions that exists between the offer, the "CBRE advice" and the level of funding requirement set out in the Applicant's original Funding Statement. As a consequence, SHP was not afforded the opportunity to test the evidence or have a fair chance to put its case at the CA Hearing.

SHP provided evidence to the examination (in Appendix CA.5.1 to its Written Submissions put at the Compulsory Acquisition hearing), which demonstrated that the Examining Authority was misled by the Applicant as to the extent discussions/offers were subject to confidentiality provisions.

This evidence, which was informed by legal advice from SHP's legal advisers, is summarised below;

1. The note summarised the oral submissions provided at the Compulsory Acquisition hearing by the parties. The Applicant accepted that the confidentiality agreements between the parties had expired, but stated that *"the non-disclosure agreement covered a certain period and all that took place within that period… when it expired the things that took place that didn't fall under that umbrella were not covered but things that had taken place pursuant to that agreement were still covered by the confidentiality clause."*

2. It explained that SHP had long treated the approaches from the Applicant with scepticism and that SHP was concerned that the Applicant's primary objective was to influence the approach SHP took to objecting to the DCO examination through limiting the information that could be shared under the examination process.

3. It explained that SHP purposefully drafted the confidentiality agreements in a manner that ensured the confidentiality obligations in respect of the Applicant's offer would terminate, should the Applicant fail to execute the transaction within a specified timetable. This would ensure that SHP and the Applicant would be free to disclose the material factual information to the Examining Authority, as SHP did in its response to the Examining Authority's first Written Questions.

8. It provided evidence to show that the confidentiality provisions of the confidentiality agreements terminated on 16 January 2019. It confirmed that the first Confidentiality Agreement was dated 3 December 2018 (well after the offer of £20m had been made) and expired on 12 December 2018, which matched the “Completion Date” defined in the signed Heads of Terms signed by the Applicant on 3 December 2018. It then explained that as a result of the Applicant’s failure to meet the target completion date, the Confidentiality agreement was extended three times, and ultimately to 16 January 2019.
9. The note explained that as a consequence of the apparent lack of serious engagement from the Applicant and the strengthening view on the part of SHP that the engagement from the Applicant had been an attempt to negate SHP’s submissions to the examination, a decision was taken not to extend any confidentiality agreement beyond that date.
10. The note then explains (and provides evidence of) the repeated attempts by the Applicant to encourage SHP to extend the Confidentiality provisions, even resorting to the Applicant’s legal advisor unilaterally emailing through revised Confidentiality Agreements executed on each of (i) 5 February 2019 (10 days before the parties were to submit responses to the Examining Authority’s Written Questions) and (ii) 19 March 2019 - immediately prior to the CA Hearing.

The Applicant continues to seek to avoid transparency and proper scrutiny of its application. Following SHP’s refusal to extend the Confidentiality agreements, the Applicant started to mark its correspondence “without prejudice”, which restricts SHP’s ability to share it with the examination.

SHP considers that the body of correspondence would demonstrate the lack of meaningful or proactive engagement by the Applicant and its failure to honour commitments. It would also allow SHP to fully evidence that SHP has not been receipt of any correspondence that shows the Applicant making a “without prejudice” offer to SHP, as the Applicant has asserted in paragraph 3.9 in its Written Summary of Oral Submissions to the CA Hearing. SHP believes it would be helpful to share this recent correspondence with the Examining Authority, but as noted above, is prevented from doing so by the Applicant’s actions.

This contrasts with SHP’s actions. In the interests of transparency, SHP has reiterated to the Applicant, that SHP has not restricted the Applicant’s ability to disclose to the Examining Authority any information regarding the status of any discussions or any offers that may, or may not, have been made.

Update on Current Status of Discussions

RSP’s offer to acquire our site for a total consideration of £20m was confirmed in writing by the Applicant’s Director, Anthony Freudmann, on 16 October 2018. As set out above, Heads of Terms were subsequently signed on 3 December 2018 that set a target completion date as 12 December 2018.

The Applicant claimed that it had the funds necessary to complete an acquisition before the end of 2018. However, the Applicant’s evidence presented to the recent compulsory acquisition hearing (and accompanying written submissions), show no committed funding was in place.

Following the Applicant's failure to deliver on the transaction it had signed up to, the Applicant then requested a change to the payment structure of the transaction, which it claimed would provide more certainty for the Applicant's purported "funders".

Despite SHP's continued scepticism regarding the underlying intent and motives of the Applicant, but recognising the obligations placed on SHP to act reasonably, SHP wrote to RSP in January confirming that it would be willing to consider an alternative structure, which importantly did not change the overall economics of the proposed transaction, but provided the Applicant with the greater certainty it had asked for. In making this proposal, SHP sought to both remove any further excuses for the Applicant's failure to deliver and flush out whether the Applicant was serious and actually had the requisite funding.

In the period since then, the evidence shows the Applicant has not made serious efforts to engage. Where the Applicant has engaged, it tends to have been timed around an impending deadline for DCO submissions or an examination hearing. The Applicant has continually failed to respond to communications or honour "commitments" made to SHP. SHP would like to provide a full detailed account, which would clearly evidence that the Applicant is not satisfying its obligations under the Compulsory Acquisition guidance, but is prevented from doing so by the Applicant's liberal use of "without prejudice" heading on any email correspondence.

SHP is able to advise that in the most recent communication, a telephone call on 12 April 2019 from Anthony Freudmann (a director of the Applicant), the Applicant made a commitment to contact SHP on 15 April 2019 with a revised offer.

On account of its previous dealings with the Applicant, SHP is not surprised that the Applicant failed to honour this commitment. Indeed, in the three weeks that have passed since that phone call on 12 April 2019 there has been no further correspondence from the Applicant.

Likelihood of Reaching Agreement

The behaviour of the Applicant only serves to reinforce SHP's strongly held view that the Applicant is not serious in its intentions and that its sporadic engagement with SHP is simply a tactic to allow it to maintain a pretence with the Examining Authority that it is making meaningful attempts to negotiate to acquire SHP's land.

SHP has reviewed paragraph 3.1 of the Applicant's Written Summary of Oral Submissions put at the Compulsory Acquisition hearing, where the Applicant is now trying to claim the so-called discussions with SHP as justification for its failures to provide the required information on funding by the Deadlines set by the Examining Authority. At every step, the Applicant seeks to avoid providing information or answering questions in a manner that would allow for an adequate and fair testing of its application.

The Applicant has demonstrated itself to be an unreliable counterparty and the evidence suggests it does not have the ability, willingness or sufficient funds to acquire the land and that this position is highly unlikely to change during the examination.

It has extinguished its excuses for failing to provide its homework on time and can no longer be afforded the benefit of the doubt.

Recent Correspondence from the Applicant's Advisers

SHP has long suspected that the correspondence from the Applicant's advisers CRBRE and BDB Pitmans has been purely for "box ticking" or "file building" purposes as summarised below.

- Correspondence with CBRE: Following the Compulsory Acquisition hearing, Colin Smith of CBRE, responded to an email from SHP's advisor, Avison Young. This email, and Avison Young's response are attached for completeness, however SHP would note the following;
  - It is clear that CBRE have not been informed of facts that its client should have made it aware of. This includes, the Applicant's £20m offer to SHP, the timing of the offers made by RiverOak Investment Corporation LLC in May 2014, which preceded SHP's acquisition of the site in September 2014 at the "asking price" of £7 million.
  - CBRE correspondence continues to be infected by factual errors, and on the basis that CBRE's correspondence also the set out an offer of £2.5m for SHP's land around the very same time the Applicant had agreed to pay a total consideration of up to £20m, SHP does not consider there to be any merit in corresponding directly with CBRE any further.
  - SHP is of the strong view that the Applicant is seeking to create an alternative narrative to the factual position that can be evidenced, the factual position being that following the Applicant making a formal offer to acquire SHP's land for a total consideration of £20m (for which it signed Heads of Terms), the Applicant has failed to deliver on its commitment or seek to make meaningful efforts to progress any alternative structure.

- Correspondence with BDB Pitmans: SHP received a letter from BDB Pitmans dated 1 March 2019. In summary, the letter explained that the Applicant is seeking to continue discussions to acquire land by voluntary agreement and directed SHP to contact George Yerrall, a director of the Applicant.

  In view of the direct communications that had taken place between SHP and other directors of the Applicant (which the Applicant has tried to keep from the examination), the sole purpose of the letter appeared to be to create a documentation trail that would give any third party reviewing the letter a misleading impression of engagement between the parties.

  Following receipt of the letter, SHP's legal adviser raised a direct query with BDB Pitmans to ask for an explanation as to why the letter had been sent to SHP. An extract of BDB Pitmans' reply is provided below (with a copy of both this email and the 1 March 2019 letter appended to this note);

  > *"This is a letter we have sent to all landowners that are subject to compulsory acquisition powers from the Manston DCO application as we are under a duty to offer to negotiate.* ***To treat SHP any differently might look odd.****"* *[emphasis added]*

  The reply from Mr Walker was highly revealing as it appears to acknowledge that the sole purpose of the letter is to create documentation that purports to show (we assume to the Examining Authority) that the Applicant is making attempts to negotiate. The fact that the letter made no sense to SHP did not seem to form any part of the Applicant's considerations.

