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

WRITTEN SUMMARY OF STONE HILL PARK LTD'S ORAL SUBMISSIONS MADE AT THE COMPULSORY ACQUISITION HEARING HELD ON 4 JUNE 2019

1. BACKGROUND

1.1. The Compulsory Acquisition Hearing 2 (the "Hearing") was held from 10.00 on 4 June 2019 at Discovery Park, Sandwich, CT13 9FF.

1.2. The Hearing took the form of running through items listed in the agenda published by the Examining Authority (the "ExA") (the "Agenda").

1.3. This note covers the principal issues raised by Stone Hill Park Limited ("SHP") at the Hearing and includes an elaboration on some issues. Those matters either relate to matters raised by the Applicant at the Hearing or provide information that SHP would have provided in response to the Agenda if time permitted. This approach was agreed with the ExA at the Hearing.

1.4. Present from SHP were James Strachan QC, Jamie Macnamara and Iain Mackintosh from SHP, Louise Congdon from York Aviation and John Rhodes from Quod.

1.5. The following documents are appended to this written summary;

1.5.1. Appendix 1: Note dealing with matters of procedural fairness and providing summary of SHP's submissions on Agenda Item 4 – Revised Funding Statement (which includes reference to Agenda Item 7 – The Availability of Funds and Potential Shortfalls);

1.5.2. Appendix 2: York Aviation Note of Oral Evidence focusing on issues of viability of the development and justification for the land area proposed for the development.

2. INTRODUCTION

2.1. This second Hearing was made necessary by the failure of the Applicant to provide sufficient information in support of its case for compulsory acquisition at the first CA Hearing on 20 March 2019.

2.2. SHP, of course, has a fundamental right to a Compulsory Acquisition Hearing, particularly as its land forms 92% of the Order land. At Deadline 5, SHP submitted a written summary of its submissions at the first CA Hearing held on 20 March 2019 [REP5-029]. That written summary explained SHP's concern that it had not been given the opportunity to make representations or to test documents which actually meet the requirements of the Planning Act 2008 and the CLG guidance on compulsory acquisition. It is deeply regrettable that SHP finds itself in exactly the same position following the second Compulsory Acquisition Hearing. Indeed, SHP can almost replicate the submissions made following the first hearing which included:

2.2.1. the Applicant is under an obligation to produce a Statement explaining how the proposals will be funded. The Statement is required to provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. For all the reasons explored at the Hearing, RSP's Funding Statement (24 May 2019) [REP7a-007] fundamentally fails this requirement and is not materially different from the Funding Statement to which the Examining Authority advised the applicant it could attach no weight following the first CA Hearing. Indeed, SHP's Comments on the Applicant's Oral Representations to the CA Hearing [REP6-052], SHP's Comments on the Applicant's answers to Second Written questions [REP7-014] and SHP's Comments on the Applicant's answers to Third Written questions [REP8-reference to be allocated] set out the issues with the Applicant's revised Funding Statement and related information.

2.2.2. the Applicant has still been unable to provide the Examination with a clear explanation of the distinction between the NSIP development and the claimed Associated Development. Neither has the Applicant been able to provide any meaningful detail about the proposed Associated Development, how it complies with relevant Guidance, the need for it or any evidence which could come close to justifying the compulsory acquisition of SHP's land;

2.2.3. having failed to provide any evidence to demonstrate the viability and deliverability of its proposed development, the Applicant attempted to give oral evidence at the Hearing to explain and justify its Business Plan. That approach, of course, is entirely unacceptable. If the Applicant is going to assert the soundness of its Business Plan, it needs to submit that Plan in good time for it to be understood and then tested at examination. A case for compulsory acquisition cannot possibly be justified by ad hoc, oral assertions. Even the brief cross examination permitted of the Applicant's witness exposed such serious errors in the "Business Model", submitted by the Applicant in lieu of a proper Business Plan and viability assessment, that the Applicant undertook (again) to provide further information to the Examination. That information, of course, should have been available at CA Hearing 1, let alone CA Hearing 2.

2.3. SHP has no desire to undergo a third Compulsory Acquisition Hearing but SHP's fundamental rights as an "affected person" will not be satisfied without the opportunity to test and make full representations on the Applicant's Compulsory Acquisition case, if that case is ever made.

2.4. Against that background, SHP has structured this document by reference to the Applicant's claimed "compelling need in the public interest" which RSP confirmed at the Hearing remained unaltered from that set out in its Statement of Reasons [APP-012] and which is advanced under the following 4 headings (in summary):

- urgent need for additional capacity in the south-east;
- substantial socio-economic benefits;
- the only viable use for the airport land; and
- safeguarding a significant national asset.

2.5. In addition, there are some important other Compulsory Acquisition issues that arose from the agenda and SHP's submissions and these matters are summarised in Section 7 of this note.

2.6. In view of the inadequacy of the information advanced by RSP, these submissions are relatively short and SHP awaits the opportunity to test the further information which RSP has undertaken to provide to the Examination.

2.7. SHP considers the Examining Authority will be familiar with SHP's written summary of oral representations to the first CA Hearing [REP5-031] and does not seek to repeat those submissions in this summary note.

3. URGENT NEED IN THE SOUTH EAST

3.1. The Examining Authority will be familiar in principle with SHP's case in this respect, not least from SHP's Written Representations submitted on 15 February 2019 [REP3-025], which included detailed appendices prepared by York Aviation (Appendix 4) and Altitude Aviation (Appendix 5). In addition, SHP has made the following relevant submissions, the terms of which are not repeated here.

3.1.1. SHP's Comments on the Applicant's answers to First Written questions on Need [REP4-067], incorporating a separate York Aviation Report [REP4-065];

3.1.2. SHP's Written Summary of Oral Representation – CA Hearing, which appended notes from each of York Aviation and Altitude Aviation Advisory [REP5-031];

3.1.3. SHP's Written Summary of Oral Representation – Need and Operations Hearing, which appended notes from each of York Aviation and Altitude Aviation Advisory [REP5-029];

3.1.4. SHP Comments on the Applicant's Oral Representations to the Need & Operations Hearing [REP6-055]

3.1.5. SHP Comments on the Applicant's Oral Representations to the CA Hearing [REP6-052]

3.1.6. SHP's Comments on the Applicant's answers to Second Written questions on Need, incorporating a separate York Aviation Report [REP7-014]

3.1.7. SHP's Comments on the Applicant's answers to Third Written questions on Need incorporating a separate York Aviation Report [REP8-reference to be allocated].

3.2. Of fundamental concern is that the Applicant's case is built upon the forecasts in the Azimuth Report [APP-085] but those forecasts are deeply flawed. Indeed, they are not actually forecasts in the traditional sense. At paragraph 1.1.2 of Volume III, Azimuth explain that they take "*a different approach"* by using a "*qualitative method*" based on their literature review, which SHP presume means the review set out in Azimuth Volume II. Paragraph 1.1.2 of Volume III explains:

> "*The approach identifies potential users of Manston Airport and builds a forecast from this intelligence,"*

3.3. SHP has characterised this as a "wish list" and provided evidence not only of the inconsistency between the forecast and RSP's Environmental Statement but also between the forecast and the case which has now evolved from RSP through the examinations based on an alleged but undisclosed E-commerce model. It is particularly notable that a forecast based on potential users of Manston Airport is not supported by any evidence that any airlines would actually use Manston Airport. There is no evidence of demand or confirmation of interest and in SHP's view, no likelihood of operators being attracted. Manston Airport occupies a remote location which is demonstrably un-attractive to the distribution industry and seriously handicapped in its location by reference to its principal competitors. Its long history of failure is testament to this.

3.4. There are, in fact, no quantitative components of the forecasts which can be interrogated. It is remarkable, for instance, that RSP is unable to demonstrate how the Azimuth forecasts, as relied on by the ES, took into account the freight capacity of the third runway at Heathrow Airport. The Government's policy support for the third runway represents support for the largest increase in freight capacity in the south-east for more than 50 years. York Aviation have estimated that the doubling of freight capacity at Heathrow would allow for at 31 years of extrapolated growth of future air cargo[1].

3.5. The only apparent quantitative contribution to RSP's "forecasts" is a reliance on the 14,000 cargo movements referred to in the York Aviation report for TfL in 2013 based on the circumstance of no additional capacity being provided at any London airport, let alone Heathrow – this provided the original "justification" for the reasonableness of RSP's 17,170 cargo movements at Manston. At the Examination, RSP were reduced to asserting that "of course" they knew all about the third runway and will have taken its prospect into account but RSP could not explain how or where that assertion could be seen or tested.

3.6. RSP's case now appears to be reliant upon casting doubt upon the ability of the third runway at Heathrow to meet air freight needs in the south-east. In particular, RSP's answers to questions ND3.10 and ND3.21 attempt to cast doubt on either Heathrow's commitment to bring forward additional freight capacity or the ability of Heathrow to do so because of alleged constraints. In response, SHP advised that Heathrow's preferred masterplan will be published for public consultation on 18 June 2019 and is anticipated to demonstrate Heathrow's commitment to double freight capacity to 3 million tonnes and to explaining how this is to be achieved through an intensification of cargo facilities at the airport. This, of course, is consistent with Heathrow's previously announced Cargo Blueprint.

3.7. In response to question ND 3.12, RSP suggested that there were un-served markets in South America, China, East Asia, India and Pakistan but failed to recognise the obvious point that the third runway at Heathrow has been selected by the Government particularly because of its exceptional ability to enhance international connectivity, including for freight (Airport's NPS paragraph 3.18) by providing additional services to precisely such destinations.

