



RiverOak Strategic Partners

Applicant's s106 obligation in favour of Thanet District Council

**TR020002/D12/UUTDC
Examination Document**

Project Name:	Manston Airport Development Consent Order
Application Ref:	TR020002
Submission Deadline:	12
Date:	9 July 2019

RIVEROAK FUELS LIMITED

to

THANET DISTRICT COUNCIL

PLANNING OBLIGATION BY DEED OF UNILATERAL UNDERTAKING

under section 106 of the Town and Country Planning Act 1990 (as amended) and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 relating to land at Manston Airport, Manston Rd, Ramsgate, Kent, CT12 5BQ

DATE

9 July

2019

PARTIES

- (1) **RIVEROAK FUELS LIMITED** (Company Registration Number 11535715) whose registered office is situated at Calder & Co, 16 Charles II Street, London, SW1Y 4NW ("**RiverOak**")

in favour of

- (2) **THANET DISTRICT COUNCIL** of Cecil Street, Margate, Kent, CT9 1XZ ("the **District Council**")

INTRODUCTION

1. The District Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
2. RiverOak is the freeholder owner of the Jentex Site which is registered at the Land Registry under title number K315361.
3. RiverOak Strategic Partners Limited has submitted the Application to the Planning Inspectorate for development consent to construct and operate the Project. The Application was accepted for examination by the Planning Inspectorate on 14 August 2018. The Secretary of State is responsible for determining the Application.
4. The District Council is satisfied that the obligations in this Deed are compliant with Regulation 122 of the Regulations and they meet the following tests:-
 - 4.1 They are necessary to make the development of the Project acceptable in planning terms; and
 - 4.2 They are directly related to the development of the Project; and
 - 4.3 They are fairly and reasonably related in scale and kind to the development of the Project.
5. RiverOak has agreed that the development of the Project shall be carried out only in accordance with the Development Consent Order and the rights and obligations set out in this Deed.
6. The parties have agreed that following the making of the DCO they will enter into a Confirmatory Deed with the intention that, subject to certain conditions, it is enforceable by the District Council on RiverOak and on the Remaining Site and any successors in title to the Remaining Site.

NOW THIS DEED WITNESSES AS FOLLOWS

OPERATIVE PART

1. DEFINITIONS

In this Deed unless the context otherwise requires the following terms and expressions (arranged in alphabetical order) shall have the following meanings:

Word or Phrase	Meaning
"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
"2008 Act"	means the Planning Act 2008 (as amended);
"Application"	means the application for a development consent order under s37 of the 2008 Act submitted by RiverOak Strategic Partners Limited (Company Registration Number 10269461) to the Planning Inspectorate on 17 July 2018 and given reference number TR020002;
"Charging Schedule"	means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations;
"CIL"	means the charge created pursuant to Part 11 of the 2008 Act and Regulation 3 of the CIL Regulations and referred to as the Community Infrastructure Levy in those enactments;
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended);
"Commencement"	means the carrying out of a "material operation" (as defined in section 155 of the 2008 Act) comprised in or carried out for the authorised development (as defined in Schedule 1 of the Development Consent Order) other than operations consisting of environmental surveys and monitoring, investigations for the purposes of assessing ground conditions, diversion and laying of services, receipt and erection of construction plan and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements or installation of a site compound or any other temporary building or structure to the extent that it is unlikely to give rise to any materially new or materially different environmental effects from those identified in the environmental statement (and in this Deed " Commence " and " Commenced " and cognate expressions shall be construed accordingly);

