APPLICATION BY RIVEROAK STRATEGIC PARTNERS LTD ("THE APPLICANT")

FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE UPGRADE AND REOPENING ON MANSTON AIRPORT

PINS Reference Number: TR020002

STONE HILL PARK LTD'S COMMENTS ON THE APPLICANT'S WRITTEN SUMMARY OF ORAL SUBMISSIONS PUT AT THE COMPULSORY ACQUISITION HEARING HELD ON 20 MARCH 2019.

1. **BACKGROUND**

1.1 The Compulsory Acquisition Hearing ("CA Hearing") was held at 10:00am on 20 March 2019 at Discovery Park, Sandwich, CT13 9FF.

1.2 The Applicant's Written Summary of Oral Submissions ("Applicant's Written Summary") was published on 5 April 2019.

1.3 The purpose of this note is to highlight anomalies, discrepancies and a number of issues of serious concern relating the information submitted by the Applicant.

2. **AGENDA ITEM 5: FUNDING**

2.1 **Paragraph 3.1:** The Applicant's claims 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,"* is baffling to say the least.

2.1.1 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, which it failed to deliver on.

2.1.2 In the period since, it is SHP's firmly held view, supported by the evidence, that the Applicant's engagement and correspondence with SHP has been purely tactical, and aimed at allowing it to maintain a pretence to the Examining Authority that discussions are ongoing.

2.1.3 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.

2.1.4 For principals who have held themselves out over the last 5 years as being well funded, experienced investors, it is bemusing that they are still incapable of providing a satisfactory explanation of the funding position, despite previous commitments to do so.

2.2 **Paragraph 3.2:** The Applicant claims the intention is that RiverOak Manston Limited ("ROML") would be the Applicant's sole owner on completion of its restructure. A change such as this would only be window dressing and would in no way address any concerns over funding - unless all funding was provided by ROML and there was absolute transparency over the source(s) of that funding. If, as Mr Rothwell suggested at the CA Hearing, MIO Investments would still continue to fund all the costs, then the simple transfer of the ownership of the shares (that hold no economic value) held by MIO Investments to ROML does not change anything. Indeed, the economic value attaching to the funding would remain with MIO Investments.

2.3 **Paragraph 3.3:** The Applicant has stated, *"[T]he shareholders of MIO Investments are the project's investors. Although the investors wished to remain confidential, 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."*

2.3.1 The information included in Appendix 4 has been reviewed by SHP's advisers and it is considered important to bring the following matters to the Examining Authority's attention, which raise a number of important concerns and questions;

2.3.2 Who are the Investors/Funders?

(a) The name of one of the parties to the Joint Venture Agreement ("JV Agreement") has been redacted.

(b) As noted on page 55 (of 56) of the JV Agreement dated 15 December 2016, the Deed was signed on behalf of the redacted investor by Anthony Freudmann who was *"acting as his attorney".*

(c) The identity of this individual is important to the examination, as based on the provisions of clause 6.10 of the JV Agreement (page 20 of 56), this individual is under an obligation to acquire 50% of all the loan notes held by the Capital Investor (i.e. MIO Investments).

(d) Mr Rothwell advised at the CA hearing that MIO Investments had funded £14.5m costs, therefore this anonymous individual would appear to be *"underwriting"* over £7million of the "costs" expended on the DCO.

(e) There is no basis on which the Applicant should be anything other than transparent about this individual, who (if his potential exposure is £7m+) is the principal "investor" in the proposed project, which purports to be a Nationally Significant Infrastructure Project.

2.3.3 HMRC Business Investment Relief Scheme.

(a) The evidence submitted by the Applicant does not support its assertions that the loans to MIO Investments by its shareholders *"had been subject to due diligence and approval by HMRC."*

(b) It is noted that the Examining Authority has identified some of these issues in its written questions F.2.15, F.2.16 and F.2.17. However, we would also bring to the Examining Authority's attention that the financial statements of the Applicant, RiverOak Strategic Partners Ltd ("RSP"), for the years ending 31 July 2017 and 31 July 2018, show nil investment in the form of new share capital or loans i.e. no loan or equity funding has been provided to RSP.