3.8. In the absence of any demonstrated quantitative shortfall, RSP's case at the Hearing relied heavily upon its interpretation of national planning policy. A close reading of the Airport's NPS, however, identifies:

[1] SHP written representations, appendix 3, paragraph 2.14

a) under the heading "*International Connectivity and Strategic Benefits, including freight*" paragraph 3.18 of the Airport's NPS explains that "*Heathrow is best placed to address this need"* and explains the importance of Heathrow's ability to generate connections to fast growing economies;

b) at paragraphs 3.24 and 3.73, the NPS confirms that its support for a third runway at Heathrow includes particularly that Heathrow would provide the greatest support for freight. RSP sought to argue that the statements were made only to express a relative preference for Heathrow compared with Gatwick. A fair reading of the NPS, however, would confirm that the Government identified particular, absolute advantages in Heathrow's ability to deliver substantial increased freight capacity and connections to growing markets in order to "*address this need*"; and

c) at paragraph 3.73 of the Airports NPS the Government confirms that it has attached particular weight to freight in its decision to support the expansion of Heathrow.

3.9. RSP assert that the emerging green paper shows continued support for air freight but both the NPS and the green paper make clear that the NPS establishes only the need for the third runway at Heathrow and it is for other promoters to make their own specific need case, including in the circumstance where the Government is generally supportive of existing airports making best use of their available runway capacity.

3.10. RSP also suggest that the Airports Commission did not seriously consider the need for freight. However, examination of the Airports Commission final report 2015 identifies:

a) 114 references to freight;

b) the Airports Commission summarised case for Heathrow in the Executive Summary (page 24) makes multiple references to the freight credentials of the third runway; and

c) at paragraph 6.19, the Airports Commission make clear that their work has paid particular attention to the need for freight capacity.

3.11. The Applicant's case on need is simply not made out and not credible.

4. SUBSTANTIAL BENEFITS

4.1. There are 2 particular aspects to this heading of RSP's case:

- whether in fact the application proposals (if developed) would bring substantial benefits; and
- whether it is necessary for RSP to demonstrate that those benefits would materialise.

4.2. The first issue was explored in the Issue Specific Hearing on Socio-Economic issues on 5 June 2019. In parallel with this submission, RSP has submitted a note of its oral evidence at that Hearing [REP8-reference to be allocated], which demonstrates in summary that the asserted benefits are based on flawed assumptions and calculations and are, hence, grossly exaggerated.

4.3. This note addresses the second point, namely the extent to which there is an obligation on RSP to demonstrate that the benefits would materialise. This part of the agenda was "skipped over" at the Hearing in the interests of time but only with the specific recognition

from the Examining Authority that SHP and others could submit in writing the matters which they would have raised.

4.4. In this context, it was notable that Michael Humphries QC on behalf of RSP referred specifically to paragraph 18 of the CLG Guidance on compulsory acquisition to claim that the Applicant "*should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition"*, as if that was the only paragraph in the Guidance and the only obligation on the Applicant.

4.5. Again, SHP's position was set out in its Written Representations in Section 8 [REP3-025]. Those representations drew attention to the following additional requirements of the CLG Guidance:

- paragraph 13 of the Guidance makes clear that 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. That guidance is given twice in paragraph 13 and again in paragraph 14;
- paragraph 17 requires as much information as possible about the resource implications of both acquiring **and implementing** the project;
- paragraph 17 then makes clear that the financial viability of the proposal underlying the compulsory acquisition either needs to be demonstrated or the applicant should provide an indication of how any potential short falls (in viability) are intended to be met. That guidance is not concerned simply with funding compulsory acquisition but with the viability of implementing the project; and
- paragraph 19 requires any potential risks or impediments to **implementation** (not acquisition) of the scheme to be identified and properly managed.

4.6. A lack of viability or funds would be a fundamental impediment.

4.7. Paragraph 18, therefore, sets out only one of the requirements and it is un-surprising that the Guidance requires evidence of the viability and deliverability of the benefits which are claimed in order to outweigh the private loss that would result from the compulsory acquisition. There can scarcely be a compelling need in the public interest to acquire land for a development which is not viable and has no prospect of proceeding. Appendix 1 explains SHP's position on these matters in more detail.

4.8. Having reluctantly but finally agreed to provide some additional information on its Business Plan to the Examination, RSP appear to have acknowledged the consequences of the Guidance.

4.9. As part of its testing of the Plan, SHP would wish to examine how it can be the case that the cost of making the airport fit for use can apparently increase by £86m with no apparent impact on the project's viability. SHP would also wish to examine further the resource implications of the Applicant's project, which were not adequately tested at the Hearing e.g. what costs (which would be substantial) has the Applicant has included for off-site works (including highways) and all s.106 obligations, adequacy of the sum stated in Article 9 etc.

4.10. SHP reserves its position pending receipt of the promised information but SHP's evidence at the Examination explained the context in which it was necessary to test any business plan. Attached at **Appendix 2** is a Note of Oral Evidence prepared by York Aviation that

comments on the business case information so far available to the Examination from the Applicant. This note formed the basis of SHP's questioning of Mr. Wilson. It identifies that the evidence submitted so far shows a requirement for RSP to achieve a rate of revenue per workload unit over double that achieved at Stansted and four times that achieved at East Midlands.

4.11. When questioned, it was notable that Mr. Wilson:

- confirmed that he had just taken the Azimuth forecasts and put revenues and costs against them;
- claimed that he had looked at comparable airports for assessing costs but was unable to name any that he had examined – Mr Wilson then further confirmed that he was not aware that there were any comparable airports;
- could not explain why his revenue figures were a multiple of those achieved at East Midlands or Stansted;
- would not answer questions about the forecasts, stating that was not his role and that questions should be directed at the author of the Azimuth Report – clearly there was not an opportunity to do that as the author was not in attendance at the Hearing, despite Compelling Case in the Public Interest being an Agenda Item;
- confirmed that the revenue forecasts were based on the forecasts set out in the Azimuth Report (i.e. integrator movements being 100% outbound / 20% return), which is incompatible with the import based E-Commerce Integrator model now advanced by the Applicant; and
- confirmed that he had no involvement in any business model that assessed viability of the proposed project and that he was not aware of any such model or information being before the examination.

4.12. In response to the Examining Authority's question ND 3.1, RSP advised that "*the forecast assumed that costs of operating from the airport would be in line with other cargo airports".* This fundamental assertion does not appear to be accurate.

4.13. The consequences do not need to be laboured, they are obvious:

- either RSP is able to explain how it will be able to achieve revenue far higher than better located airports in order to attempt to demonstrate the viability and deliverability of its proposals – but in doing so must inevitably undermine its own forecasts which the Examination has been told are based on an assumption that costs would be comparable with other airports; or
- RSP will assert that its costs will indeed be comparable with other airports, in which case its proposals will not be viable (based on RSP's own evidence).

5. THE ONLY VIABLE USE

5.1. It is almost ironic that this is RSP's third claimed part of its "*compelling case*". In order to make good that case, of course, it is beholden on RSP to demonstrate the viability and deliverability of its proposals. Unless it can do so, this element of its case (and its case as a whole) simply falls away.

5.2. As part of its case, RSP criticised SHP's proposals for the development of a new community including 3,700 homes at the airfield and, in particular, criticise SHP for not bringing viability evidence of its own to the Examination.

5.3. SHP has produced evidence of its own deliverability and credentials in its Written Representations [REP3-025] but, in any event, the simple response to RSP's criticism is:

- this is an examination of RSP's proposals. SHP's proposals fall to be examined by the planning authority as a planning application;
- SHP has submitted a full viability appraisal to its determining authority (Thanet District Council) so that that appraisal can be independently reviewed before a decision is taken. RSP cannot say the same for its own application.

5.4. RSP also criticise SHP for not forcing the determination of its application with Thanet District Council. It is well known, however, that (contrary to officer advice) members of Thanet District Council declined to allocate Manston Airport for residential led mixed use development in the Local Plan and those members will not be prepared to (favourably) determine the SHP application whilst these DCO proceedings are still 'live'.

5.5. In the absence of RSP's DCO application, SHP's application would be progressing with every expectation of achieving officer recommendation for approval. As SHP has explained in its Written Representations (see Appendix 3) [REP3-025] there is a pressing need for housing in the district, Manston Airport is the most sustainable location to meet that need and, in the absence of an ability to allocate Manston, the District Council has been forced to allocate green-field land in less sustainable locations. After years of under-delivery, there is an urgent need for housing – so much so that the Secretary of State has directed that the Local Plan is immediately reviewed to attempt to meet that need.

5.6. The SHP proposals would bring substantial residential and employment benefits and would safeguard a 1,200m heritage runway so that aviation could continue to be an active part of life at Manston Airport.

6. SAFEGUARDING A NATIONAL ASSET

6.1. Whilst the SHP proposals would embrace and bring forward a secure future for aviation at Manston (based on a realistic scale of activity), the RSP application offers no such realistic prospect.

6.2. SHP has long been concerned that RSP proposals are not "real" and the unravelling nature of RSP's application has only confirmed those concerns.

6.3. As explained above, the evidence provides no basis for assuming that RSP's proposals would be constructed or operated. The Applicant has no track record in developing or operating a cargo airport and has failed to demonstrate that it has the funds even to acquire let alone construct and operate an airport. DCO consent would provide no certainty of any outcome other than the transfer of the land from a willing developer (SHP) to an un-known party with no track record and un-identified investors (RSP).

7. OTHER COMPULSORY ACQUISITION ISSUES

7.1. SHP's evidence on other compulsory acquisition issues was given in part at the Hearing and in part at the DCO Hearing, for which SHP has provided a separate written summary [REP8-reference to be allocated].

7.2. That written summary explains SHP's concern that RSP has been unable to properly identify the distinction between its NSIP proposals and associated development or explain how the majority of the claimed associated development is in fact associated with the principal development, or meets the other relevant tests under the DCLG Guidance.