Word or Phrase	Meaning
"Confirmatory Deed"	means a supplemental agreement substantially in the form at Sixth Schedule which is to be made under section 106 of the 1990 Act for the purpose of binding the Remaining Site (if and when acquired by RiverOak) with the development consent obligations set out in this Deed;
"Commencement Date"	means the date a material operation under section 155 of the 2008 Act has been carried out pursuant to the Development Consent Order;
"Contributions"	means the financial contributions payable to the District Council under the terms of this Deed and "Contribution" shall be construed accordingly;
"Decision Letter"	means the decision letter issued by the Secretary of State confirming whether or not the DCO is granted;
"Development Consent Order" or "DCO"	means the development consent order in a form as may ultimately be made by the Secretary of State if he is minded to issue development consent pursuant to the Application;
"Dispute"	means any dispute, issue, difference or claim as between the parties in respect of any matter contained in or arising from or relating to this Deed or the parties' obligations and rights pursuant to it (other than in respect of any matter of law);
"Expert"	means an independent person appointed in accordance with the provisions of clause 10 to determine a Dispute between the parties to this Deed;
"Index"	means the BIS Index of Construction Prices and Costs or in each case in default of publication thereof, such substitute index which replaces it or is the nearest equivalent;
"Index Linked"	means the indexation payable by reference to the Index calculated in accordance with clause 12 of this Deed;

Word or Phrase	Meaning
"Infrastructure"	has the meaning ascribed in section 216(2) of the 2008 Act as amended by Regulation 63 of the CIL Regulations;
"Interest Rate"	means interest at 4% per annum above the Bank of England's base rate applicable from the date the relevant Contribution or Contributions are due under this Deed until the date of payment;
"Jentex Site"	means the land and building on north side of Canterbury Road West, Manston, Ramsgate which forms part of the Site and is identified as edged red on the Plan 2;
"Manston Airport"	means Manston Airport situated at Manston Road, Ramsgate, Kent, CT12 5BQ;
"Operation"	means commencement of air transport movements at Manston Airport pursuant to the DCO;
"Plan 1"	means the plan of the Site attached to this Deed at Annex 1 and labelled "Plan 1";
"Plan 2"	mean the plan of the Jentex Site attached to this Deed at Annex 2 and labelled "Plan 2";
"Practically Completed"	means the issue of a certificate of practical completion in relation to the Project or any part of a Project (as appropriate) by RiverOak's architect, engineer, project manager or other suitably qualified professional and " Practically Complete " shall be construed accordingly;
"Planning Inspectorate"	means the executive agency of the Ministry of Housing, Communities and Local Government;
"Project"	means the redevelopment of Manston Airport as defined in Schedule 1 of the Development Consent Order;
"Remaining Site"	means the Site excluding the Jentex Site;
"Requirement"	means a requirement of the Development Consent Order;

Word or Phrase	Meaning
"Secretary of State"	means the Secretary of State for Transport;
"Site"	means the land identified in the Development Consent Order shown edged red on the Plan 1; and
"Working Day(s)"	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly.
- 2.5 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it and "statutory requirement" shall be construed accordingly.
- 2.7 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council the successors to its statutory functions.
- 2.8 Clause headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation.

2.9 If any provision in this Deed is held to be invalid illegal or unenforceable such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

2.10 References to "notice" shall mean notice in writing.

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants contained in the Schedules are development consent obligations (to the extent that they are capable of being so) for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council as local planning authority.

3.3 To the extent that any obligations contained in this Deed are not development consent obligations for the purposes of Section 106 of the 1990 Act they are entered in pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.

4. AGREEMENT TO ENTER INTO THE CONFIRMATORY S106 AGREEMENT

4.1 Subject to Clause 5 (Conditionality) RiverOak shall enter into the Confirmatory Deed with the District Council before Commencement for purposes of ensuring the Remaining Site is bound by the development consent obligations set out in this Deed.

5. CONDITIONALITY

5.1 Subject to clause 4.1, the parties agree that none of the terms or provisions in this Deed shall have operative effect unless and until:

5.1.1 the Development Consent Order has been duly made; and

5.1.2 the Development Consent Order has Commenced.

with the exception of this Clause 5 insofar as it relates to obligations in the Schedules that must be complied with prior to Commencement, all of which shall have operative effect upon the making of the Development Consent Order and shall have operative effect from the date of this Deed.

5.2 Where the Development Consent Order becomes the subject of any judicial review proceedings:-

5.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Project has been Commenced

5.2.2 if following the final determination of such proceedings the Development Consent Order is quashed and, in the event that the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused, this Deed will cease to have any further effect and any money paid to the District Council pursuant to the Schedules and not spent by the District Council (or such other person as the money has been paid to under this Deed) shall be repaid in full within 56 days of the final determination of such proceedings; and

5.2.3 if following the final determination of such proceedings the Development Consent Order is validly Commenced, then this Deed will take effect in accordance with its terms.