(c) The Applicant (RSP) is still reporting share capital of £1 and claiming to be a dormant company. Whilst we understand from Mr Rothwell's evidence that loans may have been made to the Applicant's subsidiary, RiverOak Operations Ltd, this is not consistent with the information contained in the HMRC letters in Appendix 5 or within the drafting of the JV Agreement in Appendix 4. Again, there appears to be multiple inconsistencies and contradictions in the evidence submitted by the Applicant.

2.3.4 Corporate Structure and Funding

(a) To experienced investors, the Applicant's structure would be considered to be unnecessarily complicated and opaque for what is merely a bidding vehicle. The use of multiple subsidiary companies, each with separate funding lines that do not pass through the parent company, facilitates ring fencing between assets and liabilities, the rationale for which is unclear.

(b) We would note that the JV Agreement dated 15 December 2016 inferred that completion loan note funding of £1.45 million was advanced by MIO Investments in December 2016 (see clause 3.3.3), of which £800,000 was paid to RiverOak Investment Corporation LLC ("ROIC"), ostensibly for its rights and interests in the project (see 3.3.4). It would appear that MIO Investments had also provided £350,000 of funding in August 2016 that was subsequently reclassified as Replacement Loan Notes.

(c) As set out in clause 6.1 of the JV Agreement, the proceeds of these loan notes were stated to be used to *"satisfy the liabilities for Phase 1 which are set out in the Budget"*. Phase 1 costs were defined as being those associated with applying for and obtaining the DCO (clause 2.1.1).

(d) Therefore, the documentation would suggest that the Applicant had only budgeted remaining costs of circa £1 million to obtain the DCO, being the £1.8 million of the loans provided by MIO Investments, less the £800,000 paid to ROIC. Yet, in paragraph 3.15 of its written summary of oral submissions, the Applicant claimed to have spent £14.5 million on the project.

(e) After allowing for the £800,000 paid to ROIC and the c.£2.6m costs of acquiring the Jentex site, it would appear that the

Applicant's c.£1 million forecast of the costs of the DCO process is currently out by around £10 million and rising.

(f) It is noted that the Examining Authority has sought proof of the claimed £14.5 million expenditure in written question F.2.21, however we remain concerned that the Applicant will not be forthcoming with a satisfactorily detailed response that will enable the Examining Authority to understand where these costs have been incurred.

(g) In Section (A) Background of the JV Agreement (on page 4 of 56), it stated that the single share in RiverOak Strategic Partners Ltd was held by ROML. The confirmation statement lodged at Companies House on 23 March 2017 (and publically available on the Companies House website) shows this to be inaccurate. The single share was actually held by Anthony Freudmann.

(h) As noted further in comments on paragraph 3.16 below, the varied JV Agreement (dated 29 March 2019) and the loan agreement submitted by the Applicant at Deadline 5 provide no credible evidence of funding that can be properly and fairly tested.

2.3.5 As the Applicant continues to make submissions that do not say what the Applicant claims it does, we would encourage the Examining Authority to call on any internal legal and commercial advice it has available to assist it with its review of the Applicant's submissions. It would also be informative if the Applicant was asked to provide copies of the information it provided to HMRC to allow an independent review of the position to be undertaken.

2.4 **Paragraph 3.6:** The Applicant stated that *"it was possible that a change in Thanet District Council's policy on use of the Order land would impact the valuation assessment within the property cost estimate. A note on this matter was asked to be provided at deadline 5 and can be found at Appendix 1."* Paragraph 1 of Appendix 1 states that *"[T]he Applicant's surveyor, Colin Smith of CBRE, confirmed that planning policy and the potential for permission are elements within the valuation assessment."*

2.4.1 However, a review of the recording from the CA Hearing (from minute 54 onwards) shows that Mr Smith acknowledged that the decision of Thanet DC not to have a policy allocation in the new local plan would affect the valuation of the site, that Mr Smith was unable to give an estimate of how this had impacted his advice and, when requested to do so by the Examining Authority, Mr Smith undertook to provide the information for Deadline 5.