7.3. SHP's case in relation to the claimed associated development is first set out in sections 5 and 6 of Appendix 1 (NSIP Rebuttal) to SHP's Written Representations [REP3-025]. SHP's case has been supplemented by submissions that responded to the Applicant's limited additional submissions, particularly in respect of the purported associated development on the Northern Grass.

7.4. RSP's Planning Statement describes its proposals for the Northern Grass Area as a 105,000 sqm "business park". That description was refined into an "airport related business park" in the Updated NSIP Justification dated 18 January 2019 in which Appendix 4 promised further evidence at Deadline 3. That further evidence has not so far been produced.

7.5. It is the case, therefore, that RSP has not provided the examination with:

- any independent evidence of demand for the claimed associated development; or
- any rigorous estimation of the required scale or land requirements of the associated development;
- any clear or consistent breakdown of the likely uses to which the Northern Grass Area would be put; or
- any information that would allow the Examining Authority to adequately test whether the criteria (e.g. there is no information that would allow an assessment of the cross-subsidy test) in the relevant DCLG Guidance have been satisfied, and interested parties a fair chance to put their case.

7.6. The clearly excessive scale of car parking proposed (as part of Work No.21) emerged at the Traffic ISH on 6 June 2019 is another example of the excessive scale of the Applicant's proposals. Compulsory acquisition cannot be justified on that basis.

7.7. RSP responded to the Examining Authority's questions OP 2.5, OP 2.9 and OP 3.9 with an illustrative list of facilities accompanied by a recognition that "no marketing" had taken place. The Examining Authority is clearly alive to the inadequacy of the information, as its questions demonstrate, including OP 3.9 which probes the floorspace estimates and alleged associated nature of the listed uses. In practice, virtually none of the uses listed are actually associated with the principal development. None are justified by any evidence of need or demand and the basis for the compulsory acquisition of SHP's land is completely inadequate. It is not sufficient for RSP to suggest that the land falls within the natural curtilage of the airport, so RSP should have that land too. The SHP land extends to 742 acres – a compelling case has to be made for every one of them.

7.8. In response to question CA 3.22, RSP sought to justify its assertion that, if development did not take place on the Northern Grass Area, it was likely to be spread further afield with

adverse consequences for sustainability. There are, of course, serious problems with that argument for RSP, not least:

- a recognition that any alleged uses could in fact be spread more widely and do not need to be allocated on the Northern Grass Area;
- the evidence before the examination from the district council that there is a surplus of employment land available in the local area on which any demand which did emerge could be satisfied; and
- the lack of any justification for the land uses proposed or any evidence that their location elsewhere would generate adverse consequences.

7.9. It is almost as if RSP do not understand the burden on an applicant to demonstrate a **compelling** case to take someone else's land. No compulsory acquisition has ever been consented as far as SHP is aware on the basis of so little evidence. The "Land Requirement" has been examined primarily through written questions (and comments thereon) and submissions from SHP as part of its written summary of oral representations to the first CA Hearing [REP5-031]. Additional evidence is included in paragraphs 21-31 of the York Aviation note attached as Appendix 2.

7.10. Another aspect of RSP's case at the examination was the assertion of Michael Humphries QC that "*no harm*" would arise in practice from confirmation of compulsory acquisition powers because RSP would be obliged to exercise the compulsory acquisition powers within 12 months (since watered down at the DCO Hearing) and, in any event, SHP would be compensated. Again, such a case fails to recognise the fundamental nature of the tests involved in compulsory acquisition. If compensation was a sufficient remedy, this examination would not be necessary and there would be no obligation on RSP to demonstrate a compelling case.

7.11. In fact, as a legislation recognises, real harm arises from the enforced loss of land. That harm is demonstrable in this case. SHP has already been severely prejudiced by these unwelcome DCO proposals. It is clear that without this hostile DCO, SHP's land would be allocated for residential development, its application would have progressed and been very likely approved and very substantial public benefit could be realised from its proposed development.

7.12. Compulsory acquisition cannot be undertaken lightly and SHP is particularly concerned to find itself "victim" to a compulsory acquisition proposal from investors that will not identify themselves but who are directly associated with a party which Thanet District Council closely investigated and found to be un-fit as an indemnity partner for compulsory purchase.

7.13. Other Matters

7.13.1. Potential Risks or Impediments: SHP has set out the material nature of these risks and impediments in its previous submissions. For example, SHP had set out its comments, which were broadly consistent with those of the DIO, on the HRDF Beacon in its answer to third written question CA.3.6 [REP7a-044].

7.13.2. Reasonable Alternatives: it is noted that the Applicant has failed to provide any evidence that it has explored all reasonable alternatives to compulsory acquisition of land owned by SHP and other parties. SHP has set out the

position in previous submissions and as part of it comments on the Applicant's answers to third written questions [REP8-reference to be allocated]. SHP would also wish to raise a concern with the Examining Authority regarding attempts by the Applicant to acquire the small fragmented land interests held by parties that own land above the Pegwell Bay pipeline. SHP would respectfully suggest that the Examining Authority seek copies of correspondence sent by the Applicant to these landowners (with names and addresses redacted as appropriate) to address concerns that the Applicant has not acted reasonably.

APPENDIX 1: NOTE DEALING WITH MATTERS OF PROCEDURAL FAIRNESS AND AGENDA ITEM 4 – REVISED FUNDING STATEMENT

1. The purpose of this note is to set out SHP's concerns regarding matters of procedural fairness and provide a summary of SHP's submissions on Agenda Item 4 – Revised Funding Statement. This also necessarily touched on matters under Agenda Item 7 – The Availability of Funds and Potential Shortfalls.

2. GENERAL MATTERS / PROCEDURAL FAIRNESS

2.1. So far as SHP is concerned, the need for the second CA Hearing ("Hearing 2") arose directly in consequence of the Applicant's failure to provide relevant information in respect of its application and, in particular, its case for compulsory acquisition in advance of the first Compulsory Acquisition Hearing ("Hearing 1") or at that Hearing itself, and on the basis that further information was going to be provided. In the event, Hearing 2 took much of the same frustrating, unacceptable and procedurally unfair course as occurred at Hearing 1, with the Applicant having failed to provide necessary information before Hearing 2 and then, at Hearing 2 itself, suggesting that it would provide more information relevant to compulsory acquisition after Hearing 2 itself. SHP through its Counsel made the point on several occasions that this procedure was inherently unfair and prejudicial to SHP. The point of a right to hearing in response to proposed Compulsory Acquisition of SHP's land is for the Examining Authority and for Interested Parties (including SHP in particular which owns the vast majority of the land which the Applicant is seeking compulsorily to acquire) to examine test the Applicant's case properly. It is impossible to be able to do this in a fair and proper manner if the relevant material has not been provided in advance of such a hearing or, indeed, at the hearing itself.

2.2. For the avoidance of doubt, having reviewed all of the information provided by the Applicant in advance of Hearing 1 and 2 and at those Hearings, as compared with the information which is said to be coming in due course, SHP emphatically submits that it has not had a proper opportunity to understand and test the Applicant's purported justification and any claimed supporting evidence for compulsory acquisition and has been materially prejudiced in responding to the Applicant's case and continues to be materially prejudiced. This is a consequence of the Applicant's failure to provide proper justification and supporting evidence in support of the Application and in advance of the Hearings and SHP reserves its rights entirely both as to the procedural and substantive consequences and prejudice this has caused. Whilst the Applicant during the course of Hearing 2 sought to suggest that it is a normal part of the DCO process for material to be provided during the course of the examination by way of written submission after hearings, SHP submits that this is not a proper or procedurally fair answer to the basic problem that the Applicant has created and SHP is unaware of any case where a DCO applicant that is seeking compulsory acquisition has been entitled to provide the sort of missing information and justification after compulsory acquisition hearings in the way that is now being proposed. SHP considers that it is impossible for the Examining Authority to be satisfied that there is in fact a proper justification for compulsory acquisition of SHP's land and interests based on the material provided to date and, in so far as claimed further supporting justification is submitted, SHP will have had no opportunity to test that material at a hearing of the type to which SHP is entitled in principle under the statutory provisions.

2.3. SHP is also fully cognisant of section 94(7) of the Planning Act 2008 which sets out the principle that any oral questioning of any person making representations at a hearing should be undertaken by the Examining Authority except where the Examining Authority thinks that oral questioning by another person is necessary in order to ensure (a) adequate testing of any representations; or (b) that a person has a fair chance to put the person's case.

2.4. Whilst SHP is grateful in principle to the Examining Authority for permitting SHP to carry out some direct questioning at Hearing 1 and 2, for the reasons set out at both those hearings, it considers that it was not given sufficient time to put all of the necessary questions it wished to the Applicant to test the representations that have been made, or to give SHP a fair chance to put its case. Amongst other things: (a) by virtue of the fact that the Applicant has simply not provided all of the information in support of its claimed justification (such as a purported business case), the Examining Authority itself was simply unable to test the Applicant's representations at the two Hearings by reason of the Applicant's failures, let alone to be able to ask all the questions on SHP's behalf to test the case; and (b) the respective time periods of 15 minutes and 35 minutes at Hearing 1 and 2 allowed for direct questioning was too short to enable SHP to ask all of its necessary and relevant questions to put its case. SHP does not rehearse all of those points again in this summary, but refers back to the points it has previously made on this topic in relation to Hearing 1 and at Hearing 2 itself, including the identification of the topics on which it would have asked questions if it had had time to do so.

3. AGENDA ITEM 4 - REVISED FUNDING STATEMENT

3.1. The Examining Authority elided some of the examination on this Agenda Item with questions under Agenda Item 7 on The Availability of Funds and Potential Shortfalls.