  The Applicant appears to have focussed its time on creating the illusion that it is making efforts, instead of taking any action to evidence real efforts were being made.

Unfortunately, this has been a consistent feature of the Applicant's approach to the examination. When faced with any hurdle, the Applicant appears to seek to do as little as it can get away with, it glosses over issues and provides misleading and incomplete answers, and it continually fails to honour commitments and deadlines to provide information to the examination that would facilitate the proper testing and scrutiny of its application.

Sub-Appendices

1. Letter from BDB Pitmans to SHP dated 1 March 2019;
2. Email from Angus Walker (BDB Pitmans) to SHP's property legal advisers, Cripps, dated x March 2019;
3. Email from CBRE to Avison Young dated 29 March 2019; and
4. Email from Avison Young to CBRE dated 2 May 2019

Stone Hill Park Limited
Baldwins Wynyard Park House
Wynyard Avenue
Wynyard
Billingham
TS22 5TB

Your Ref

Our Ref
EPP/JYD/166055.0007

Date
1 March 2019

By First Class Post

Dear Sirs

Manston Airport Development Consent Order: application by RiverOak Strategic Partners Limited ("RiverOak")

We refer to our previous correspondence dated 9 February 2018 and 23 March 2018 in relation to our client RiverOak's application for a development consent order ("**DCO**") under the Planning Act 2008 for the reopening of Manston Airport ("**the Order**").

RiverOak's application is continuing to progress through examination by the Planning Inspectorate and you may have received statutory notices regarding this process. The application documents can be viewed on the Planning Inspectorate's website at the following link:- https://infrastructure.planninginspectorate.gov.uk/projects/south-east/manston-airport/

The application documents include a Book of Reference which identifies the plots of land in which it is understood that you have an interest. The application documents include Land Plans which identify each land plot by number.

RiverOak and Stone Hill Park Limited are in discussions to enter into a Statement of Common Ground ("**SoCG**") which sets out the matters agreed between the parties. The SoCG does not deal with the interaction of land interests. RiverOak is therefore seeking to continue discussions with you in order to acquire your land and/or land rights required for the project by voluntary agreement, prior to the grant of the DCO.

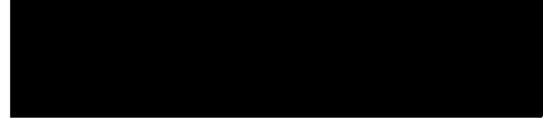
Accordingly, to pursue further discussions, or if you have any queries, we would ask that you contact Mr Yerrall, who is one of RiverOak's Directors, at george.yerrall@rsp.co.uk.

BDB Pitmans is the trading name of BDB Pitmans LLP which is a limited liability partnership registered in England and Wales with registered number OC320798. Its registered office and principal place of business is 50 Broadway, London SW1H 0BL where a list of members' names is available for inspection. BDB Pitmans LLP is authorised and regulated by the Solicitors Regulation Authority. We use the word partner to refer exclusively to a member of BDB Pitmans LLP

SRA ID Number 448617

18546941.1

Yours faithfully



BDB Pitmans LLP

Sub-Appendix 2

From: WALKER Angus [mailto:]
Sent: 05 March 2019 16:41
To: Clare Hyland < ; Kate Hughes < >
Cc: JAMES Ellen < >; YOUNG Robert
< >
Subject: RE: Manston NDA [CHH-MAIN.FID3598947] [BDB-BDB1.FID10406835]

Hi Clare

Ellen has asked me to reply. This is a letter we have sent to all landowners that are subject to compulsory acquisition powers from the Manston DCO application as we are under a duty to offer to negotiate. To treat SHP any differently might look odd.

Regards

Angus Walker **Partner**
T +44 (0)20 7783 3441

W www.bdbpitmans.com

For and on behalf of BDB Pitmans LLP
50 Broadway London SW1H 0BL

Sub-Appendix 3

From: Smith, Colin @ London HH [ ]
Sent: 29 March 2019 15:22
To: Walton, Michael (Avison Young - UK) < >
Cc: WALKER Angus < >; Tony Freudmann
< k>; Sayer, John @ London HH < >; WALKER Angus
< >
Subject: RE: Stone Hill Park Limited

Dear Michael

I refer to your email sent on 18th March at 13.54 which I note this is 'open' (as opposed to 'without prejudice') as is this response

For ease of reference my comments are embedded, in red text, in your email reproduced below.

Thank you for your email. In the interest of being helpful I am instructed to highlight the following, some of which your client may not have made you aware of;

- Stone Hill Park Ltd acquired the land for £7m in September 2014 on an arm's length basis on account of the new parties involved and equity invested on transfer. This is shown on the Land Registry transfer documents and was reflected in the level of SDLT paid. I am advised that the funding for this transaction was provided by the vendor who has throughout retained effective control over the property. It is not an arm's length OMV comparable, if this is incorrect please provide a full explanation.
- The sale to Stone Hill Park followed attempts by the related predecessor to your client, RiverOak Investment Corporation LLC ("RIC"), to acquire the land from Kent Facilities Ltd earlier in 2014.
- As George Yerrall confirmed in his evidence to the Transport Committee, RIC had made an offer of £7m; "The highest offer was £7 million. We were rejected at £4 million. We were rejected at £5 million. We ultimately offered £7 million, which we were told was the asking price." (http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/transport-committee/smaller-airports/oral/17966.html)

- The subsequent sale to Stone Hill Park Ltd reflected the £7m figure your client's related predecessor was prepared to pay. I am advised that the sale to SHP was in Autumn 2014 and the TSC Hearing was in February 2015.
- Your client made an offer of £20 million (subject to a residential restriction) to acquire the site immediately prior to your letter of 10 October 2018. Can you please confirm whether you were aware of this at the time you sent your letter which claimed SHP's land was valued at only c£2m?

Yes, as you will of course understand and appreciate attempts to acquire by negotiation are a requirement placed on any entity seeking to secure compulsory purchase powers and such requirement endures throughout the process. (The 'Christos' Case refers)
I am advised that the £20m sum to which you refer is inaccurate and importantly the negotiations reflected which party was to receive the payments from DfT in respect of the Operation Stack/Brock rights. As I have explained the statutory hope value compensation assessment I have made, on which you have yet to engage, reflects the significant doubt and uncertainty regarding planning, need for third party land and rights, environmental and ecological constraints and viability. At present I see the rule 2 valuation as hope value assessed on a 'bottom up' (enhancement of EUV)

rather than a ‘top down’ (residual appraisal with a discount) basis of approach. (The ‘Clearing’ case refers)

I repeat my previously offered proposal that the matter is resolved on the basis of LT Contract possibly subject to a minimum, not less than, payment in accordance with the HCLG 2018 Guidance*.

My client has also asked that I highlight the irony in it being asked to provide details of its funding arrangements at the same as your client refuses to answer the most basic questions regarding its own funding posed by the Examining Authority.

*
https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance

Colin

Colin Smith | Senior Director
CBRE - Planning & Compulsory Purchase
Henrietta House | Henrietta Place | London | W1G 0NB
DDI 020 7182 2192 | F 020 7182 2021 | M
colin.smith@cbre.com | http://www.cbre.com

Sub-Appendix 4

From: Walton, Michael (Avison Young - UK) [mailto:Michael.Walton@avisonyoung.com]
Sent: 02 May 2019 11:13
To: Smith, Colin @ London HH <colin.smith@cbre.com>
Subject: RE: Stone Hill Park Limited

Colin

Thank you for your email of 29 March 2019. I am instructed to respond on the following basis:

- Your statements regarding the sources of funding of the SHP acquisition of the land at Manston and control of the entity are simply incorrect. This was an arm's length sale at a value which was equivalent to the "asking price" a fact that was subsequently acknowledged by George Yerrall in his evidence to the TSC.

- It is a matter of record that SHP acquired the site in September 2014 and the TSC Hearing was held in February 2015. However, what George Yerrall was reporting on at the TSC hearing were the offers that Riveroak Investment Corp LLC made during May 2014 - that is the date of the "asking price" to which he refers. It is not clear what point you are making here.

- You make reference to being advised by your client regarding the nature of the £20m offer it made. We suggest that you request your client to provide you with a copy of the Heads of Terms signed on 3 December 2018 and associated documents that will enable you to fully understand the terms of the transaction it signed up to, and the detail of the restriction over residential development my client would retain.

- On account of your client having engaged directly with my client (and you seemingly being unaware of such contact and the levels of the offers), my client sees limited value in engaging in parallel negotiations with CBRE that bear no resemblance to the terms that your client signed up to. However my client remains concerned that the nature of engagement from your client over recent months strongly suggests your client is not serious in its intentions and that the sporadic engagement with my client is simply a tactic designed to allow your client to maintain a pretence with the Examining Authority that it has made meaningful attempts to negotiate to acquire the land.