2.4.2 The information contained in Appendix 1 does not do this. Instead we have a statement from the Applicant itself advising that it has allowed for the valuation impact of any change in local plan in its (£7million) estimate for land acquisition costs. Again, there is no analysis, evidence or justification provided by the Applicant to support its assertion.

2.5 **Paragraph 3.9:** The Applicant claimed that it *"had been engaging in continued negotiations with SHP regarding the acquisition of the site. It had made a without prejudice offer, subject to contract for a significant sum."*

2.5.1 Please note that that the discussions referred to SHP's response to written question CA.1.17 regarding the Applicant's £20m written offer **were not** on a *"without prejudice basis".* We provide a more comprehensive update on the position in our response to the Examining Authority's 2nd written question CA.2.17.

2.5.2 We challenge the Applicant to provide evidence of its *"without prejudice offer"* and would advise the Examining Authority that the Applicant has also been advised that is under no duty of confidentiality to SHP in respect of any offers it has made. SHP is highly concerned that the Applicant continues to make misleading statements to the Examining Authority as a means of maintaining the pretence that is making efforts to acquire the site by voluntary arrangement and avoiding having to answer the Examining Authority's questions.

2.6 **Paragraph 3.10:** The Applicant has stated that the Jentex site was not included in the CBRE costs assessment and Funding Statement. If the Applicant is taken at its word, this is an acceptance that its Funding Statement was materially inaccurate.

2.6.1 However, as noted in its paragraph 3.12, the Applicant continues to refuse to disclose information on how its costs estimate is comprised. In view of the material errors made by the Applicant in its Funding Statement (e.g. exclusion of the £2.5m cost of the Jentex site, underestimating Phase 1 construction costs by £86m), it is not possible to have any confidence in the assertions made by the Applicant, particularly in absence of any evidence that can be adequately and fairly tested.

2.7 **Paragraph 3.13**: The Applicant states in its written summary that it is unable to provide a precise estimate of construction costs until the detailed design stage. In its Appendix 3, the Applicant attempts to justify Mr Yerrall's inability to provide a potential range of deviation to its cost estimate when requested to do so by the Examining Authority. SHP believes that it was very clear to those in attendance at the hearing that the Examining Authority was seeking to understand by how much (e.g. in nominal or percentage terms) the "estimated" construction costs could change. SHP cannot speak to the motivations of the Applicant, however its failure to address the question and its subsequent explanation that it *"has performed its own search and asked its consultants and has been unable to find a commonly understood reference to what is meant by "A", "B" or "C""* is difficult to comprehend.

2.8 **Paragraph 3.14:** The Applicant claims that *"[T]he phase 1 construction estimate had risen within a similar overall total from £100m to £186m because of a greater proportion of the works such as ground levelling are considered to be needed for phase 1 before the airport could reopen."*

2.8.1 Again, the Applicant appears to be trying to explain away material errors and inconsistencies in its Application, without recognising that its answer raises material concerns elsewhere.

2.8.2 It is a fact that Chapter 3 of the Environmental Assessment stated that earth works were assessed as being part of Phase 1 works. The Applicant's claim that £86m of construction costs (including ground levelling) has been brought forward is not coherent. If it was, the materiality of the change would impact the effects of the phase 1 development, which would require to be assessed in the Environmental Statement. Again, in view of the lack of any detailed information or evidence provided by the Applicant, it is not possible to test the Applicant's assertions.

2.8.3 Bringing forward significant additional costs would also have a fundamental effect on viability. However, without a viability appraisal that can be tested, the examination simply cannot know what the effect might be.

2.9 **Paragraph 3.15:** the claim that the project's funders have £30m set aside to meet costs is unevidenced assertion by the Applicant. Furthermore, the Applicant's assertion to have spent £14.5m (or c.£12m net of the Jentex land acquisition cost) on the DCO requires to be fully substantiated.