3.2. Following the exchanges between the Examining Authority and the Applicant on some of these topics, by way of summary only SHP made the following points:

3.3. First, in response to questions (both written and oral) from the Examining Authority regarding funding, the Applicant has variously sought to contend (amongst other things) that (a) the Examining Authority and others are not entitled to look at funding in the way that it has in a "land use" context; (b) there is an important difference between funding of the compulsory acquisition and the funding of the scheme generally and it is not necessary to demonstrate the latter – the Applicant contended that requirements in respect of funding only related to the funding of the cost of compulsory acquisition and Parliament had made this clear because there was no funding statement required for DCOs which did not involve compulsory acquisition; (c) funding or its sources will be scrutinised by the HMRC; and d) in any event, any concerns about compulsory acquisition funding are addressed by Article 9 of the dCO which is a "game changer".

3.4. In summary, SHP submitted that the Applicant was wrong in fundamental respects and that its answers to the above effect were unsatisfactory/wrong and the required scrutiny of the request for compulsory acquisition would not be undertaken if this approach were adopted. Amongst other things, SHP pointed out:

3.5. The basic premise underlying the Applicant's response and attitude to the Funding Statement (as shown in its answers to F3.1) regarding Parliament's attitude was misconceived. Regulation 5(2)(h) of The Infrastructure Planning (Applications: Prescribed

Forms and Procedure) Regulations 2009 includes a statutory requirement that where a proposed order would authorise the compulsory acquisition of land or an interest in land or right over land, a statement of reasons and a statement to indicate how an order that contains the authorisation of compulsory acquisition is proposed to be funded. The Funding Statement is therefore a statutory requirement and, what is more, it is a statutory requirement that the statement indicate how the order is proposed to be funded, not simply the compulsory acquisition element of the order. The Applicant's starting point is wrong. The Applicant is therefore wrong to contend that Parliament has demonstrated that it is only interested in the funding element in relation to the compulsory acquisition part. Moreover, the Applicant has clearly misunderstood the significance of compulsory acquisition and Parliament's requirements in respect of it. The Applicant's submissions (see e.g. answers to F3.1 and its oral answers) claim that because no Funding Statement is required for a DCO where no compulsory acquisition is proposed, the Funding Statement must necessarily only be concerned with the funding of the compulsory acquisition element. This is not only contrary to what is stated in the Regulations, but also contrary to the basic tenets of the law that relate to compulsory acquisition. In a DCO without compulsory acquisition, Parliament has not prescribed provision of information in the form of a Funding Statement for the DCO but that is because in such circumstances, the Applicant is proposing bringing forward a project without depriving anyone compulsorily of their land to do so. The Applicant will either have the necessary land itself, or have the agreements in place to bring forward the land or will rely upon reaching agreements to bring forward the land. By contrast, where the Applicant is seeking to deprive someone else of their land as part of the promotion of a DCO project, the statute (see s.122(3) of the Planning Act 2008), the common law (see e.g. the many cases on compulsory acquisition principles and now the Human Rights Act 1998 (including Article 1 of the First Protocol in the Schedule to the Human Rights Act) require an applicant to prove a compelling case in the public interest for such compulsory acquisition.

3.6. As the compulsory acquisition is only being proposed because of the project itself, this means that it is essential for an applicant to demonstrate a compelling case in the public interest for the project itself. The Applicant has seriously misunderstood this in its attitude to the provision of funding information and in answers to the Examining Authority and in suggesting that this is outside the remit of a "land use" exercise. It is contending that it is sufficient to show the likelihood of funding being available to afford the compulsory acquisition only and that is all the Funding Statement is really concerned with. That is obviously not right. Where a landowner is having its land forcibly removed, the applicant's funding statement is concerned not just with the funding of the land compensation for that land, but also with the funding of the project as a whole. It is not right to suggest that an applicant seeking compulsory acquisition merely needs to be able to show that it is likely to be able to pay the compensation price for the land (although the Applicant has not even done that). The necessary payment of compensation in any compulsory acquisition case is a given, but it certainly does not equate to demonstration of a compelling case in the public interest at all. The need for demonstration of a compelling case in the public interest and the need to avoid violation of the human rights at stake (in this case the basic right to peaceful enjoyment of property under Article 1 of the First Protocol) demonstrate why the Applicant is so wrong to try and characterise this process as merely one concerned with "land use" (i.e. merely akin to a planning consent process). The Applicant has misunderstood what it is in fact seeking under the DCO.

3.7. It is absurd to suggest that an applicant for compulsory acquisition can fulfil its obligations in relation to the compelling case in the public interest merely by stating I can afford to buy

your land if in fact it will not be able to proceed with the project for which the land is being acquired. The provision of a Funding Statement in respect of the Order as a whole where compulsory acquisition is proposed is because funding is directly relevant to the basic question as to whether there is a compelling case in the public interest to deprive someone of their land. Regrettably, the Applicant has misdirected itself and is misdirecting the Examining Authority in suggesting that the Funding Statement need only be concerned with the cost of compulsory acquisition. The Examining Authority has correctly requested relevant information about the funding of the project as a whole, including basic information as to the Applicant's business case and the viability of the project as a whole. That information simply does not exist. As a result of direct questioning (see below), the Applicant confirmed that there is no business case before the examination. As to viability, there is no evidence or information from the Applicant to demonstrate that the project is or even could be viable. By contrast, there is a significant body of information from SHP's aviation experts using the Applicant's own information to demonstrate that the whole project is completely unviable. Indeed, the assumptions the project is based upon regarding purported "forecasts", assumed returns and consequential charges, contradict the Applicant's case that the airport would offer a cost neutral service as compared with other airports and demonstrates that the airport would in fact be one of the most expensive airports ever and simply off the scale in terms of expense as compared with cargo airports. It is therefore little wonder that the Applicant has sought to divert the Examining Authority from any questions about the funding of the project as a whole, refused to divulge any business case and refused to address viability - it is unable to do so. But it is fundamentally wrong to try and suggest that this falls outside the remit of the DCO examination and, in particular, the basic issue of compulsory acquisition with which this Hearing was concerned.

3.8. The Applicant has also mischaracterised both the nature of the Examining Authority's questions and SHP's position on the funding of the project as a whole by making submissions to the effect that it is not normally the case for a DCO applicant to have to demonstrate that it already has all funds for the DCO project (e.g. £306 million secured and available such as in a bank account). This sort of submission avoids addressing the questions that have been asked and wilfully misinterprets the questions and representations made. Neither SHP, nor the Examining Authority (as SHP understands the Examining Authority's questions) have contended that the only way the Applicant can justify compulsory acquisition is show that it has £306 million available now in a bank for the project as a whole. This is just setting up a straw man argument to knock it down, whilst avoiding the real issues. What the Applicant does have to do, however, is demonstrate a compelling case in the public interest for the making of the DCO with compulsory acquisition of the entirety of SHP's interests covered by the proposed DCO. The Applicant is, of course, nothing like more "normal" DCO applicants. It is a shell company, with no material assets, no apparent experience, no rights to call on money and where it is owned by a series of other companies, ultimately controlled by a Belizean company which is similarly shrouded in mystery. What the documents do disclose, however, is that none of these companies have any material assets or rights to assets. As the SHP pointed out, one way of testing that proposition is to ask who would be liable now and have the ability to pay a costs award (for example). The Applicant was not able to answer this.

3.9. The Applicant's new reliance upon Article 9 of the dDCO and characterisation of it as a "game-changer" repeat and reaffirm this basic misunderstanding, but also incorporate a new problem. It repeats and reaffirms the basic misunderstanding because (a) the Applicant's reliance on Article 9 is necessarily confined in its ambit to the cost of compulsory acquisition, rather than evidence about the potential funding of the DCO; Article 9 has

nothing to do with the latter – this is a repeat of the flawed submission that all that an aggrieved landowner is entitled to know is that compensation will be paid for land lost, rather than the project proceeding itself; (b) Article 9 is concerned with a particular safeguard applicable when compulsory acquisition authorised by a DCO is about to occur, but it does nothing to address the necessary evidence required to demonstrate that a DCO should be made in the first place and, in particular, the requirements to demonstrate a compelling case in the public interest; (c) Article 9 tells one nothing about the ability of this project to proceed and, therefore, demonstration of a compelling case in the public interest; (d) it would again be absurd and contrary to the statutory purpose, as well as applicable in every case, if the basic questions about funding that need to be addressed at the DCO examination stage could be deferred through the surrogate procedure of offering Article 9 as a mechanism. This would mean that a DCO would be made with compulsory acquisition powers attached, all of the disastrous consequences that entails for the affected landowner (and all other interested parties), but without the Applicant having ever provided the necessary evidence to demonstrate the likelihood of funding of the compulsory acquisition and funding evidence in relation to the project as a whole. SHP therefore dealt fully with the adverse consequences of reliance on Article 9.