5.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:-

5.3.1 proceedings by way of judicial review are finally determined:-

(a) when permission to bring a claim for judicial review has been refused and no further application may be made;

(b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused;

(c) when any appeal is finally determined and no further appeal may be made.

6. DEVELOPMENT CONSENT OBLIGATIONS

6.1 RiverOak covenants with the District Council to observe and perform:-

6.1.1 the development consent obligations and covenants contained in Schedules One to Five; and

6.1.2 any other obligations which are not development consent obligations contained in the Schedules pursuant to section 111 of the Local Government Act 1972 and all other powers so enabling, in each case so far as they relate to the Jentex Site from time to time.

6.2 The parties agree that the development consent obligations contained in this Deed shall:

6.2.1 be enforceable against the Jentex Site and RiverOak's successors in title to the Jentex Site; and

6.2.2 not be enforceable against any other owner of any land interest in the Site who is not a party to this Deed.

7. RELEASE

7.1 Subject to clause 6.2 RiverOak and its successors in title and those deriving title from them shall, upon disposing of the whole or any part of the Jentex Site, be released from all obligations in this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the parties in relation to any antecedent breach of those obligations.

7.2 Subject to clause 6.2 RiverOak and its successors in title and those deriving title from them shall, upon disposing of the whole or any part of the Remaining Site, be released from all obligations in this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the parties in relation to any antecedent breach of those obligations.

8. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS

Nothing in this Deed shall be construed as prohibiting or limiting the rights of RiverOak to use or develop any part of the Site in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order or other statutory authority other than the Development Consent Order granted either before or after the date of this Deed.

9. LAPSE

It is agreed that this Deed shall lapse and be no further effect if:

9.1 the Development Consent Order expires or is revoked prior to the Commencement Date; or

9.2 The Development Consent Order is amended or repealed otherwise than with the consent of RiverOak

in which case this Deed shall forthwith determine and cease to have effect and the District Council shall use reasonable endeavours to cancel all entries made in its register of local land charges in respect of this Deed.

10. RESOLUTION OF DISPUTES

10.1 In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least one representative from each party.

10.2 If the parties are unable to resolve the Dispute amicably pursuant to clause 10.1 within two months from the Dispute arising (or such other period as may be agreed between the parties to the dispute), one party may by serving notice on all the other parties (the "**Notice**") refer the Dispute to an Expert for determination.

10.3 The Notice must specify:-

- 10.3.1 the nature, basis and brief description of the Dispute;
- 10.3.2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen; and
- 10.3.3 details of the proposed Expert.
- 10.4 In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within 10 Working Days of the request, and any failure for such nomination to be made within 10 Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead.
- 10.5 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- 10.6 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of his appointment to act.
- 10.7 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.
- 11. **NOTICES**
- 11.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.
- 11.2 Any such notice must be delivered by hand or by pre-paid Special Delivery post and shall conclusively be deemed to have been received:-
 - 11.2.1 if delivered by hand, on the next Working Day after the day of delivery; and
 - 11.2.2 if sent by Special Delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.
- 11.3 The address for service of any such notice, consent or approval as aforesaid shall:-

11.3.1 in the case of service upon the District Council be at its address given above or such other address for service as shall have been previously notified in writing to the other parties and any such notice shall be marked for the attention of Iain Livingstone; and

11.3.2 in the case of service upon RiverOak be at its address given above or such other address for service as shall have been previously notified in writing to the other parties and any such notice shall be marked for the attention of Tony Freudmann.

12. **INDEXATION**

Subject to the terms of this Deed, any Contributions in this Deed shall be adjusted by reference to changes in the relevant Index in accordance with the following formula:-

$$\text{Amount Payable} = \text{Sum} \times (\text{Index at Payment Date} / \text{Index at today's date})$$

where:-

"Amount Payable" is the amount of money required to be paid;

"Sum" is the amount of the Contribution or other sum of money stated in this Deed;

"Index at Payment Date" is the relevant Index last published before the date the Contribution is payable; and

"Index at today's date" is the relevant Index last published prior to the date the Development Consent Order is made.