- My client is fully aware of the MHCLG guidance on compulsory purchase and also the guidance specific to the 2008 Planning Act. At the recent Compulsory Acquisition and Need hearings RSP acknowledged that there was no extant contractual funding arrangements in place to meet the needs of the DCO. Furthermore in oral evidence, Dr Dixon conceded that the Azimuth Report that she prepared was not really a forecast of what would happen but an assessment of the 'potential' need for a dedicated freight airport in the South East of England. She confirmed that she had taken no account of the viability of operating the services for the airlines or the viability of the operation of the Airport (despite the Azimuth Report being referenced
as setting out the viability of and the Business Plan for the development in the ES, Planning Statement and Statement of Reasons – (see para 2.5 of York Aviation 2019 Report). Overall my client considers that your client has failed to meet even the basic requirements of

demonstrating a compelling case in the public interest, having failed to adhere to either the spirit or letter of the 2018 MHCLG guidance and 2013 Planning Act 2008 guidance.

Michael

Michael Walton
Director
michael.walton@avisonyoung.com

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London EC2V 7NQ
United Kingdom

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M

avisonyoung.co.uk

Appendix F.2.13: Copies of Belize records of M.I.O. Investments Limited

BELIZE

The International Business Companies Act
Chapter 270 of the Laws of Belize, Revised Edition 2000 Section 16(2)

Notice of Amendment of Memorandum and Articles of Association

To: The Registrar of Companies

IBC No. 162,208

M.I.O. Investments Limited
("the Company")

We, Morgan & Morgan Trust Corporation Belize Limited of Withfield Tower, Third Floor, 4792 Coney Drive, P.O. Box 1777, Belize City, Belize, registered agent of the Company, do hereby certify that the document annexed hereto is a true copy of the Certified Extract of the Written Resolution of the Board of Directors of the Company amending the Memorandum and Articles of Association.

Dated this 20th day of June, 2017

____
Fo[redacted]
Morgan & Morgan Trust Corporation Belize Limited

CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL
THIS 31st DAY OF July , 2017

SANTIAGO GONZALEZ, DEPUTY REGISTRAR
OF INTERNATIONAL BUSINESS COMPANIES
REGISTRY

INTERNATIONAL BUSINESS COMPANIES REGISTRY OF BELIZE
SUB UMBRA FLOREO

The International Business Companies Act
Chapter 270 of the Laws of Belize, Revised Edition 2000

M.I.O. Investments Limited

("the Company")

An International Business Company (IBC) incorporated in Belize.

Certified Extract of the Minutes of the Meeting of the Directors of the Company.

We, Morgan & Morgan Trust Corporation Belize Limited of Withfield Tower, Third Floor, 4792 Coney Drive, P.O. Box 1777, Belize City, Belize, being the registered agent of the Company, DO HEREBY CERTIFY THAT the following is a true extract of the Minutes of the Meeting of the Directors of the Company, adopted on the 6th day of June, 2017.

RESOLVE THAT Clauses 2 and 3 of the Memorandum of Association be deleted in its entirety and the following substitutes in lieu thereof:

2. REGISTERED OFFICE

The Registered Office of the Company will be at Withfield Tower, Third Floor, 4792 Coney Drive, P.O. Box 1777, Belize City, Belize, or such other place within Belize as the Company may from time to time by a resolution of directors determine.

3. REGISTERED AGENT

The Registered Agent of the Company will be MORGAN & MORGAN TRUST CORPORATION BELIZE LIMITED of Withfield Tower, Third Floor, 4792 Coney Drive, P.O. Box 1777, Belize City, Belize, or such other qualified person in Belize as the Company may from time to time by a resolution of directors determine.

Dated this 20th day of June, 2017

For and on behalf of
Morgan & Morgan Trust Corporation Belize Limited

I. B. C. NO.

BELIZE

THE INTERNATIONAL BUSINESS COMPANIES ACT
Chapter 270 of the Laws of Belize, Revised Edition 2000

MEMORANDUM
AND ARTICLES OF ASSOCIATION
OF

M.I.O. Investments Limited

INCORPORATED THE 30TH JUNE, 2016

REGISTERED OFFICE AND REGISTERED AGENT
A.J.K. CORPORATE SERVICES (BELIZE) LIMITED
Blake Building, Suite 306
Corner of Eyre & Hutson Street, P.O. Box 2670
Belize City, Belize

B E L I Z E
THE INTERNATIONAL BUSINESS COMPANIES ACT
Chapter 270 of the Laws of Belize, Revised Edition 2000

MEMORANDUM OF ASSOCIATION

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5. Exclusions 2
6. Share Capital 2
7. Amendments 3

1. NAME

The name of the Company is **M.I.O. Investments Limited.**

2. REGISTERED OFFICE

The Registered Office of the Company will be at Blake Building, Suite 306, Corner of Eyre & Hutson Street, P.O. Box 2670, Belize City, Belize, or such other place within Belize as the Company may from time to time by a resolution of directors determine.

3. REGISTERED AGENT

The Registered Agent of the Company will be A.J.K. CORPORATE SERVICES (BELIZE) LIMITED of Blake Building, Suite 306, Corner of Eyre & Hutson Street, P.O. Box 2670, Belize City, Belize, or such other qualified person in Belize as the Company may from time to time by a resolution of directors determine.

4. GENERAL OBJECTS AND POWERS

The objects of the Company is to engage in any act or activity that is not prohibited under any Law being in force in Belize including, but not limited to, the following :

4.1 The purchase, sale, transfer, disposal, dealing, finance, barter, ownership, administration, giving or taking in loan, commission, mortgage, security, lease, use, usufruct, or receivership of any kind of property, whether real or personal, stocks or rights, and make and accept all kinds of deals, contracts, operations, businesses and transactions of lawful commerce .

4.2 For such purposes the Company shall have, in addition to the powers conferred by the Law, the following:

(1) to sue and to be sued in lawsuit;
(2) to adopt and use a corporate seal and alter it at pleasure;
(3) to acquire, construct, purchase, hold, use and convey real and personal property of every kind, and make and accept pledge, mortgage, leases, liens and encumbrances of every kind;
(4) to appoint officers and agents;
(5) to enter into contracts of all kinds;
(6) to issue By-laws not inconsistent with the laws in force, for the management, regulation and government of its business and properties, for the transfer of shares, the calling and holding of meetings of shareholders and directors, and for any lawful purpose;
(7) to carry on its business and exercise its powers in foreign countries;
(8) to agree on its dissolution in accordance with the law, either by its own will or for any other cause;
(9) to open and manage bank accounts in Belize or abroad;
(10) to borrow money and contract debts in connection with its business or for any lawful purpose;
(11) to issue bonds, notes, bills of exchange, and other obligations (which may or may not be convertible into stock of the Company) payable at a specific time or times or payable upon the happening of a specific event, whether secured by mortgage, pledge or otherwise, or unsecured, for money borrowed or in payment for property purchased or acquired or for any other lawful purpose;

(12) to guarantee, acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of or deal in shares of the capital stock or bonds, or other obligations issued by other companies or any municipality, province, state or government;

(13) to do whatever may be necessary for the accomplishment of the purposes enumerated in the Memorandum of Association or any amendment thereof of necessary or incidental to the protection and benefit of the Company and, in general, to carry on any lawful business whether or not such business is similar in nature to the purpose set forth in this Memorandum of Association or in any amendment thereof;

(14) to settle the Company assets or property of the Company and to settle the Company's assets or property or any part thereof in trust .

5. EXCLUSIONS

5.1 The Company is not authorised and may not :

(1) carry on business with persons resident in Belize;

(2) own an interest in real property situated in Belize, other than a lease referred to in paragraph (5) of sub clause 5.2;

(3) carry on banking business unless it is licensed under an enactment authorising it to carry on such business;

(4) carry on business as an insurer or reinsurance company, insurance agent or insurance broker, unless it is licensed under an enactment authorizing it to carry on that business;

(5) carry on the business of providing the registered office or the registered agent for companies incorporated in Belize.

5.2 In compliance with paragraph (1) of sub clause 5.1, the Company shall not be treated as carrying on business with persons resident in Belize if :

(1) it makes or maintains deposits with a person carrying on business within Belize;

(2) it makes or maintains professional contact with solicitors, barristers, accountants, book-keepers trust companies, administration companies, investment advisers or other similar persons carrying on business within Belize;

(3) it prepares or maintains books and records within Belize;

(4) it celebrates within Belize meetings of its directors or members;

(5) it maintains a lease of property for use as an office from which to communicate with members of where books and records of the Company are prepared or maintained;

(6) it maintains shares, debt obligations or other securities in a company incorporated under the International Business Companies Act; or,

(7) shares, debt obligations or other securities in the Company are owned by any other company incorporated under the International Business Companies Act .

6. SHARE CAPITAL

6.1 Shares in the Company shall be issued in the currency of the United States of America .

6.2 The authorised capital of the Company is **Ten Thousand US Dollar (USD $10,000.00)** divided into **10,000 shares of One US Dollar (USD 1.00)** par value each.