3.10. It also incorporates a new problem which the Applicant was unable to address. That problem is the need to assess compensation. As SHP pointed out, ordinarily examination of a DCO involving compulsory acquisition does not involve the Examining Authority getting into issues of deciding compensation that will be payable for the acquisition itself. This, however, is based on the assumption that the Examining Authority will examine funding as required under the Regulations and the Guidance. Where there is dispute between the parties as to the amount of compensation payable, the Examining Authority will not normally need to resolve that dispute. It would be sufficient for the Examining Authority to satisfy itself as to the likelihood of funding being available to pay for the compulsory acquisition within the reasonable range of the likely dispute. By contrast, the Applicant's reliance upon Article 9 of the dDCO and a specific figure of £13.2 Million now as demonstrating the likelihood of funding now creates a basic problem. Even if it were right to rely upon Article 9 in this way (contrary to what SHP has submitted), it now requires the Examining Authority to satisfy itself that the sum in question is sufficient to satisfy the compensation bill or the necessary range. However, the evidence is incapable of doing that. What the Examining Authority and the Applicant know is that the compensation bill for SHP's land alone is in dispute and that SHP's own valuation experts have identified a figure far in excess of the total sum that the Applicant is proposing under Article 9. Moreover, the Examining Authority now know that the Applicant itself had previously agreed to purchase SHP's land for a total consideration of £20million (but has since reneged on that). Whilst SHP recognises that an Examining Authority would not ordinarily be required to resolve disputes about compensation, it does need to be satisfied as to the likelihood of funding being available to meet the potential range. On any basis, that range now extends at least to £20M for SHP alone and more and the Applicant only refers to £7M for the Order Land. If the Applicant is now seeking to rely on Article 9 as a game-changer, it must necessarily be inviting the Examining Authority to satisfy itself that £13.2M is likely to be sufficient (including Noise Mitigation Costs), but the Examining Authority has not involved itself in that valuation exercise and the testing of that evidence. Moreover, SHP has repeatedly pointed out that the Applicant's valuation witness (Mr Smith) has persistently refused to divulge the basis for his valuation of the SHP land and, for example, what element or percentage of hope value is included. If Article 9 is to be relied on as a "game-changer" in the way that the Applicant suggests, the Examining Authority would need to satisfy itself that a total sum of £13.2 M for all compensation liability (not simply SHP's land) is likely to

be a sufficient sum. If the Examining Authority is proposing to take that route, SHP will need disclosure of proper evidence from the Applicant as to the basis of their valuation and SHP will wish to rely upon its own valuation evidence and to submit evidence about it.

3.11. As to reliance upon the HMRC, the HMRC is clearly not performing the functions of the Examining Authority. The HMRC is only as good as the information with which it is provided, as to which we remain in the dark. The HMRC is clearly not assessing either the likelihood of funding being available for compulsory acquisition or the funding of the project as a whole. The Applicant's reliance upon HMRC was also the subject of submissions by Mr Macnamara, which are summarised in paragraphs 3.14 – 3.17 below.

3.12. Underpinning those submissions made orally, SHP would have referred the Examining Authority (if the nature of the examination and time permitted) to the statute, the case law and the Government's own Guidance require the Applicant to answer the questions and provide the evidence that the Examining Authority has been seeking. Section 122 provides that a DCO of this type may only be authorised if the land in question is required for the development, or is required to facilitate or is incidental to the development and there is a compelling case in the public interest. Paragraph 6 of the Guidance states that applicants must therefore be prepared to justify their proposals for compulsory acquisition and "need to be ready to defend such proposals throughout the examination of the application". It is certainly not envisaged, nor consistent with inherent fairness, to suggest that such defence can be mounted through provision of information after the examination has started and after the compulsory acquisition hearings. Paragraph 8 requires a clear idea of how the Applicant intends to use the land (something which has self-evidently not been demonstrated by the Applicant – even at this late stage, the Applicant itself has stated that it does not know the nature of the potential occupiers of the northern grassland areas). Paragraph 8 identifies that the Applicant must be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Paragraph 12 identifies that 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 that would be suffered by those whose land is to be acquired. It goes on to reiterate Parliament's view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. It is inconsistent with all of this for the Applicant to contend (as it does now) that it does not need to provide evidence as to the basics of a business case for its project, the basics of the viability of the project in circumstances where the Applicant has expressly confirmed that it does not yet have any investors, it will be relying on investors, and those investors will have to rely on a business case. This is therefore a stark and simple case that if the proposal is not viable, it cannot be delivered. There is no public money in prospect or relied upon whatsoever. Likewise, the Applicant's reliance on Chesterfield is completely mistaken. That case concerned a different statutory scheme and one which was dealt with prior to the Human Rights Act coming into force, and without the Guidance referred to above. However, it also concerned the regeneration of a town centre in the public interest which was partly publicly-funded and where, consequently, the project was not intended to rely on private investment through the generation of profit, or to be reliant upon private investors, but rather had to be only marginally viable for the public funds to be included, and where the Inspector and Secretary of State found that the evidence presented did demonstrate the necessary marginal viability. In this case, the Applicant self-avowedly confirms that no public money is involved and it will have to rely upon raising money from private investors who will require a profit if the project is to proceed. Likewise, the Applicant's assertion that the Applicant would not be proceeding if it did not think the project were viable is

meaningless. SHP has always identified its basic concern that this is just a land grab. SHP's concern is that the Applicant is attempting to acquire SHP's land forcibly with this DCO, but where the project used to justify the acquisition is fanciful. The Applicant's inability to demonstrate even the most basic aspects of a business case and the viability of its project and its relentless focus on merely showing potential funds for compulsory acquisition, the willingness on the Applicant to shorten the compulsory acquisition period to 1 year, only serve to increase this fear and are all consistent with actions to obtain the land, not to deliver the DCO project.

3.13. In response to the Applicant stating that it would put in further material relating to funding, business plans etc (such as interim accounts), SHP reiterated the basic problem and inherent unfairness as to the absence of such material being made available prior to the compulsory acquisition hearings.

Note on submissions regarding HMRC Approach to Scrutiny of Source of Funding

3.14. During the Hearing and its answers to third written questions F.3.3 and F.3.11, the Applicant has sought to claim that HMRC is the appropriate body to consider the source of funding suggesting it is HMRC's role to scrutinise funding where the Business Investment Relief Scheme is used. For example, in answer to written question F.3.3 the Applicant states;

"[T]he sources of funding for this Project will be, and indeed have already been, scrutinised by HMRC and the ExA must rely on that body carrying out appropriate checks".

3.15. Attached as Appendix F.3.4 is email correspondence from the same individual at HMRC that issued the HMRC letters that were submitted by the Applicant as part of Appendix 6 to the Applicant's Written Summary of Oral Submissions put at the first CA Hearing [REP5-011]. As the email correspondence followed a prior telephone conversation, its purpose was confirmatory.

3.16. In response to points 4 and 5 (*"4. HMRC do not, in the normal course, scrutinise the source and origin of any funding that is invested"* and *"5. It would be normal for HMRC to accept confirmation that an investment is to be made using foreign income and taxes that would otherwise be taxable, without undertaking further diligence (or checks) on the source or origin of that funding"*), HMRC responded as follows;

> *"We do examine the source of the investment if we have concerns about it, but not routinely. To be clear, the assurance process does not amount or purport to be "due diligence" in a commercial context as regards source."*

3.17. A copy of this email correspondence with HMRC is appended.

Jamie

From: cameron.wilson[redacted]
Sent: 31 May 2019 12:09
To: Jamie
Subject: Re: Business Investment Relief Scheme

Hello Jamie

Sorry but I have been tied up with some other issues.

All five statements are broadly correct.

We do examine the source of the investment if we have concerns about it, but not routinely. To be clear, the assurance process does not amount or purport to be "due diligence" in a commercial context as regards source.

In some cases the name of the target company is unknown if it has not yet been set up but even then it has to be clear enough that the application relates to a specific intention. The company registration details must be included in the final claim.

The assurance given can not be relied on unless the investment takes the precise form described in the application. But it may nevertheless still qualify.

Where an assurance letter contains any reservation or qualification on HMRCs part, then the investor should expect that we will check afterwards that any such concern has been addressed.

Regards

Cameron Wilson

Get Outlook for iOS

From: Jamie <jamie@[redacted]
Sent: Friday, May 31, 2019 11:44:34 AM
To: Wilson, Cameron (WMBC Wealthy)
Subject: RE: Business Investment Relief Scheme

Hi Cameron,

I was wondering if you would be able to revert on my email of Wednesday (below)?

Best regards
Jamie

From: Jamie
Sent: 29 May 2019 10:39
To: cameron.wilson@hmrc.gsi.gov.uk
Subject: Business Investment Relief Scheme

Dear Cameron,

I refer to the process by which HMRC provide "clearance" that a proposed investment can be treated as a qualifying investment as defined in section 809VC of the business investment relief provisions in Chapter A1 of Part 14 Income Tax Act 2007.

I have reviewed the relevant guidance and would be grateful if you would confirm whether the following statements are correct;

1. An application for "clearance" (or advance assurance) should confirm;
    a. which company in which an investment is to be made;
    b. the level of such investment;
    c. whether the investment is to be made by way of shares or loans; and
    d. when a company is expected to be trading.

2. A "clearance" given by HMRC could be voided if any of the information provided in the Application was not entirely accurate.

3. For example, if funds were subsequently invested in a subsidiary company by way of loans, and this information was not disclosed to HMRC in the application, would it be correct to assume that HMRC would not be bound by any advance assurance it has given?

4. HMRC do not, in the normal course, scrutinise the source and origin of any funding that is invested.

5. It would be normal for HMRC to accept confirmation that an investment is to be made using foreign income and taxes that would otherwise be taxable, without undertaking further diligence (or checks) on the source or origin of that funding.

I look forward to hearing from you.

Best regards,

Jamie Macnamara
Stone Hill Park Ltd

York Aviation

Manston Airport

Note of Oral Evidence given by York Aviation for Stone Hill Park at the Second Compulsory Acquisition Hearing 4th June 2019

1. This note sets out the key points made in oral evidence at the Second Compulsory Acquisition Hearing and responds to a number of additional points made by the Applicant during the Hearing, highlighting additional information that should be provided by the Applicant, particularly in relation to the viability of the development and the justification for the land area proposed for the development.