13. **INTEREST**

13.1 Where any obligation in this Deed is expressed to require RiverOak to pay any Contributions or Contribution, interest at the Interest Rate shall be payable (as applicable).

13.2 Where RiverOak has paid, provided or made available any sum of money (whether by way of a Contribution or otherwise) and the sum or sums have not been applied as required or within the agreed timescale set out in this Deed then the sum or sums to be refunded shall be returned to RiverOak inclusive of interest calculated in accordance with clause 13.1.

14. **LOCAL LAND CHARGES**

14.1 This Deed is a local land charge and shall be registered as such by the District Council.

15. **NOTICE OF WORKS**

15.1 RiverOak shall notify the District Council:-

- 15.1.1 prior to the Commencement Date, of the anticipated date of Commencement of works pursuant to the Development Consent Order (which obligation shall apply again if Commencement Date does not occur on the notified date);
 - 15.1.2 within seven days of the actual Commencement Date;
 - 15.1.3 within two weeks of the day on which the Project is Practically Completed; and
 - 15.1.4 within two weeks of each of the triggers in relation to the development consent obligations as set out in the Schedules to this Deed.
- 15.2 RiverOak shall give written notice to the District Council within five Working Days of RiverOak paying, providing or making available to any third party any Contributions pursuant to this Deed.

16. COMMUNITY INFRASTRUCTURE LEVY

The parties hereby acknowledge and agree that:-

- 16.1 this Deed has been negotiated and agreed on the assumption that liability to CIL does not arise in respect of any of the development authorised by the Development Consent Order because such development is situated in an area for which no charging schedule is in effect on the date of this Deed and no charging schedule is anticipated to be in effect in relation to such development on the day the Development Consent Order is made;
- 16.2 If in determining the DCO the Secretary of State expressly states in the Decision Letter that any one or more of the development consent obligations contained in this Deed:
- 16.2.1 is not a material development consent obligation; or
 - 16.2.2 can be given no weight in determining the granting of the DCO; or
 - 16.2.3 should be dealt with by a requirement imposed upon the DCO; or
 - 16.2.4 does not constitute a reason for granting the DCO in accordance with Regulation 122 of the CIL Regulations; or
 - 16.2.5 fails to satisfy the provisions of Regulation 123 of the CIL Regulations;
- then subject to the provisions of clause 2.9 of this Deed such development consent obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save to the extent set out in the Decision Letter
- 16.3 In the event that in determining the DCO the Secretary of State grants the DCO then if at the date of the grant of the DCO a Charging Schedule has been approved by the District Council and has come

into effect any contribution payable under the terms of this Deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable.

17. VAT

17.1 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the District Council to RiverOak then the District Council shall use reasonable endeavours to recover the VAT in the first instance.

17.2 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the District Council to RiverOak then, subject to the District Council complying with clause 17.1, RiverOak shall pay to the District Council or third party an amount equal to the VAT chargeable in addition to and at the same time as any payment or the provision of any other consideration for such supply upon provision of a valid VAT invoice addressed to RiverOak.

18. APPROVALS

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed by RiverOak or the District Council such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

19. DISTRICT COUNCIL'S POWERS

Nothing in this Deed shall fetter the respective statutory rights, powers or duties of the District Council.