6.3 The shares shall be divided into such number of classes and series as the directors shall by resolution from time to time determine and until so divided shall comprise one class and series .

6.4 The designations, powers, preferences, rights, qualifications, limitations and restrictions of each class and series of shares that the Company is authorised to issue shall be fixed by resolution of directors, but the directors shall not allocate different rights as to voting, dividends, redemption or distributions on liquidation unless the Memorandum of Association shall have been amended to create separate classes of shares and all the aforesaid rights as to voting, dividends, redemption and distributions shall be identical in each separate class.

6.5 If at any time the authorised capital is divided into different classes or series of shares, the rights attached to any class or series (unless otherwise provided by the terms of issue of the shares of that class or series) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or series and of the holders of not less than three-fourths of the issued shares of any other class or series of shares which may be affected by such variation.

6.6 The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith .

6.7 The Company may issue all or part of its authorised shares either as registered shares or as shares to bearer. Shares issued as registered shares may be exchanged for shares issued to bearer. Shares issued to bearer may be exchanged for registered shares .

6.8 Where shares are issued to bearer, the bearer, identified for this purpose by the number of the share certificate, shall be requested to provide the Company with the name and address of an agent for service of any notice, information or written statement required to be given to members, and service upon such agent shall constitute service upon the bearer of such shares until such time as a new name and address for service is provided to the Company. In the absence of such name and address being provided it shall be sufficient for the purposes of service for the Company to publish the notice, information or written statement in one or more newspapers published or circulated in Belize and in such other place, if any, as the Company shall from time to time by a resolution of directors or a resolution of members determine. The directors of the Company must give sufficient notice of meetings to members holding shares issued to bearer to allow a reasonable opportunity for them to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice. What amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.

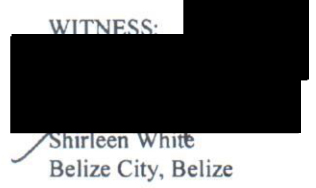
6.9 Registered shares in the Company may be transferred subject to the prior or subsequent approval of the Company as evidenced by a resolution of directors or by a resolution of members .

7. AMENDMENTS

The Company may amend this Memorandum of Association by a resolution of its members or directors .

We, A.J.K. CORPORATE SERVICES (BELIZE) LIMITED of, Blake Building, Suite 306, Corner of Eyre & Hutson Street, P.O. Box 2670, Belize City, Belize, for the purpose of incorporating an International Business Company under the laws of Belize hereby subscribe our name to this Memorandum of Association on this **30th June, 2016** in the presence of the undersigned witness .

WITNESS:



Shirleen White
Belize City, Belize

SUBSCRIBER:

Alva Belisle on behalf of
A.J.K. CORPORATE SERVICES (BELIZE) LIMITED,
Blake Building, Suite 306, Corner of Eyre & Hutson Street,
P.O. Box 2670, Belize City, Belize

BELIZE
THE INTERNATIONAL BUSINESS COMPANIES ACT
Chapter 270 of the Laws of Belize, Revised Edition 2000

ARTICLES OF ASSOCIATION

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1. INTERPRETATION

In these Articles, if not inconsistent with the subject of context, the following words and expressions shall bear the meanings set below them .

Capital: The sum of the aggregate par value of all outstanding shares with par value of the Company and shares with par value held by the Company as treasury shares plus :

(1) the aggregate of the amounts designated as capital of all outstanding shares without par value of the Company and shares without par value held by the Company as treasury shares; and,
(2) the amounts as are from time to time transferred from surplus to capital by a resolution of directors.

Member: A person who holds shares in the Company.

Person: An individual, a corporation, a trust, the estate of a deceased individual, a partnership or an unincorporated association of persons.

Resolution oF Directors: A resolution approved at a duly constituted meeting of directors of the Company or of a committee of directors of the Company by the affirmative vote of a simple majority of the directors present who voted and did not abstain where the meeting was called on proper notice, or, if on short notice, if those directors not present have waived notice; or a resolution consented to in writing by all directors or by all members of the committee, as the case may be .

Resolution of Members:

(1) A resolution approved at a duly constituted meeting of the members of the Company by the affirmative vote of: (i) a simple majority of the votes of the shares which were present at the meeting and were voted and not abstained, or (ii) such larger majority as specified in these Articles, or (iii) a simple majority of the votes of each class or series of shares which were

present at the meeting and entitled to vote thereon as a class or series and were voted and not abstained and of a simple majority of the votes of the remaining shares entitled to vote thereon which were present at the meeting and were voted and not abstained; or,

(2) a resolution consented to in writing by, (i) an absolute majority of the votes of shares entitled to vote thereon or, (ii) an absolute majority of the votes of each class or series of shares entitled to vote thereon as a class or series and of an absolute majority of the votes of the remaining shares entitled to vote thereon.

Securities: Shares and debt obligations of every kind, options, warrants and rights to acquire shares or debt obligations .

Surplus: The excess, if any, at the time of the determination, of the total assets of the Company over the sum of its total liabilities, as shown in its books of account, plus the Company's capital .

The Memorandum: The Memorandum of Association of the Company as originally framed or as from time to time amended.

The Act: The International Business Companies Act, Chapter 270, of the Laws of Belize, Revised Edition, 2000.

The Seal: The Common Seal of the Company.

These Articles: These Articles of Association as originally framed or as from time to time amended .

Treasury Shares: Shares of the Company that were previously issued but were repurchased, redeemed or otherwise acquired by the Company and not cancelled .

Registered Shares: Shares in the Company that are issued as registered shares, and that are issued in the name or names of the holder(s) indicated on the certificate(s).

Court: The Supreme Court of Belize or a Judge thereof.

"Written" or any term of like import includes words typewritten, printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in a visible form, including telex, telegram, cable or other form of writing produced by electronic communication .

Save as aforesaid any words or expressions defined in the Act shall bear the same meaning in these Articles .

Whenever the singular or plural number, or the masculine, feminine or neuter gender is used in these Articles, it shall equally, where the context admits, include the others .

A reference in these Articles to voting in relation to shares shall be construed as a reference to voting by members holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of members who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction .

A reference to money in these Articles is a reference to the currency of the United States of America unless otherwise stated.

2. REGISTERED SHARES

2.1 The Company shall issue to every member holding registered shares in the Company a certificate signed by a director or officer of the Company and under the Seal specifying the share or shares held by him and the signature of the director or officer and the Seal may be facsimiles .

2.2 Any member receiving a share certificate for registered shares shall indemnify and hold the Company and its directors and officers harmless from any loss or liability which it or they may incur by reason of the wrongful or fraudulent use of representation made by any person by virtue of the possession thereof. If a share certificate for registered shares is worn out or lost, it may be renewed on production of the worn out certificate or on satisfactory proof of its loss together with such indemnity as may be required by a resolution of directors .

2.3 If several persons are registered as joint holders of any shares, any one of such persons may be given an effectual receipt for any dividend payable in respect of such shares .

2.4 Subject to any limitations or provisions to the contrary in its Memorandum and Articles of Association,

the Company may purchase, redeem or otherwise acquire and hold its own shares, but only out of surplus or in exchange for newly issued shares of equal value .

2.5 The Company may not purchase, redeem or otherwise acquire and hold its own shares, without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless it is permitted in the Memorandum and Articles of Association or by restrictions in the share certificates .

3. BEARER SHARES

3.1 Subject to a request for the issue of bearer shares and to the payment of the appropriate consideration for the shares to be issued, the Company may, to the extent authorised by the Memorandum, issue bearer shares to, and at the expense of, such person as shall be specified in the request. The Company may also upon receiving a request in writing accompanied by the share certificate for the shares in question, exchange registered shares for bearer shares or may exchange bearer shares for registered shares. Such request served on the Company by the holder of bearer shares shall specify the name and address of the person to be registered and unless the request is delivered in person by the bearer shall be authenticated as hereinafter provided. Such request served on the Company by the holder of bearer shares shall also be accompanied by any coupons or talons which at the date of such delivery have not become due for payments of dividends or any other distribution by the Company to the holders of such shares. Following such exchange the share certificate relating to the exchanged shares shall be delivered as directed by the member requesting the exchange .

3.2 Bearer share certificates shall be under the Seal and shall carry an identifying number and state that the bearer is entitled to the shares therein specified, and may provide by coupons, talon, or otherwise for the payment of dividends or other monies on the shares included therein to the address to which the bearer shares were originally sent .

3.3 Subject to the provisions of the Act and of these Articles the bearer of a bearer share certificate shall be deemed to be a member of the Company and shall be entitled to the same rights and privileges as he would have had if his name had been included in the share register of the Company as the holder of the shares .