2.10 **Paragraph 3.16:** the Applicant provided a redacted copy of the JV Agreement in Appendix 4 and claimed it demonstrated the obligation of the funders to meet land acquisition and noise mitigation costs. However, a review of the documentation clearly demonstrates that at the time of the hearing there was no funding commitment from any party to meet land acquisition, blight or noise mitigation costs. Funding was directly at the discretion of the providers of that funding.

2.10.1 It is important to note that the post CA Hearing variation of the JV agreement on 29 March 2019 did not change this position. Whilst the JV Agreement now includes a provision that MIO is to fund the costs associated with compulsory acquisition and noise mitigation, the Deed of Variation does not amend the key terms of the JV Agreement requiring the approval of the Capital Investor (i.e. MIO Investments) for any funding to be drawn down or expended.

2.10.2 We would refer the Examining Authority to paragraph 4 of the JV Agreement dated 15 December 2016. This provision sets out the matters requiring shareholders consent as further noted in Schedule 1. Matters 2, 5 and 15 of Schedule 1 demonstrate that MIO Investments approval (which is wholly discretionary) would be required before funds could be drawn or land acquired.

2.10.3 Therefore, despite the post CA hearing variations made to section 6 of the JV Agreement heralded by the Applicant, there is still no contractual requirement for MIO to provide any funding if does not wish to do so. **Therefore, in practical terms, the variations are meaningless.**

2.10.4 Furthermore, the letter from Helix Fiduciary and appendices included as Appendix 5, do not do what the Applicant claims – it does not set *"out the status of the investors and the availability of their funds."*

2.10.5 The PWC letter referred to by Helix does not identify the beneficial owners of the accounts, nor does it provide any comfort that the beneficial owners are the same individuals that have invested in the project, nor does it

provide any evidence that the funds are capable of being used by MIO Investments. The PWC letter simply confirms that certain levels of funds are held in a bank account that Helix operate on behalf of certain clients. Based on the wording of the PWC letter, these funds could be held on behalf of any of Helix's clients, and not necessarily those that are purported to have invested in the Applicant's project.

2.10.6 Helix have claimed that the desire not to identify the individuals is borne out of a wish to avoid criticism on social media. Helix claim that all are successful individuals who are entitled to anonymity, despite seeking to utilise an attractive tax efficient investment structure for a purported Nationally Significant Infrastructure Project that seeks powers of compulsory acquisition that would have the effect of depriving one private entity of its land holdings.

2.10.7 As the Examining Authority appropriately advised the Applicant at the CA Hearing, the lack of disclosure is the Applicant's problem. One of the key fundamental principles of the Planning Act 2008 is transparency and in absence of proper disclosure, SHP and other affected parties will not have had had the opportunity to adequately test the evidence and have a fair chance to put its case.

2.11 **Paragraph 3.17:** The Applicant states that it *"provides at Appendix 6 an explanation of how the £13.1m, representing £7.5m of costs of land compensation and £5.6m of noise mitigation, has been arrived at."* We would note to the Examining Authority, that Appendix 6 does not provide an explanation. It wrongly states the amount provided for land acquisition was £7.5m (it was £7m as the £7.5m is said to include £0.5m for blight), and makes no effort to explain how the £5.6m is comprised. Based on the paragraphs 3.19 and 3.20, it would appear that the Applicant may actually have reduced its estimate for the costs associated with noise mitigation.

2.12 **Paragraph 3.21:** The Applicant provides at Appendix 7 evidence that it claims shows its accountants Calder & Co have £500,000 that can be drawn down for blight claims. We would note that the statement in Appendix 7 states that a loan of £500,000 was made to RiverOak Manston on 18 March (although the amount was not showing in the ledger balance). We would note that RiverOak Manston Ltd is only a 10% shareholder in the Applicant, not the Applicant or a subsidiary of the Applicant, and therefore it is not clear that these funds would be available.