2. These comments are made without prejudice to our view that the 'forecasts' upon which the whole of RSP's case depends are not robust. Discussions at the Need Hearing and subsequent Hearings have revealed the 'forecasts' are nothing more than a wish list of what RSP would like to attract to Manston without taking into account the market and a number of key relevant factors that would determine if they could viably do so. The key issue of relevance in relation to this Hearing is whether the development, at the cost and phasing proposed by RSP, would be viable so as to attract investors and/or, whether, at the level of aeronautical charges shown by RSP in the business model, it could credibly attract any airlines to operate. It remains SHP's case that airlines would not be attracted to use Manston to any significant degree due to its inherent disadvantages and certainly not at the prices that RSP will need to charge to achieve the aeronautical revenues shown in their 'business model'. Fundamentally, this comes back to the lack of a coherent Business Plan demonstrating how the development can be funded and the demand 'forecasts' achieved. We set out our view on the viability of the development in Section 7 of our February 2019 Report , which was reinforced by the report by Altitude Aviation Advisory of the same date, both of which were attached as Appendices to SHP's Written Representations [REP3-025]). We set out our overall assessment of financial viability and the required level of charges at paras. 7.19-7.36 of our February 2019 Report.

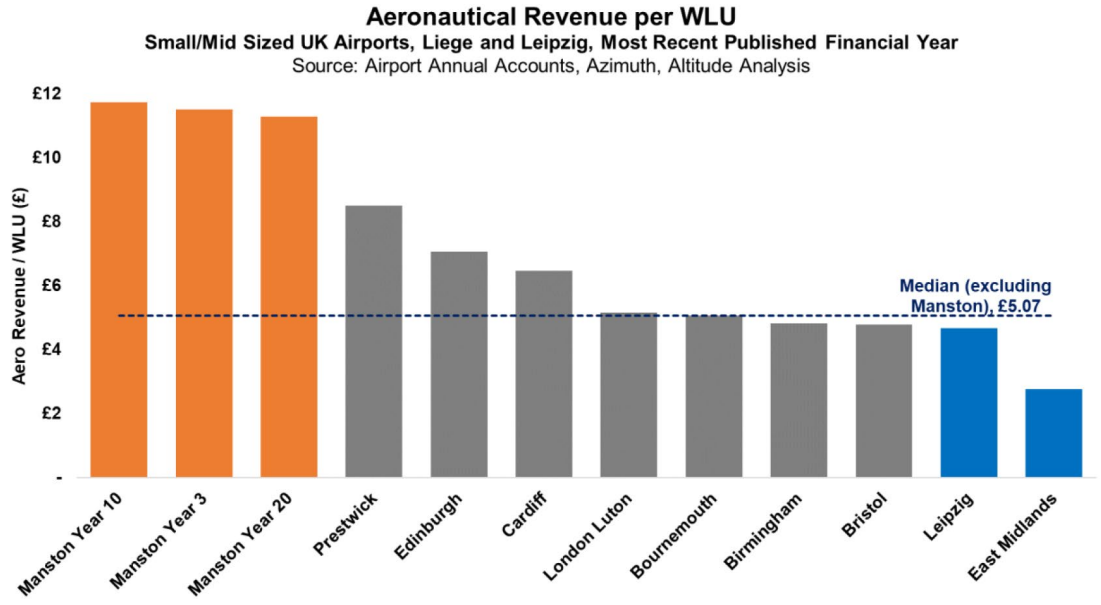
Viability

3. The only financial information provided to the ExA by the Applicant is the summary 'Business Model' provided in RSP's answer to ExA's question F.1.5 at Deadline 3. This falls far short of what would be required in a Business Plan or indeed a Business Case for investment. Altitude Aviation Advisory set out in its February 2019 Addendum Report the information that would be required by lenders in order to establish the extent to which they would be willing to invest in the development of an airport or otherwise provide debt. We consider that the same level of detailed information is required to establish viability in this case. This checklist is appended to this note to assist the ExA.

4. Mr Wilson explained at the Hearing that he had prepared the basic EBITDA model provided by RSP at Deadline 3 but that he was not party to the viability assessment or, indeed, any Business Plan that demonstrates that the levels of demand asserted by RSP and Azimuth are in fact deliverable at the prices proposed and having regard to competition from other airports, switching costs and other relevant factors identified by both Dr Dixon and Mr Cain (see para. 24 of York Aviation Supplementary Note following the Compulsory Acquisition and Need Hearings submitted at Deadline 4).

5. Currently, the spreadsheet provided gives only very high level summary information without any quantified explanation as to how the assumed revenues, and indeed operating costs, were built up. Mr Wilson acknowledged that there was a more detailed model behind this but was unable or unwilling to explain the detailed assumptions he had used to derive these high level figures during the Hearing.

6. The Business Model depends on realising aeronautical income of £17.71 per workload unit in Year 1 falling to £11.29 in Year 20 (see York Aviation commentary on 1st Written Answers F.1.5 submitted at Deadline 4). A workload unit is 1 passenger or 0.1 tonne of cargo/freight. As we have demonstrated, the level of aeronautical revenues claimed by the Applicant are significantly higher than attained by other comparable airports - over double the level of aeronautical income per WLU at Stansted (£5.10) and 4 times that achieved at East Midlands (£2.80) (para. 7.36 of York Aviation February 2019 Report. Further evidence is provided in Altitude's Note appended to SHP's Written Summary at CA Hearing 1 submitted at Deadline 5, which gives examples of the average aeronautical revenue earned at a range of other small and comparable airports (reproduced below). SHP's Deadline 6 comments on RSP's Summary of the Need and Operations Hearing also cite average revenues at Rockford International (RSP's oft cited exemplar of an e-commerce airport) at the equivalent of c.£1.30 per WLU. By any measure, operating at Manston would be more expensive than at the other airports, including those cited as comparators by RSP.



7. In other words, the level of income that Manston expects to earn from each passenger or unit of freight is without precedent for small or cargo dominated airports. This is contrary to what RSP said in response to the ExA's 3rd Questions response ND.3.1. at Deadline 7a, where they stated: *"The forecast assumed that costs of operating from the airport would be in line with other cargo airports – i.e. that cost factors would not unduly attract nor detract the potential market. Separately, the Applicant has commissioned a viability assessment which confirms that the Project can be viably delivered in such a way that would be competitive in the market and would not detract potential operators"* (emphasis added). This viability assessment has not been made available to parties to the Examination, yet this is an essential part of understanding whether there is a compelling case in the public interest for the acquisition of land.

8. Prima facie, the contention that Manston would be cost competitive flies in the face of history and the evidence on the expected level of revenues to be earnt. Furthermore, elsewhere RSP claim that Manston will be able to be a price setter because of its superior facilities, lack of congestion, good slot availability (but not at night when most cargo operators seek to fly) and claimed position relative to the market in the South East – see Deadline 7a answer to ExA's question ND.3.19: *"The offer at Manston will be built around a broader value for money proposition including time, convenience, efficiency, reliability etc to a range of interests, rather than solely the price per kg. For example, an airline will be substantially interested in slot/stand availability and flexibility if it arrives outside scheduled times, environmental and runway constraints, as well as airport charges, speed of turn-round, fuel costs etc.".* However, no evidence has been presented to the Examination to explain the value that airlines would place on these attributes and how they would justify paying 4 times the price of operating at the UK's better located main cargo airport and whether such costs could in practice be passed onto shippers.

9. It is important to note that aeronautical revenue is that earned directly from airlines and does not include any rental income from freight warehouses or commercial income earned from passengers, as confirmed by Mr Wilson at the Hearing. We now understand from the comments made by Mr Wilson at the Hearing that this income also includes an assumption that Manston will sell fuel directly to the airlines and the aeronautical revenues includes a profit margin on sales of aviation fuel as well as including cargo handling income, other than for the integrator operations (e-commerce or otherwise) that are assumed to handle their own freight either in on-site warehouses or taken directly off-site from the aircraft. This confirms what was stated in Appendix 6 to RSP's Summary of the Need and Operations hearing, where in particular RSP stated that, in respect of the e-commerce integrator: *"There is a combination of the above where an "E-Commerce" carrier becomes based at the airport. The airport swaps a higher margin and more volatile business for a lower margin higher volume and more stable income"*. However, nowhere in the model is it evident that the effect of the e-commerce integrator on the margin or income achievable has been factored into the revenue estimates.

10. At the Hearing, both Mr Wilson and Mr Lawlor promised that further detail and justification of the business model would be provided at Deadline 8. This needs to comprise an itemised breakdown of revenues and costs accompanied by a clear explanation and justification of the assumptions used to derive the estimates and how these are expected to change over time so as to provide sufficient transparency to allow the reasonableness of the estimates to be verified. Specifically, the Applicant needs to identify the benchmark airports it has used to derive its revenue estimates as it is unclear from Mr Wilson's remarks at the Hearing whether his estimates are based solely on Prestwick and what broader analysis he undertook of relevant benchmarks. The choice of comparators needs to be justified and evidenced. In particular, it will be important to understand the build up of aeronautical revenues in some detail for each type of operation (e-commerce integrator, niche freight, general freight, low cost passenger services, other passenger services, general aviation) in order to assess the extent to which Manston would be cost competitive as claimed by RSP, and the implications for the achievability of the 'forecasts' of usage.

11. In relation to the level of aeronautical revenues, there are a number of key issues which need to be taken into account and we would expect to see the explanation for how they have been factored into the revenue estimates transparently set out in the further information promised to be submitted by the Applicant:

12. As noted above, the aeronautical revenue per WLU is significantly higher in the first year of operation when there are no passenger services, with the average revenue per WLU shown as being lower from Year 2 when low cost passenger services commence. This would be consistent with the Airport having to discount its charges substantially to attract a low cost carrier to operate (Ryanair is the airline cited by RSP) so reducing average aeronautical revenues per WLU once passenger services commence. For a small airport such as Manston, we would not expect Ryanair to pay more than £0-£3 per passenger in aeronautical charges (see para 7.25 of York Aviation February 2019 Report) and this is likely to include the cost of any handling required. The low cost operation makes up the majority of the passenger services in the Azimuth forecast so it must follow, as the 'Business Model' suggests, that cargo airlines are expected to pay something closer to £17 per WLU to achieve an overall average in the £11-£12 range, making the gap to what is paid by cargo operators at other airports still greater. RSP need to be probed as to whether they expect to charge the same amount per WLU for passenger and cargo operations and whether the level of charges proposed have been discussed with the airlines, including Ryanair and potential cargo operators, including the claimed e-commerce integrators.