3.4 Subject to any specific provisions in these Articles, in order to exercise his rights as a member of the Company, the bearer of a bearer share certificate shall produce the bearer share certificate as evidence of his membership of the Company. Without prejudice to the generality of the foregoing, the following rights may be exercised in the following manner :

(1) for the purpose of exercising his voting rights at a meeting, the bearer of a bearer share certificate shall produce such certificate to the chairman of the meeting;

(2) for the purpose of exercising his vote on a resolution in writing, the bearer of a bearer share certificate shall cause his signature to any such resolution to be authenticated as hereinafter set forth;

(3) for the purpose of requisitioning a meeting of members, the bearer of a bearer share certificate shall address his requisition to the directors and his signature thereon shall be duly authenticated as hereinafter provided; and

(4) for the purpose of receiving dividends, the bearer of the bearer share certificate shall present at such places as may be designated by the directors any coupons or talons issued for such purpose, or shall present the bearer share certificate to any paying agent authorised to pay dividends .

3.5 The signature of the bearer of a bearer share certificate shall be deemed to be duly authenticated if the bearer of the bearer share certificate shall produce such certificate to a notary public or a bank manager or a director or officer of the Company (herein referred to as an "authorised person" and if the authorised person shall endorse the document bearing such signature with a statement

(1) identifying the bearer share certificate produced to him by number and date and specifying the number of shares and the class of shares (if appropriate) comprised therein;

(2) confirming that the signature of the bearer of the bearer share certificate was subscribed in his presence and that if the bearer is representing a body corporate he has so acknowledged and has produced satisfactory evidence thereof;

(3) specifying the capacity in which he is qualified as an authorised person and, if a notary public, affixing his seal thereto, or, if a bank manager, attaching an identifying stamp of the bank of which he is a manager.

3.6 Notwithstanding any other provisions of these Articles, at any time, the bearer of a bearer share

certificate may deliver the certificate for such shares into the custody of the Company at its registered office, whereupon the Company shall issue a receipt therefore under the Seal signed by a director or officer identifying by name and address the person delivering such certificate and specifying the date and number of bearer share certificates so deposited and the number of shares comprised therein. Any such receipt may be used by the person named therein for the purpose of exercising the rights vested in the shares represented by the bearer share certificate so deposited including the right to appoint a proxy. Any bearer share certificate so deposited shall be returned to the person named in the receipt or his personal representative if such person be dead and thereupon the receipt issued therefore shall be of no further effect whatsoever and shall be returned to the Company for cancellation or, if it has been lost or mislaid, such indemnity as may be required by resolution of directors shall be given to the Company .

3.7 The bearer of a bearer share certificate shall for all purposes be deemed to be the owner of the shares comprised in such certificate and in no circumstances shall the Company or the Chairman of any meeting of members or the Company's registrars or any director or officer of the Company or any authorised person be obliged to inquire into the circumstance whereby a bearer share certificate came into the hands of the bearer thereof, or to question the validity or authenticity of any action taken by the bearer of a bearer share certificate whose signature has been authenticated as provided herein .

3.8 If the bearer of a bearer share certificate shall be a corporation, then all the rights exercisable by virtue of such shareholding may be exercised by an individual duly authorised to represent the corporation but unless such individual shall acknowledge that he is representing a corporation and shall produce upon request satisfactory evidence that he is duly authorised to represent the corporation, the individual shall for all purposes hereof be regarded as the holder of the shares in any bearer share certificate held by him.

3.9 The directors may provide for payment of dividends to the holders of bearer shares by coupons or talons and in such event the coupons or talons shall be in such form and payable at such time and in such place or places as the directors shall resolve. The Company shall be entitled to recognize the absolute right of the bearer of any coupon or talon issued as aforesaid to payment of the dividend to which it relates and delivery of the coupon or talon to the Company or its agents shall constitute in all respects a good discharge of the Company in respect of such dividend .

3.10 If any bearer share certificate, coupon or talon be worn out or defaced, the directors may, upon the surrender hereof for cancellation, issue a new one in its stead, and if any bearer share certificate, coupon or talon be lost or destroyed, the directors may upon the loss or destruction being established to their satisfaction, and upon such indemnity being given to the Company as it shall by resolution of directors determine, issue a new bearer share certificate in its stead, and in either case on payment of such sum as the Company may from time to time by resolution of directors require. In case of loss or destruction the person to whom such new bearer share certificate, coupon or talon is issued shall also bear and pay to the Company all expenses incidental to the investigation by the Company of the evidence of such loss or destruction and to such indemnity .

4. SHARES, AUTHORISED CAPITAL AND CAPITAL

4.1 Subject to the provisions of these Articles and any resolution of members the unissued shares of the Company shall be at the disposal of the directors who may without prejudice to any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of the shares to such persons, at such times and upon such terms and conditions as the Company may by resolution of directors determine .

(1) The Memorandum or Articles, or an agreement for the subscription of shares may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt .

(2) Any provision in the Memorandum or Articles, or in an agreement for the subscription of shares providing for the forfeiture of shares, shall contain a requirement that written notice specifying a date for payment to be made, be served on the member who defaults in making payment, pursuant to a promissory note or other written binding obligation to pay a debt .

(3) The written notice referred to in subsection 4.1 paragraph (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be subject to forfeiture .

(4) Where a notice has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, by resolution of directors forfeit and cancel the shares to which the notice relates .

(5) The Company is under no obligation to refund any monies to the member whose shares have been cancelled pursuant to subsection 4.1 of paragraph (4) and that member shall be discharged from any further obligation to the Company.

4.2 Shares in the Company shall be issued for money, services rendered, personal property, an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination of the foregoing as shall be determined by a resolution of directors .

4.3 Shares in the Company may be issued for such amount of consideration as the directors may from time to time by resolution of directors determine, except that in the case of shares with par value, the amount shall not be less than the par value and in the absence of fraud the decision of the directors as to the value of the consideration received by the Company in respect of the issue is conclusive unless a question of law is involved. The consideration in respect of the shares constitutes capital to the extent of the par value and the excess constitutes surplus.

4.4 A share issued by the Company upon conversion of, or in exchange for, another share or a debt obligation or other security in the Company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the Company in respect of the other share, debt obligation or security.

4.5 Treasury shares may be disposed of by the Company on such terms and conditions (not otherwise inconsistent with these Articles) as the Company may by resolution of directors determine .

4.6 The Company may issue fractions of a share and a fractional share shall have the same corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares .

4.7 Upon the issue by the Company of a share without par value, the consideration in respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the Company upon liquidation of the Company.

4.8 The Company may, by resolution of its shareholders, purchase, redeem or otherwise acquire and hold its own shares but no purchase, redemption or other acquisition which shall constitute a reduction in capital shall be made except in compliance with Regulations 7.4 and 7.5.

4.9 A determination by the directors under the preceding Article is not required where shares are purchased, redeemed or otherwise acquired:

(1) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the Company;
(2) in exchange for newly issued shares in the Company;
(3) by virtue of the provisions of Section 79 of the Act;
(4) pursuant to an order of the Court .

4.10 Shares that the Company purchases, redeems or otherwise acquires pursuant to Regulation 4.8 may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired out of capital and would otherwise infringe upon the requirements of Regulations 7.4 and 7.5, or to the extent that such shares are in excess of 80 percent of the issued shares of the Company, in which case they shall be cancelled but they shall be available for reissue. Upon the cancellation of a share, the amount included as capital of the Company with respect to that share shall be deducted from the capital of the Company .

4.11 Where shares in the Company are held by the Company as treasury shares or are held by another company of which the Company holds, directly or indirectly, shares having more than 50 percent of the votes in the election of directors of the other company, such shares of the Company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose except for purposes of determining the capital of the Company.

5. TRANSFER OF SHARES

5.1 Subject to any limitations in the Memorandum, registered shares in the Company may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee, but in the absence of such written instrument of transfer the directors may accept such evidence of a transfer of shares as they consider appropriate .

5.2 The Company shall not be required to treat a transferee of a registered share in the Company as a member until the transferee's name has been entered in the register of members .

5.3 Subject to any limitations in the Memorandum, the Company must on the application of the transferor or transferee of a registered share in the Company enter in the share register the name of the transferee of the share save that the registration of transfers may be suspended and the share register closed at such times and for such periods as the Company may from time to time by resolution of directors determine provided always that such registration shall not be suspended and the share register closed for more than 60 days in any period of 12 months.

6. TRANSMISSION OF SHARES

6.1 The executor or administrator of a deceased member, the guardian of an incompetent member or the trustee of a bankrupt member shall be the only person recognized by the Company as having any title to his share but they shall not be entitled to exercise any rights as a member of the Company until they have proceeded as set forth in the next following two regulations .

6.2 Any person becoming entitled by operation of law or otherwise to a share or shares in consequence of the death, incompetence or bankruptcy of any member may be registered as a member upon such evidence being produced as may reasonably be required by the directors. An application by any such person to be registered as a member shall be deemed to be a transfer of shares of the deceased, incompetent or bankrupt member and the directors shall treat it as such.

6.3 Any person who has become entitled to a share or shares in consequence of the death, incompetence or bankruptcy of any member may, instead of being registered himself, request in writing that some person to be named by him be registered as the transferee of such share or shares and such request shall likewise be treated as if it were a transfer.