2.13 **Paragraph 3.22:** the proposal by the Applicable is wholly inadequate. We would refer the Examining Authority to section 7.2 of SHP's written summary of oral submissions put at the CA Hearing.

2.14 **Paragraph 3.23:** we would respectfully flag that the report from the Transport Select Committee predated the second CPO process undertaken by Thanet District Council. Accordingly, it is unclear how this report is of any relevance.

3. **AGENDA ITEMS 10 AND 11: ORAL REPRESENTATIONS/OBJECTIONS**

3.1 **Paragraph 8.2:** the Applicant states it *"does not accept the testimony of Altitude Aviation Advisory as to its business case"* yet provides nothing in terms of evidence or information to support its position.

3.1.1 Instead it refers to a more detailed business plan that is *"subject to commercial confidentiality"* and that *"it is not willing to reveal to potential customers or competitors the precise charges or revenues it anticipates because that would adversely affect its negotiations in future."* SHP notes that the Applicant has included as Appendix 6 to its Written Summary of Oral Submissions put at the Need and Operations Hearing, a *"note explaining its business model (Appendix F.1.5 to the Applicant's Appendices to Answers to FWQs REP3-187)"*. However, on any objective analysis, the information provided is nothing more than a high level narrative summary of the types of revenue an airport could attract and the nature of direct / indirect costs.

3.1.2 It provides absolutely nothing in the way of information or evidence that would allow the Examining Authority and affected parties to assess the merits of the Applicant's proposals. In absence of any of its own evidence that would allow its Application to be adequately and fairly tested, or even a reasoned rebuttal of the evidence provided by Altitude Aviation Advisory (who have experience of over 100 transactions involving over 200 airports), the only detailed evidence before the examination is that provided by SHP and its highly experienced advisory team.

3.1.3 It is highly revealing that the Applicant has made no attempt to rebut the evidence highlighting the multiple fundamental flaws in the Applicant's business case. It cannot be emphasised enough that the author of the forecasts that underpin the entire DCO application accepted that it has no relevant experience of air cargo forecasting, and did not consider costs or viability in preparing its forecasts.

3.2 **Paragraph 8.3:** It is perhaps interesting that the Applicant has resorted to arguing that it is not necessary to demonstrate the viability or deliverability of its project.

3.2.1 SHP's case in this respect is that there cannot be a compelling need in the public interest to acquire land for a project which is not viable or deliverable and that the burden of proof lies on the Applicant to demonstrate that viability and deliverability in order to attempt to make its "compelling case". These matters are set out in SHPs Written Representations of 15 February 2019 (in section 8).

3.2.2 SHP has identified the significance of the Guidance related to procedures for the compulsory acquisition of land, September 2013 which provides at paragraph 13:

"….the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived

*from the compulsory acquisition **will outweigh** the private loss…." (emphasis added).*

3.2.3 That requirement could only be satisfied if the Examining Authority and the Secretary of State conclude that the project will proceed so that its benefits will (with certainty) outweigh the loss to SHP and others.

3.2.4 The Applicant's Appendix 9 quotes selectively from the judgement in the Chesterfield Properties case1. In particular, the appendix fails to identify:

- that the proposals involved a town centre regeneration scheme that was described as Stockton's last, and perhaps only, chance to revive its flagging retail economy, regenerate a run-down area at the heart of the town centre and enhance its appearance and image. (Inspector's conclusions paragraph 501).

- that there was very substantial public sector support for the development which benefitted from a City Challenge contribution of £9 million which had been approved in principle by the Government Office and anticipated EU funding and direct local authority support;

- that the inquiry was advised that schemes of such a nature were, by definition (in order to qualify for grant), marginally viable; and

- that the Inspector had found that the scheme is viable (paragraph 105).