13. Secondly, as was evident at the Hearing, RSP will seek to argue that it can realise a higher level of aeronautical income charge because it will be providing handling and other services directly rather than these being provided by third party handling agents. However, it is clear, as the Applicant itself acknowledges (see Deadline 7a answer SE.3.3 to the ExA's third written questions) that *"Integrator dominated airports will inevitably employ fewer people directly because handling staff will be employed by the integrator (DHL, etc.) and not by the airport operator.".* This is material because we know that 50% of Manston's freighter activity is assumed to be by an integrator (new e-commerce or otherwise), which is likely to want to do its own handling. RSP helpfully explain how the integrator might operate at OP.3.9 of the same batch of answers: *"In the case of new-style e-integrators the critical factor will be whether the airport acts as a fulfilment centre as well as a handling centre, or is just acting as a transhipment point from aircraft to a processing facility. We envisage part of the cargo inbound would already have printed labels and hence already be en-route from the originating business to the final consumer and consequently could be easily transferred to a logistics facility for breaking down of pallets for 'last mile' delivery journeys by van or small truck. This does not need to be undertaken airside, and hence could be centred at a nearby logistics building, such as some of the larger ones on the Northern grass or possibly even larger than those shown. Other new integrator consignments may be to re-stocking product lines in fulfilment centres that systems suggest may run short in the near future; in these cases, it is most likely that handling from plane to truck would take place airside or via a cargo shed on airport."* This answer makes clear that RSP expects at least part of the cargo brought in by the integrator to be put straight onto a truck and sorted off-site, i.e. not incurring handling charges at Manston, or otherwise handled in the integrator's own facility so not requiring handling by the airport operator. This is, in effect, the same handling process as at East Midlands meaning that revenues for the airport operator would be directly comparable for half of the traffic at least. Taking this into account, would imply an even higher revenue per WLU needing to be charged to the other cargo operators to make RSP's claimed overall average.

14. RSP also highlighted fuel revenues as a further differentiator to airports such as East Midlands and Stansted, where the fuel is provided by third parties. Fuel income will consist of a margin/mark-up on the cost of fuel, which is currently of the order of £0.50-0.60 per litre for Jet A1. We know from the Transport Assessment (para. 6.4.37), the number of peak day fuel delivery tankers expected in Year 20 is 21, from which it is possible to estimate the level of fuel expected to be sold on a busy day and by extrapolation over the year as a whole. The price of fuel will be an important factor to the airlines in the cost of operating to Manston so the higher the fuel margin assumed in the revenue estimates, the less likely it is that airlines would a) take up fuel at Manston on shorter sectors where they can tanker sufficient fuel for the return trip or b) be willing to operate on longer sectors to the extent that the cost of fuel would be materially higher than alternative airports. It will be important for the Applicant to be transparent in the assumptions it has used to estimate fuel revenues both in terms of the cost of fuel and the assumed margin.

15. We intend to provide further comments on the viability of the proposed development at Manston once further detailed information has been provided by the Applicant but nothing that was stated at the Hearing alters our view that the development is highly unlikely to be viable as the assumed level of aeronautical and other revenues will not be capable of being realised in a competitive market or, if the Applicant seeks to realise revenues at this level, this would be a substantial deterrent to attracting most, if not all, operators.

Compelling Case

16. If the Airport is not viable, it cannot meet the need which RSP claims that it intends to meet. As was noted at the Hearing this goes to the heart of whether there is a compelling case in the public interest sufficient for the acquisition of SHP's land.

17. We note that at the Hearing, Ms Schembri sought, as in the original application documents, to place substantial reliance on the overall shortage of airport capacity in the South East of England as creating a prima facie need for Manston as a freight airport. We have dealt with this at length in our November 2017 and February 2019 Reports.

18. Ms Schembri was completely wrong to construe that the Airports NPS, in supporting the development of a third runway at Heathrow, did not address the requirement for additional capacity for air freight. The NPS is quite clear that the third runway is seen as the principal means of addressing the need for additional capacity for air freight, not least as this is largely a need for additional bellyhold capacity to be provided by additional global air services carrying passengers and freight. It is clear from the extracts below that the Airports NPS very much had the need for air freight capacity in mind when selecting the new northwest runway at Heathrow as its preferred option for development:

"3.14 Increasing airport capacity in the South East of England and maintaining the UK's hub status can be expected to result in both positive and negative impacts, as would be the case for any major infrastructure project. Important positive impacts are expected to include better international connectivity and providing benefits to passengers and the UK economy as a whole (for example for the freight industry)."

*"**International connectivity and strategic benefits, including freight***

3.18 Heathrow Airport is best placed to address this need by providing the biggest boost to the UK's international connectivity. Heathrow Airport is one of the world's major hub airports, serving around 180 destinations worldwide with at least a weekly service, Building on this base, expansion at Heathrow Airport will mean it will continue to attract a growing number of transfer passengers, providing the added demand to make more routes viable. In particular, this is expected to lead to more long haul flights and connections to fast-growing economies, helping to secure the UK's status as a global aviation hub, and enabling it to play a crucial role in the global economy."

"3.24 As set out above, expansion at Heathrow Airport delivers the biggest boost in long haul flights, and the greatest benefit therefore to air freight. This is further facilitated by the existing and proposed airport development of freight facilities as part of the Northwest Runway scheme."

"3.73 Building on this assessment, the Government has identified a number of attributes in the manner of strategic effects, which it believes only the preferred scheme is likely to deliver to meet the overall needs case for increased capacity in the South East of England and to maintain the UK's hub status. The Government has afforded particular weight to these:

- *……*

- *The Heathrow Northwest Runway scheme delivers the greatest support for freight. The plans for the scheme include a doubling of freight capacity at the airport. Heathrow Airport already handles more freight by value than all other UK airports combined, and twice as much as the UK's two largest container ports."*

19. It is not, as Ms Schembri tried to construe, that freight was simply a reason why Heathrow was preferred over Gatwick, but a fundamental driver in the Government's thinking as to how air freight requirements could best be met. It is clear that the NPS set out to address the requirements for global air freight connectivity, selecting Heathrow as the preferred means of meeting this need. As we have demonstrated in Section 4 of our February 2019 Report, once allowance is made for the capacity to be provided by the new runway at Heathrow, there is no capacity shortfall for air freight that falls to be addressed. There is no need for Manston.

20. SHP have dealt further with the absence of a compelling case in their overarching submissions.

Land Required

21. Due to the limited time available at the Hearing there was little time to address whether the applicant had justified the land it requires for the development.

22. The Hearing focussed principally on the matter of Associated Development on the Northern Grass but there are other parts of the Works within the airfield which would not form part of the Principal Development (driven by the requirement to deliver a capability of at least 10,000 annual cargo air transport movements). In this respect, it is important to note that Works 2, 10 and 11 are not related to the cargo operations.

23. In particular, Work No.2 is the provision of light and business aviation hangars and a terminal for the fixed base operator. These are not related to the operation of cargo air transport movements and are entirely incidental to the proposal to re-open the airport. Indeed, the FBO terminal is akin to the passenger terminal (Work No. 12) which has already been reclassified as Associated Development. The provision of facilities for general aviation and business aviation, as well as hangars for MRO/aircraft tear down (Work No 18 already classified as Associated Development) are also incidental to the re-opening of the airport and not related to the handling of cargo aircraft movements.

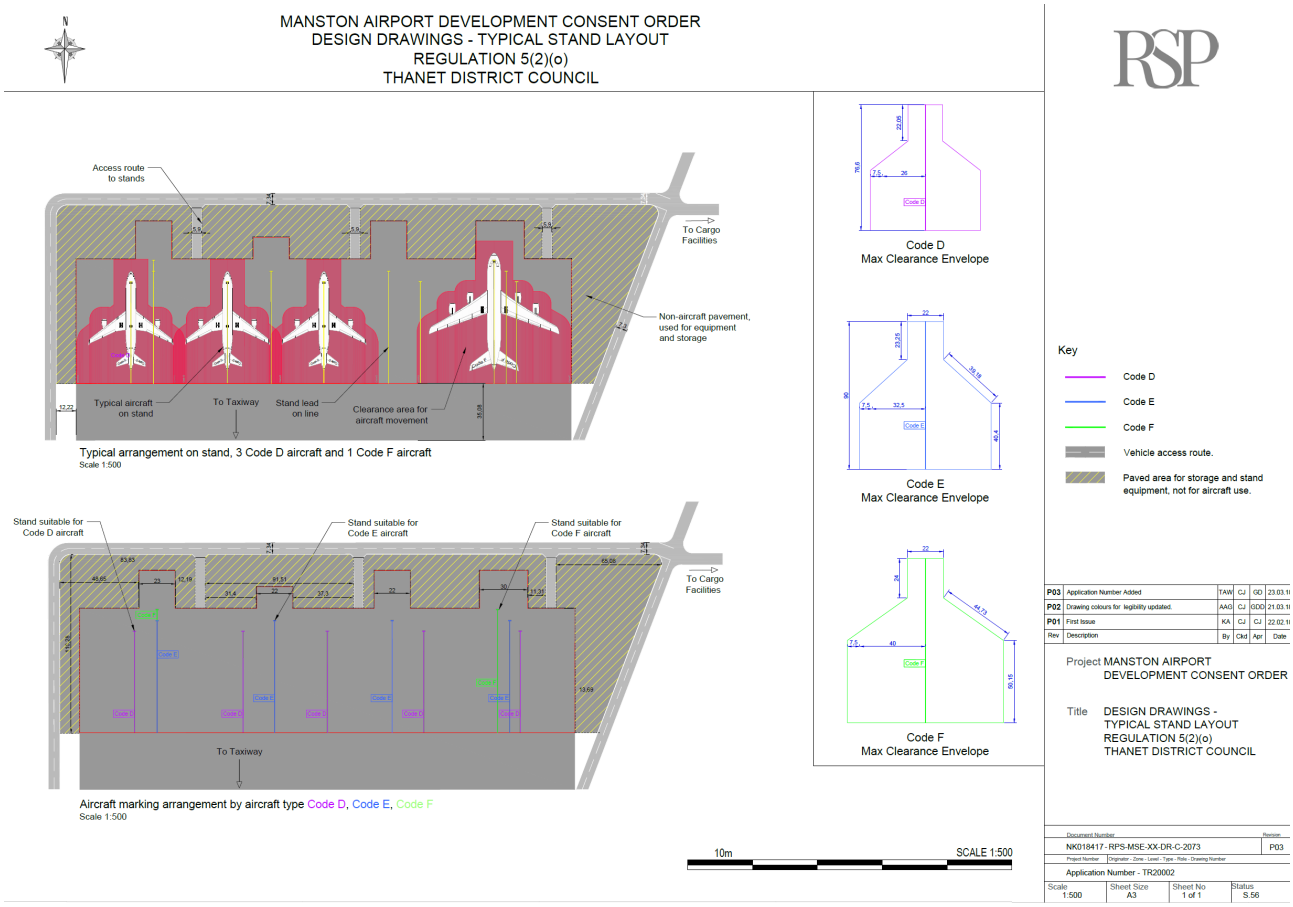
24. There is a similar issue with the aprons associated with the Passenger Terminal – the 4 Code C stands at Work No. 11 and with the MRO/aircraft tear down hangars – the 3 Code C stands at Work No. 10.