6.4 What amounts to incompetence on the part of a person is a matter to be determined by the court having regard to all the relevant evidence and the circumstances of the case .

7. REDUCTION OR INCREASE IN AUTHORISED CAPITAL OR CAPITAL

7.1 The Company may, by a resolution of members or directors, amend the Memorandum to increase or reduce its authorised capital and in connection therewith the Company may in respect of any unissued shares increase or reduce the number of shares, increase or reduce the par value of any shares or effect any combination of the foregoing.

7.2 The Company may amend the Memorandum to :

(1) divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or

(2) combine the shares, including issued shares, of a class or series into smaller number of shares of the same class or series; provided however, that where shares are divided or combined under (1) and (2) of Regulation 7.2, the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

7.3 The capital of the Company may, by a resolution of members or directors, be increased by transferring an amount of the surplus of the Company to capital, and, subject to the provisions of Regulations 7.4 and 7.5, the capital of the Company may be reduced by transferring an amount of the capital of the Company to surplus .

7.4 No reduction of the capital shall be effected that reduce, the capital of the Company to an amount that immediately after the reduction is less than the aggregate par value of all outstanding shares with par value and all shares with par value held by the Company as treasury shares and the aggregate of the amounts designated as capital of all outstanding shares without par value and all shares without par value held by the Company as treasury shares that are entitled to a preference, if any, in the assets of the Company upon liquidation of the Company.

7.5 No reduction of capital shall be effected unless the members or directors determine that immediately after the reduction the Company will be able to satisfy its liabilities as they become due in the ordinary course of its business and that the realisable value of the assets of the Company will not be less than its total liabilities, other than deferred taxes, as shown in the books of the Company and its remaining capital, and, in the absence of fraud, the decision of the directors as to the realisable value of the assets of the Company is conclusive, unless a question of law is involved .

7.6 Where the Company reduces its capital the Company may :

(1) return to its members any amount received by the Company upon the issue of any of its shares ;
(2) purchase, redeem or otherwise acquire its shares out of capital; or
(3) cancel any capital that is lost or not represented by assets having a realisable value .

8. MEETINGS AND CONSENTS OF MEMBERS

8.1 The directors of the Company may convene meetings of the members of the Company at such times and in such manner and places within or outside Belize as the directors consider necessary or desirable .

8.2 Upon the written request of members holding 10 percent or more of the outstanding voting shares in the Company the directors shall convene a meeting of members .

8.3 The directors shall give not less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appears as members in the share register of the Company .

8.4 A meeting of members held in contravention of the requirement in Regulation 8.3 is valid if:

(1) members holding not less than 90 percent of the total number of shares entitled to vote on all matters to be considered at the meeting, or 90 percent of the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with not less than a 90 percent majority of the remaining votes, have agreed to shorter notice of the meeting; or,
(2) all members holding shares entitled to vote on all or any matters to be considered at the meeting have waived notice of the meeting and for this purpose presence at the meeting shall be deemed to constitute waiver.

8.5 The inadvertent failure of the directors to give notice of a meeting to a member, or the fact that a member has not received notice, does not invalidate the meeting .

8.6 A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.

8.7 The instrument appointing a proxy shall be produced at the place appointed for the meeting before the time for holding the meeting at which the person named in such instrument proposes to vote .

8.8 An instrument appointing a proxy shall be in substantially the following form or such other form as the Chairman of the Meeting shall accept as properly evidencing the wishes of the member appointing the proxy. Only members who are individuals may appoint proxies .

(Name of Company)

I/We ....being a member of the above Company with .... shares, HEREBY APPOINT .... of .... or failing him .... of .... to be my/our proxy to vote for me/us at the meeting of members to be held on the..........day of............. , 20...., and at any adjournment thereof.

(Any restrictions on voting to be inserted here)

Signed this day of.................... ,.............

....

Member

8.9 The following shall apply in respect of joint ownership of shares :

(1) if two or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;
(2) if only one of the joint owners is present in person or by proxy he may vote on behalf of all joint owners; and,
(3) if two or more of the joint owners are present in person or by proxy they must vote as one .

8.10 A member shall be deemed to be present at a meeting of members if he participates by telephone or other electronic means and all members participating in the meeting are able to hear each other .

8.11 A meeting of members is duly constituted if, at the commencement of the meeting, there are present in person or by proxy not less than 50 percent of the votes of the shares or class or series of shares entitled to vote on resolution of members to be considered at the meeting. If a quorum be present, notwithstanding the fact that such quorum may be represented by only one person, then, such person may resolve any matter and a certificate signed by such person accompanied where such person be a proxy by a copy of the proxy form shall constitute a valid resolution of members .

8.12 If within two hours from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the next business day at the same time and place or to such other time and place as the directors may determine, and if at the adjourned meeting there are present within an hour from the time appointed for the meeting in person or by proxy not less than one third of the votes of the shares or each class or series of shares entitled to vote on the resolutions to be considered by the meeting, those present shall constitute a quorum but otherwise the meeting shall be dissolved.

8.13 At every meeting of members, the Chairman of the Board of Directors shall preside as chairman of the meeting. If there is no Chairman of the Board of Directors or if the Chairman of the Board of Directors is not present at the meeting, the members present shall choose someone of their number to be the chairman. If the members are unable to choose a chairman for any reason, then the person representing the greatest number of voting shares present in person or by prescribed form of proxy at the meeting shall preside as chairman failing which the oldest individual member or representative of a member present shall take the chair .

8.14 The Chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place .

8.15 At any meeting of the members the chairman shall be responsible for deciding in such manner as he shall consider appropriate whether any resolution has been carried or not and the result of his decision shall be announced to the meeting and recorded in the minutes thereof. If the chairman shall have any doubt as to the outcome of any resolution put to the vote, he shall cause a poll to be taken of all votes cast upon such resolution, but if the chairman shall fail to take a poll, then, any member present in person or by proxy who disputes the announcement by the chairman of the result of any vote may immediately following such announcement demand that a poll be taken and the chairman shall thereupon cause a poll to be taken. If a poll is taken at any meeting, the result thereof shall be duly recorded in the minutes of that meeting by the chairman.

8.16 Any person other than an individual shall be regarded as one member and subject to Regulation 8.17 the right of any individual to speak for or represent such member shall be determined by the law of the jurisdiction where, and by the documents by which, the person is constituted or derives its existence. In case of doubt, the directors may in good faith seek legal advice from any qualified person and unless and until a court of competent jurisdiction shall otherwise rule, the directors may rely and act upon such advice without incurring any liability to any member.

8.17 Any person other than an individual which is a member of the Company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the person which he represents as that person could exercise if it were an individual member of the Company.

8.18 The chairman of any meeting at which a vote is cast by proxy or on behalf of any person other than an individual may call for a notarially certified copy of such proxy or authority which shall be produced within 7 days of being so requested or the votes cast by such proxy or on behalf of such person shall be disregarded .

8.19 The directors of the Company may attend and speak at any meeting of members of the Company and at any separate meeting of the holders of any class or series of shares in the Company.

8.20 An action that may be taken by the members at a meeting may also be taken by a resolution of members consented to in writing or by telex, telegram, cable, telecopier, or other written electronic communication, without the need for any notice, but if any resolution of members is adopted otherwise

than by the unanimous written consent of all members, a copy of such resolution shall forthwith be sent to all members not consenting to such resolution .

9. DIRECTORS

9.1 The first directors of the Company shall be elected by the subscribers to the Memorandum; and thereafter, the directors shall be elected by the members or the existing directors for such terms as the members or directors determine.

9.2 The minimum number of directors shall be one and the maximum number shall be nine .

9.3 Each director shall hold office for the term, if any, fixed by resolution of members or until his earlier death, resignation or removal.

9.4 A director may be removed from office, with or without cause, by a resolution of members .

9.5 A director may resign his office by giving written notice of his resignation to the Company and the resignation shall have effect from the date the notice is received by the Company or from such later date as may be specified in the notice.

9.6 A vacancy in the Board of Directors may be filled by a resolution of members or by a resolution of a majority of the remaining directors.

9.7 With the prior or subsequent approval by a resolution of members, the directors may, by a resolution of directors, fix the emoluments of directors with respect to services to be rendered in any capacity to the Company.

9.8 A director shall not require a share qualification, and may be an individual or a company.

9.9 A director by writing under his hand deposited at the Registered Office of the Company, may from time to time appoint another director or any other person to be his alternate. Every such alternate shall be entitled to be given notice of meeting of the directors and to attend and vote as a director at any such meeting at which the director appointing him is not personally present and generally at such meeting to have and exercise all the powers, rights, duties and authorities of the director appointing him. Every such alternate shall be deemed to be an officer of the Company and shall not be deemed to be an agent of the director appointing him. If undue delay or difficulty would be occasioned by giving notice to a director of a resolution of which his approval is sought in accordance with Regulation 8, his alternate (if any) shall be entitled to signify approval of the same on behalf of that director. A director by writing under his hand deposited at the Registered Office of the Company may at any time revoke the appointment of an alternate appointed by him. If a director shall die or cease to hold the office of director, the appointment of his alternate shall thereupon cease and terminate.