3.2.5 Neither does the appendix recognise that viability of proposed schemes is commonly material to the determination of compulsory acquisition cases. For example, proposals for town centre compulsory acquisition were dismissed in September 2010 in Stowmarket by the Secretary of State who agreed with his Inspector Mr. Prentis that the lack of viability and the lack of commitment to delivery of the scheme meant that there could not be a compelling case in the public interest (reference LDN 23/W35206/1). Similarly, an inquiry concerning the Croydon Gateway Scheme rejected proposals for compulsory acquisition (reference LDN23/L5240/6/1) in a case where the applicant had relied upon the Chesterfield Properties case (see the Inspector's report paragraph 11.1.11) but the Secretary of State nevertheless concluded that the CPO should not be confirmed for several reasons, including because there was no reasonable prospect of the scheme proceeding if the CPO were confirmed (paragraph 11.3.38).

3.2.6 Whilst each case may turn on its own individual merits, the requirements of the relevant Guidance for the purposes of the Planning Act 2008 are clear and the lack of evidence of viability, commitment, funding or deliverability are fundamental failings of the application.

[1] Chesterfield Properties plc –v- Secretary of State for environment; Secretary of State for Transport and Stockton-on-Tees Borough Council, 1997, EWHC, admin 709 (24 July, 1997).

4. **AGENDA ITEM 15: LAND REQUIRED**

4.1 **Paragraph 11.1:** It is interesting to note that the Applicant has now included a requirement that *"Works Nos. 15, 16 and 17 must only be developed and used to support the operation of Works Nos. 1 to 11 and 13."*

4.1.1 Notwithstanding the fact that much of the proposed development included in Work Nos. 1 to 11 and 13, does not satisfy the NSIP development criteria and most of the asserted associated development does not satisfy the guidance (please refer to SHP's extensive submissions on these matters), the Applicant's new requirement 19 in the dDCO would rule out the following types of activity the Applicant stated it was seeking to attract to the Northern Grass area in paragraph 14 of Annex 4 of its Updated NSIP Justification [REP1-005].

- passenger airline offices and crew facilities
- offices and flight planning facilities for flight schools;
- catering operation for passenger flights;
- covered secure and valet parking operations;
- rental car operators – overnight garage, cleaning and office facilities;
- garage and offices for airside public transport providers;
- airport taxi company garage, cleaning and office facilities;
- offices and warehousing for storage associated with MRO and aircraft recycling (including parting out) operations.

4.1.2 It is a common feature of this examination that the Applicant's attempts to address or resolve issues, only serve to create a new issue, or highlight material contradictions and inconsistencies elsewhere.

4.2 **Paragraph 11.2:** In response to the commitment it gave at the hearing, the Applicant claims it provided more information about the warehousing, northern grass, Fixed Base Operations (FBO) and Maintenance Repair and Overhaul (MRO) income set out in its business plan at Appendix 10. However, Appendix 10, which is headed *"Note substantiating net income figure"* only comprises a few paragraphs of generic assumptions explaining that tenants will occupy the properties on terms that are "comparable" with similar properties.

4.2.1 We note that the Applicant again failed to fulfil its commitment to explain and justify the unevidenced assertions it made about the scale of airport-related commercial development at East Midlands Airport.

4.2.2 Furthermore to the extent that it has provided further examples of the type of business park development it would expect on the Northern Grass (at Appendix 7 to the Oral Summary of the Need and Operations hearing), these relate principally to non-airport related uses on land adjacent to airports such as the Aerohub at Newquay and Aerospace park at Prestwick (see paragraphs 70 - 73 of York Aviation's supplementary note appended as Appendix NOPS.5.1 to SHP's Written Summary of Oral Submissions to the Need and Operations hearing) as well as introducing new examples of non-airport related business parks adjacent to airports such as the Meteor Business Park at Gloucestershire, which supports non-airport related

activities and provides a financial cross-subsidy to the operation of the airport.

4.2.3 The Applicant appears confused itself as to its intentions regarding the Northern Grass. On the one hand, it seeks to justify the area of land proposed by reference to non-airport related business parks adjacent to airports, whilst on the other appearing to accept that only associated development to the primary NSIP purpose can be allowed. The position is fundamentally contradictory.