25. It needs to be recognised that, within the context of viability, the primary purpose of these developments is to provide a supporting income stream to assist in covering the cost of re-opening the airfield. The specific need for such facilities at Manston has not been justified by RSP, nor the scale of facilities proposed, which is material to the overall land required for the proposal. This needs to be considered alongside the lack of any justification provided for the scale of 'airport related' uses to be located on the Northern Grass and whether they are actually functionally needed to support the cargo operation. We addressed the extent to which the proposed list of airport related used were legitimately Associated Development to the Principal Development in our Deadline 7 comments on the Applicant's Deadline 6 responses, Draft DCO.

26. This list of uses was not discussed in any detail at the Hearing but it remains a substantial concern that the Applicant continues to claim a wide range of general airport related facilities as being eligible to be considered as Associated Development to a cargo NSIP. The example from Annex A to DCLG's Guidance on Associated Development for National Infrastructure Project was cited by RSP at the Hearing that, in respect of Airports, *"Freight distribution centre, including freight forwarding and temporary storage facilities"* would be considered as Associated Development and was claimed as a precedent for the type of facilities they propose as airport related. *Properly understood, this example* needs to be seen in the context that a passenger related NSIP for 10 million passengers or more is likely to include an increase in aircraft movements capable of carrying both additional passengers (requiring additional passenger terminal capacity) and also bellyhold cargo capacity requiring similar facilities for the handling of additional freight. Hence, additional freight handling facilities would necessarily be Associated Development to the Principal Development in this case. An increase in cargo air transport movements, which forms the basis for the Manston NSIP case, does not similarly generate any requirement whatsoever for passenger related activities, nor general/business aviation activities and maintenance activities. Cargo ATMs do not carry passengers but passenger ATMs do carry freight in bellyhold. Just because an airport is open for the handling of cargo aircraft does not automatically mean that any other form of aviation activity necessarily must be accommodated. Hence, to the extent that general airport related development is proposed by RSP, the only possible rationale for these is to provide some financial cross subsidy to the Principal Development.

27. Over and above the question of Associated Development and the extent to which the identified Works have been justified by evidence, there is the question of whether the totality of the land required for the development has been justified. This goes beyond the justification for the Northern Grass and extends to the totality of the proposals. To date, there is an absence a coherent and validated justification for the scale of development overall from the Applicant. We set out our estimation of the area required at paras. 6.9-6.24 of our February 2019. RSP responded with an explanation in their Oral Summary of the CA Hearing, Section 11 & Appendix 11 to which SHP responded at para 4.3 of its Comments on the Applicant's Summary of Oral Evidence at the CA Hearing. Further comments are included in York Aviation Deadline 7 comments on Deadline 6 responses submitted – OP.2.3.

28. It is notable that, despite their answer to Question OP.2.3, the Applicant has itself designed its apron to operate on a MARS (Multiple Apron Ramp System) basis as shown clearly on the Design Drawings submitted as part of the Application (see drawing below). Clearly, the Applicant expects Code D or smaller aircraft to use multiple centrelines rather than to park on a single Code E stand. As we have demonstrated in the analysis contained in our February 2019 Report, the number of Code E stands required to accommodate RSP's aircraft movement 'forecasts' as assessed in the ES is materially less than the 19 stands proposed, particularly as they are demonstrably designed to be used on a multiple use basis by aircraft of different sizes, consistent with the fleet mix assessed in the ES. We remain of the view that the scale of apron proposed is excessive and no more than 10 Code E aircraft stands would be required to accommodate the entire 'forecast'.



29. In relation to the scale of cargo handling buildings required, we continue to believe that the buildings shown are at least 3 times the scale required, even assuming all of the cargo tonnage was handled on site (see paras. 6.21 and 6.22 of our February 2019 Report). We note that RSP continues to misrepresent the scale of facilities at East Midlands in their Deadline 7a response to the ExA's third questions – OP.3.8. In our Deadline 7 comments on RSP answers to the ExA's questions at Deadline 6 – OP.2.5, we explained that the current cargo facilities at East Midlands Airport comprise some 80,000m^2. This area is disputed by RSP, which claims that the cargo handling facilities are currently some 96,000m^2. This is incorrect. On EMA's own website they quote: *"Five airside cargo terminals offering over 865,000 sq. ft of undercover cargo processing area"* (https://www.magairports.com/our-expertise/cargo-services/east-midlands-cargo/). This converts to 80,361m^2 as we have stated. As we pointed out at para. 6.23 of our February 2019 Report, this area also handles purely road based freight (which reflects the quality of East Midlands as a distribution location) so is not, in any event, a relevant comparator for Manston, where no such operations are envisaged.

30. When we assessed the area of cargo handling sheds required, we assumed that all freight would be handled through the on-site airport transit sheds. However, it is now clear from RSP's more recent answers that it envisages that a substantial part of the e-commerce integrator freight will be loaded straight onto a truck from the aircraft side and/or to a fulfilment centre necessarily located closer to the main centres of population. To the extent that freight is loaded directly onto trucks or taken to a landside sorting facility, it will not require space within an on-site freight warehouse on the airside. This will further reduce the scale of facilities required compared to the area that we previously assessed.

31. We remain of the view that the Applicant has failed to substantiate the scale of development shown on its plans, even if its 'forecasts' were capable of being realised. Excessive development is, of course, another reason why the development will not be viable and would constitute an economically inefficient development.

14th June 2019

Key Characteristic	Main Features	Comment	Material Typically Provided to Debt Provider
Demand	Catchment and consumer choice (airlines, destinations, cargo operators, etc.)	• Long run demand linked to GDP, disposable income, affordability, airline economics, etc. • Structural features e.g. hub, inbound tourism, cargo demand, etc.	• Detailed traffic forecast to include passenger segmentation (domestic, short haul, long haul, low cost carrier, etc.), cargo demand (bellyhold, freighter, expeditor), and other (business jet, general aviation, etc.). • Traffic report which covers all aspects of traffic demand including air transport movements (ATMs), aircraft stand demand, runway and terminal busy hour rates, etc.
Competition	Competing airports' features, capacity, etc.	• Detailed assessment of airport competition, and why users choose a particular airport. • Modal substitution options.	• Debt providers would expect the traffic report to include detail of the airport's competition, including discussion on competing airport characteristics.
Revenue	Diverse revenue streams	• Detailed outline of all airline, passenger, and non-aviation related revenues. • Clear rationale for forecast assumptions (airline contracts, concession contracts, property leases, etc.). • Detailed performance benchmarking analysis.	• Business plan to include a detailed build up of all revenue categories over the forecast horizon. • Business plan report should include detailed analysis of historic performance vs. forecast performance, and outcomes vs. sample benchmark airports.
Operating Costs	Operating leverage	• Lower unit costs as volumes increase driven by high fixed costs. • Detailed analysis of fixed and variable costs including staff costs by functional department, and non-staff costs by main outsourced categories.	• Operating cost forecast to include analysis vs. historic performance and regional airport recent trends. • Operating cost forecast to be driven by the appropriate drivers and assumptions clearly explained to debt providers.
Profitability	Profitability driven by airport size and passenger profile	• Operating expenditure consumes a high share of revenue at lower throughput airports. • Operational leverage is difficult to achieve at lower throughput airports.	• Detailed financial model to include debt provisions and below EBITDA operating costs (depreciation, dividends, etc.). • Downside demand / cost scenarios to demonstrate resilience of the business case – what happens if forecast are not achieved? • Detailed financial model to demonstrate debt covenants can be met under a range of scenarios throughout the forecast period.
Investment	Infrastructure leverage / investment flexibility	• High investment cost for lower throughput airports. • More efficient use of infrastructure as throughput increases. • Flexibility on incremental capacity investment.	• Detailed process capacity assessment. • Investment plan to achieve approvals to commence operations. • Investment in capacity and asset renewals over the forecast period.

Figure 5 - Airport Market Key Characteristics (source: Altitude)