10. POWERS OF DIRECTORS

10.1 The business and affairs of the Company shall be managed by the directors who may pay all expenses incurred preliminary to and in connection with the formation and registration of the Company and may exercise all such powers of the Company as are not by the Act or by the Memorandum or these Articles required to be exercised by the members of the Company, subject to any delegation of such powers as may be authorised by these Articles and to such requirements as may be prescribed by a resolution of members; but no requirements made by a resolution of members shall prevail if it be inconsistent with these Articles nor shall such requirement invalidate any prior act of the directors which would have been valid if such requirement had not been made.

10.2 The directors may by a resolution of directors, appoint any person, including a person who is a director, to be an officer or agent of the Company.

10.3 Every officer or agent of the Company has such powers and authority of the directors, including the power and authority to affix the Seal, as are set forth in these Articles, or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under the Act.

10.4 Any director which is a body corporate may appoint any person as its duly authorised representative for the purpose of representing it at meetings of the Board of Directors or with respect to unanimous written consents.

0.5 The continuing directors may act notwithstanding any vacancy in their body, save that if their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum for a meeting of directors, the continuing directors or director may act only for the purpose of appointing directors to fill any vacancy that has arisen or summoning a meeting of members .

10.6 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as shall from time to time be determined by resolution of directors .

10.7 The Company may from time to time and at any time by resolution of directors appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these Regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him .

11. PROCEEDINGS OF DIRECTORS

11.1 The directors of the Company or any committee thereof may meet at such times and in such manner and places within or outside Belize as the directors may determine to be necessary or desirable .

11.2 A director shall be deemed to be present at a meeting of directors if he participates by telephone or other electronic means and all directors participating in the meeting are able to hear each other .

11.3 A director shall be given not less than 5 days notice of meetings of directors, but a meeting of directors held without 5 days notice having been given to all directors shall be valid if all the directors entitled to vote at the meeting who do not attend, waive notice of the meeting. The inadvertent failure to give notice of a meeting to a director or the fact that a director has not received the notice does not invalidate the meeting .

11.4 A director may by a written instrument appoint an alternate who need not to be a director and an alternate is entitled to attend meetings in the absence of the director who appointed him and vote or consent in place of the director.

11.5 A meeting of directors is duly constituted for all purposes if at the commencement of the meeting there are present in person or by alternate not less than one half of the total number of directors, unless there are only two directors in which case the quorum shall be two .

11.6 If the Company shall have only one director the provisions herein contained for meetings of the directors shall not apply but such sole director shall have full power to represent and act for the Company in all matters as are not by the Act or the Memorandum or these Articles required to be exercised by the members of the Company and in lieu of minutes of a meeting shall record in writing and sign a note or memorandum of all matters requiring a resolution of directors. Such a note or memorandum shall constitute sufficient evidence of such resolution for all purposes.

11.7 At every meeting of the directors the Chairman of the Board of Directors shall preside as chairman of the meeting. If there is no Chairman of the Board of Directors or if the Chairman of the Board of Directors is not present at the meeting the Vice Chairman of the Board of Directors shall preside. If there is no Vice Chairman of the Board of Directors or if the Vice Chairman of the Board of Directors is not present at the meeting the directors present shall choose someone of their number to be chairman of the meeting .

11.8 The emoluments of all officers shall be fixed by resolution of directors .

11.9 The directors shall cause the following corporate records to be kept:

(1) minutes of all meetings of directors, members, committees of directors, committees of officers and committees of members;

(2) copies of all resolutions consented to by directors, members, committees of directors, committees of officers and committees of members; and,

(3) such other accounts and records as the directors by resolution of directors consider necessary or desirable in order to reflect the financial position of the Company.

11.10 The books, records and minutes shall be kept at the registered office of the Company or at such other

place as the directors determine.

11.11 The Company may keep a register of directors containing the names and addresses of the directors of the Company, the date on which each director is appointed as a director of the Company, and the date on which each person named as a director ceased to be a director of the Company. If the Company keeps a register of directors referred to in this Regulation, a copy of such register shall be kept at the registered office of the Company.

11.12 The directors may, by a resolution of directors, designate one or more committees, each consisting of one or more directors.

11.13 Each committee of directors has such powers and authorities of the directors, including the power and authority to affix the Seal as are set forth in the resolution of directors establishing the committee, except that no committee has any power or authority either to amend the Memorandum or these Articles or with respect to the matters requiring a resolution of directors under Regulations 9.6, 9.7, and 10.2.

11.14 The meetings and proceedings of each committee of directors consisting of two or more directors shall be governed mutatis mutandis by the provisions of these Articles regulating the proceedings of directors so far as the same are not superseded by any provisions in the resolution establishing the committee .

12. OFFICERS

12.1 The Company may by resolution of directors appoint officers of the Company at such times as shall be considered necessary or expedient. Such officers may consist of a Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, President and one or more Vice Presidents, Secretaries and Treasurers and such other officers as may from time to time be deemed desirable. Any number of offices may be held by the same person.

12.2 The officers shall perform such duties as shall be prescribed at the time of their appointment subject to any modification in such duties as may be prescribed thereafter by resolution of directors or resolution of members, but in the absence of any specific allocation of duties it shall be the responsibility of the Chairman of the Board of Directors to preside at meetings of directors and members, the Vice Chairman to act in the absence of the Chairman, the President to manage the day to day affairs of the Company, the Vice Presidents to act in order of seniority in the absence of the President but otherwise to perform such duties as may be delegated to them by the President, the Secretaries to maintain the share register, minute books and records (other than financial records) of the Company and to ensure compliance with all procedural requirements imposed on the Company by applicable law and the Treasurer to be responsible for the financial affairs of the Company.

12.3 The emoluments of all officers shall be fixed by resolution of directors .

12.4 The officers of the Company shall hold office until their successors are duly elected and qualified, but any officer elected or appointed by the directors may be removed at any time, with or without cause, by resolution of directors. Any vacancy occurring in any office of the Company may be filled by resolution of directors .

13. INDEMNIFICATION

13.1 Subject to Regulation 13.2, the Company shall indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who :

(1) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the Company; or,

(2) is or was, at the request of the Company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for another company or a partnership, joint venture, trust or other enterprise .

13.2 Regulation 13.1 only applies to a person referred to in that Regulation if the person acted honestly and in good faith with a view to the best interests of the Company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful .

13.3 The decision of the directors as to whether the person acted honestly and in good faith and with a view to

the best interests of the Company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of this Regulation 13, unless a question of law is involved .

13.4 The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a nolle prosequi does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the Company or that the person had reasonable cause to believe that his conduct was unlawful .

13.5 If a person referred to in Regulation 13.1 has been successful in defense of any proceedings referred to in that Regulation, the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

13.6 The Company may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the Company, or who at the request of the Company is or was serving as a director, an officer or a liquidator of, or in any other capacity is or was acting for another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the Company has or would have had the power to indemnify the person against the liability under Regulation 13.1.

14. SEAL

The directors shall provide for the safe custody of the Seal. The Seal when affixed to any written instrument shall be witnessed by a director or any other person so authorised from time to time by resolution of directors. The directors may provide for a facsimile of the Seal and of the signature of any director or authorised person which may be reproduced by printing or other means on any instrument and it shall have the same force and validity as if the Seal had been affixed to such instrument and the same had been signed as hereinbefore described.

15. DIVIDENDS

15.1 The Company may by a resolution of directors declare and pay dividends in money, shares, or other property, but dividends shall only be declared and paid out of surplus. In the event that dividends are paid in specie the directors shall have responsibility for establishing and recording in the resolution of directors authorising the dividends, a fair and proper value for the assets to be so distributed .

15.2 The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the Company.

15.3 The directors may, before declaring any dividend, set aside out of the profits of the Company such sum as they think proper as a reserve fund, and may invest the sum so set apart as a reserve fund upon such securities as they may select .

15.4 No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend the Company will be able to satisfy its liabilities as they become due in the ordinary course of its business and the realisable value of the assets of the Company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in its books of account, and its capital. In the absence of fraud, the decision of the directors as to the realisable value of the assets of the Company is conclusive, unless a question of law is involved .

15.5 Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned and all dividends unclaimed for three years after having been declared may be forfeited by resolution of directors for the benefit of the Company.

15.6 No dividend shall bear interest as against the Company and no dividend shall be paid on shares described in Regulation 4.10.

15.7 A share issued as a dividend by the Company shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share .

15.8 In the case of a dividend of authorised but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution .

15.9 In the case of a dividend of authorised but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distributions, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the Company upon liquidation of the Company .

15.10 A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having a proportionately smaller par value does not constitute a dividend of shares .

16. BOOKS AND RECORDS

16.1 The Company shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the Company.

16.2 The Company shall keep minutes of all meetings of directors, members, committees of directors, committees of officers and committees of members, and copies of all resolutions consented to by the directors, members, committees of directors, committees of officers and committees of members .