4.2.4 Overall, the failure to address a specific request for information and evidence has also been a consistent theme throughout the examination. Whenever the Applicant is asked by the Examining Authority to provide evidence to support its unevidenced assertions, the Applicant either remains silent on the issue in its next submission, or answers a question that was not asked, rather than correct the factually inaccurate information it has previously submitted to the examination.

4.2.5 The Applicant's repeated failures to provide any detail or evidence to support its assertions is literally incredible. As the Examining Authority made clear in the preliminary hearing, assertion that is not supported by evidence can carry no weight in the examination. In absence of any evidence to support the Applicant's assertions, the application cannot be adequately and fairly tested and there can be no basis on which the Examining Authority could recommend grant of a DCO.

4.2.6 The Applicant continues to approach the examination with the expectation that the burden of proof is entirely on SHP (and other parties) to prove the case against its plans, rather than there being any onus on the Applicant to provide any substantive evidence that can be adequately and fairly tested.

4.3 **Paragraph 11.4:** The Applicant has set out its calculation of the number of stands required to accommodate the forecast ATMs together with the airside warehousing required at Appendix 11. However, this is based on an asserted number of 'based' aircraft each needing a dedicated stand available to it all day long and then adding the requirements for non-based aircraft over the rest of the day. First of all, there is simply no explanation provided for the claimed number of based aircraft as this is not set out in the Azimuth Reports. Secondly, once the overnight based aircraft have departed, the stands would be available for other aircraft during the day. Hence, there is double counting in the number of stands required.

4.3.1 As noted in evidence provided by SHP, the infrastructure is vastly overstated as the comments above would corroborate. SHP's case in relation to the necessary scale of facilities for the principal development is set out in its Written Representations, Appendix 4, Section 6 [REP3-025]. That analysis shows that the facilities proposed (and the consequent land take) are grossly over-scaled and that the same applies to the "associated development" proposed for the Northern Grass. We would also refer the Examining Authority to SHP's evidence set out in paragraphs 57-74 of Appendix CA.15.1 to its written summary of oral submissions, which, inter alia, also explains why the proposed scale of infrastructure provision is completely inconsistent with claimed cost efficiency of the development (as

required by the Airports NPS) nor likely to facilitate RSP being able to offer operators competitive terms as claimed by them, given the scale and cost of the infrastructure it proposes to provide and the consequent implications for the level of charges that it would have to levy to cover the costs of investment.

5. AGENDA ITEM 16: REASONABLE ALTERNATIVES

5.1 **Paragraph 12.2:** The Applicant makes a number of inaccurate claims and assertions regarding engagement with SHP. SHP has provided detailed notes and evidence to supports its statements and will provide a more detailed summary in its response to second written questions (CA.2.17).

5.1.1 Based on the evidence and patterns of behaviour, it is SHP's firm view that the Applicant's correspondence with SHP (which it only started marking without prejudice following SHP's refusal to extend the Confidentiality agreements) is tactical, and aimed at allowing it to maintain a pretence to the Examining Authority that discussions are ongoing. SHP is not aware of any correspondence marked "without prejudice" that contains an offer from the Applicant.

5.2 **Paragraph 12.3:** The Applicant has again completely ignored 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 consider the Applicant's failure to acknowledge or respond to SHP's letter of 9 April 2018. It is noted that the Applicant has accepted the error in summarising the offer as being for 25 years. However, the glib comment that the "*terms on which the lease was proposed were not commercially viable and were rejected on that basis"* on top of 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. The Applicant's position is not supported by the evidence and we would respectfully refer the Examining Authority to the entirety of the correspondence between 15 March 2018 and 9 April 2018 (included within the appendix to SHP's response to question CA.1.17).

5.3 **Paragraph 12.4:** The Applicant continues to mispresent the position with SHP's Hybrid Planning Application (TDC reference OL/TH/18/0660) and the intentions of SHP to develop the site. We would respectfully advise the Examining Authority that, at the local plan examination hearings, Thanet District Council 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 the Council also noted that *"if the DCO process fails it obviously opens up huge opportunities for us to plan housing growth in the long term".*