16.3 The books, records and minutes required by Regulations 18.1 and 18.2 shall be kept either in its original or a copy thereof, at the Registered Office of the Company or at such other place as the directors may determine, and shall be open to the inspection of the directors at all times .

16.4 The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions of regulations the books, records and minutes of the Company or any of them shall be open to the inspection of members not being directors and, no member (not being a director) shall have any right of inspecting any book, record, minute or document of the Company except as conferred by Law or authorised by resolution of the directors .

17. ACCOUNTS

The Company shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the Company.

18. AUDIT

18.1 The Company may by resolution of members call for the accounts to be examined by auditors .

18.2 The first auditors shall be appointed by resolution of directors; subsequent auditors shall be appointed by a resolution of members.

18.3 The auditors may be members of the Company but no director or other officer shall be eligible to be an auditor of the Company during his continuance in office .

18.4 The remuneration of the auditors of the Company :

(1) in the case of auditors appointed by the directors, may be fixed by resolution of directors.

(2) subject to the foregoing, shall be fixed by resolution of members or in such manner as the Company may by resolution of members determine .

18.5 The auditors shall examine each profit and loss account and balance sheet required to be served on every member of the Company or laid before a meeting of the members of the Company and shall state in a written report whether or not:

(1) in their opinion the profit and loss account and balance sheet give a true and fair view respectively of the profit and loss for the period covered by the accounts, and of the state of affairs of the Company at the end of that period;

(2) all the information and explanations required by the auditors have been obtained .

18.6 The report of the auditors shall be annexed to the accounts and shall be read at the meeting of members at which the accounts are laid before the Company or shall be served on the members .

18.7 Every auditor of the Company shall have a right of access at all times to the books of account and vouchers of the Company, and shall be entitled to require from the directors and officers of the Company such information and explanations as he thinks necessary for the performance of the duties of the auditors .

18.8 The auditors of the Company shall be entitled to receive notice of, and to attend any meetings of members of the Company at which the Company's profit and loss account and balance sheet are to be presented .

19. NOTICES

19.1 Any notice, information or written statement to be given by the Company to members must be served in the case of members holding registered shares by mail addressed to each member at the address shown in the share register and in the case of members holding shares issued to bearer, in the manner provided in the Memorandum.

19.2 Any summons, notice, order, document, process, information or written statement to be served on the Company may be served by leaving it, or by sending it by registered mail addressed to the Company, at its registered office, or by leaving it with, or by sending it by registered mail to the registered agent of the Company.

19.3 Service of any summons, notice, order, document, process, information or written statement to be served on the Company may be proven by showing that the summons, notice, order, document, process, information or written statement was mailed in such time as to admit to its being delivered in the normal course of delivery within the period prescribed for service and was correctly addressed and the postage was prepaid .

20. VOLUNTARY WINDING UP AND DISSOLUTION

The Company may voluntarily commence to wind up and dissolve by a resolution of members but if the Company has never issued shares, it may voluntarily commence to wind up and dissolve by resolution of directors.

21. CONTINUATION

21.1 The Company may by resolution of members or by resolution passed unanimously by all directors of the Company continue as a company incorporated under the laws of a Jurisdiction outside Belize in the manner provided under those laws.

21.2 The Registered Agent, duly authorised by the Company members, may submit to the Registrar, an Affidavit expressing an interest as to continue the Company in another Jurisdiction, upon registration of this request, the Registrar will strike off the Company, issuing a certificate of discontinuance in Belize .

22. AMENDMENTS

These Articles may only be altered, repealed or replaced by resolution of the members of the Company .

We, A.J.K. CORPORATE SERVICES (BELIZE) LIMITED of, Blake Building, Suite 306, Corner of Eyre & Hutson Street, P.O. Box 2670, Belize City, Belize, for the purpose of incorporating an International Business Company under the laws of Belize hereby subscribe our name to these Articles of Association on this **30th June, 2016** in the presence of the undersigned witness .

WITNESS:

Shirleen White
Belize City, Belize

SUBSCRIBER:

Alva Bensie on behalf of
A.J.K. CORPORATE SERVICES (BELIZE) LIMITED,
Blake Building, Suite 306, Corner of Eyre & Hutson Street,
P.O. Box 2670, Belize City, Belize

Appendix OP.2.1: Correspondence with the CAA regarding timing of EASA certification process

From: Bromley-Fox Kat
Sent: 29 April 2019 16:08
To: Jamie
Subject: RE: EASA Certification

Good afternoon Jamie

Thank you for your email.

I have spoken with the Manager, Aerodromes and ATM and can confirm that the CAA would adhere to established policy/practice as you have described below.

With best regards,
Kate

Kate Bromley-Fox
Principal Aerodrome Inspector (Operations)
Aerodromes
Civil Aviation Authority

Follow us on Twitter: @UK_CAA

From: Jamie <jamie
Sent: 25 April 2019 16:58
To: Bromley-Fox Kate <
Subject: RE: EASA Certification

Dear Kate,

Many thanks for your time earlier.

As we discussed, Stone Hill Park Ltd ("SHP") is the landowner of the site of the former Manston Airport in Kent. By way of background, SHP acquired the site after the airport closed in 2014 (following c15 years of commercial failure for successive operators) and is now pursuing plans to transform the site into a new settlement comprising housing, leisure facilities and a heritage aviation quarter, incorporating a retained 1,200m runway.

Our progress has been hindered by attempts by a third party, RiverOak Strategic Partners Ltd ("RSP"), to compulsorily acquire the land as part of a Development Consent Order ("DCO") it is promoting to reopen the site as a commercial cargo airport. Notwithstanding the lack of any evidence to support RSP's plans, the DCO application is in the middle of a 6 month examination phase, which involves the testing and assessment of the merits of the application. We would further note that RSP is owned 90% by an offshore Belize based entity, MIO Investments Ltd, that has anonymous directors and shareholders.

We have long been concerned that discussions between RSP and CAA regarding EASA licence certification requirements have not been presented by RSP in an entirely accurate and complete fashion to the government appointed Examining Authority.

Based on the guidance on the CAA website, it appears clear to us that the CAA will only progress discussions on a licence/certificate if it is satisfied that an Applicant is able to prove that it has control over or access to the land it wants to be licensed/certified as an aerodrome. The guidance further notes that *"the applicant must either be the landowner or have the permission of the landowner to use the site as an aerodrome, with rights to control the aerodrome under the terms of a lease or other operating agreement."*

RSP is neither the owner of the land to which its "project" relates nor does it have permission of the landowner to use the site as an aerodrome. The grant of a DCO, including powers of compulsory acquisition over SHP's land, would not change that situation. It would only be by actually using powers to compulsorily acquire the land that RSP could gain *"control over or access to the land"* in the manner set out in the guidance. This would require a value to be set by the Lands Tribunal, and there would be no certainty that RSP could afford to, or choose to, meet the costs required to acquire the land.

This brings us on to the representations that RSP has made to the examination about the timing of the commencement of the EASA certification process (we note the Statement of Common Ground between the CAA and RSP (copy attached) is silent on this). In its latest Written Summary of Oral Submissions put at a hearing on Need and Operations (https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-003786-Need%20and%20Operation%20Hearing%20Summary%20and%20Appendices.pdf), RSP states the following;

> ***"8 Agenda Item 10 - Operations – Aerodrome Certificate***
>
> *8.1 The Applicant explained that they anticipate it would take 2 years for the certification process to be completed. The Applicant stated that it would be an iterative process, and although the formal process had not started, a team was ready to begin immediately. The Applicant explained that the CAA would not allow the Applicant to enter the formal process until the DCO is granted, as the CAA require certainty before commencing the certification process. The same procedure will be followed by Heathrow."*

As we discussed on our call, even if the Secretary of State made the decision to grant the DCO with powers of compulsory acquisition (for the avoidance of doubt we consider there is no credible evidence to support this), RSP would not be in control of the land at that point and there would be no certainty that it would ever be in control of the land. Even if it was successful, it would likely take c. 18 months following an initial decision by the Secretary of State before RSP could be in control of the land – this would cover the period required to get past (or not as the case would likely be) any judicial review proceedings and associated appeals, and a further period beyond that to complete the compulsory acquisition process. Please also be aware that RSP is seeking the right to acquire the land at any time in a 5 year period, which could delay this further.

Therefore, to ensure that the CAA's position is not being misrepresented, we would appreciate if the CAA could confirm whether it has departed from its published guidance and would intend to begin the certification process ahead of RSP being either (i) the landowner (having completed the acquisition of the aerodrome site using powers of compulsory acquisition) or (ii) have the express permission of the landowner. If a decision has been made to depart from the guidance, as the landowner with a vested interest in the site we would be grateful if you could provide the justification for doing so and an explanation of the basis on which the certification process would be progressed.

I apologise for the lengthy nature of this email. Should you require any further information or clarification, please do not hesitate to contact me.

Best regards

Jamie