20. GOOD FAITH

The parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

21. RIGHTS OF THIRD PARTIES

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

22. JURISDICTION

22.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

22.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

23. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

AIR QUALITY STATION ZH3

DEFINITIONS AND INTERPRETATION

1. Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:-

Word or Phrase	Meaning
"Air Quality Station ZH3 Contribution"	<p>means the following sums to be Index Linked and used towards the Air Quality Station ZH3 Contribution Purposes:</p> <ul style="list-style-type: none">• <u>Tranche 1</u> - £70,000 (Seventy thousand pounds) Index Linked to be used for the capital cost of an air quality monitoring station;• <u>Tranche 2</u> - £4,000 (Four thousand pounds) Index Linked to be used for the installation of an air quality monitoring station;• <u>Monthly Payment 1</u> - £1,200 (One thousand two hundred pounds) Index Linked per month to be used for the servicing of the air monitoring station to be paid on a monthly basis for the lifetime of the operation of Manston Airport;• <u>Monthly Payment 2</u> – £600 (Six hundred pounds) Index Linked per month to be used in relation to the costs of the diffusion tubes for the air monitoring station as well as putting out and recovering the diffusion tubes, analysis and reporting to be paid on a monthly basis for the lifetime of the operation of Manston Airport; and• <u>Annual Payment</u> - £4,000 (Four thousand pounds) Index Linked per annum to be used for the reporting costs in relation to the air monitoring station to be paid annually for the lifetime of the operation of Manston Airport.
"Air Quality Station ZH3 Contribution Purposes"	<p>means the reinstatement and ongoing operational costs in relation to the continuous monitoring of air quality (NO₂ and NO) at Air Quality Station ZH3 (as shown on the Air Quality Station ZH3 Plan) such works including data examination; maintenance; operation; and a request for ongoing support for passive monitoring via diffusion tubes and receptors (including the monitoring of fine particles PM10 and PM2.5) close to Manston Airport; and</p>

Word or Phrase	Meaning
"Air Quality Station ZH3 Plan"	means the plan attached to this Deed at Annex 3 showing Air Quality Station ZH3 marked as 'Thanet Airport ZH3'

2. RiverOak covenants with the District Council as follows:
 - 2.1 To pay Tranche 1 and Tranche 2 of the Air Quality Station ZH3 Contribution in full to the District Council prior to the coming into Operation of the Project.
 - 2.2 Not to cause permit or allow the Project to come into Operation until Tranche 1 and Tranche 2 of the Air Quality Station ZH3 Contribution has been paid in full to the District Council.
 - 2.3 To pay Monthly Payment 1 and Monthly Payment 2 in full to the District Council for the lifetime of the operation of Manston Airport pursuant to the DCO (unless agreed otherwise in writing with the District Council) on a monthly basis with the first payments to be made at the end of the first month following the installation of Air Quality Station ZH3.
 - 2.4 To pay the Annual Payment of the Air Quality Station ZH3 Contribution in full to the District Council for the lifetime of the operation of Manston Airport pursuant to the DCO (unless agreed otherwise with the District Council) on each anniversary of the installation of Air Quality Station ZH3.

SECOND SCHEDULE

NOISE MONITORING

DEFINITIONS AND INTERPRETATION

1. Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:-

Word or Phrase	Meaning
"Noise Monitoring Stations"	means noise monitoring stations to be located at Manston Airport;
"Noise Monitoring Assessment Contribution"	means the annual payment of £10,000 (ten thousand pounds) Index Linked and used towards the Noise Monitoring Assessment Contribution Purposes; and
"Noise Monitoring Assessment Contribution Purposes"	means an independent assessment of the data from the Noise Monitoring Stations to ensure that provisions of the District Council's Noise Mitigation Plan and the Development Consent Order are being complied with.

2. RiverOak covenants with the District Council as follows:
- 2.1 To agree the exact locations of the Noise Monitoring Stations with the District Council prior to the coming into Operation of the Project.
- 2.2 To provide a report of the data from the Noise Monitoring Stations to the District Council every 12 months unless otherwise agreed in writing with the District Council.
- 2.3 To pay the first annual Noise Monitoring Assessment Contribution to the District Council at the time of the compilation of the first report (pursuant to paragraph 2.2 above).
- 2.4 To pay the annual Noise Monitoring Assessment Contribution to the District Council for the lifetime of the operation of Manston Airport (unless agreed otherwise in writing with the District Council) on each anniversary of the payment of the first annual Noise Monitoring Assessment Contribution.

THIRD SCHEDULE

EDUCATION / TRAINING / RECRUITMENT / PROCUREMENT

DEFINITIONS AND INTERPRETATION

1. Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:-

Word or Phrase	Meaning
"Education & Training Contribution"	<p>means:</p> <ul style="list-style-type: none">• an initial payment of £250,000.00 Index Linked (Two hundred and fifty thousand pounds) ("Initial Payment"); and• an annual payment of Fifty thousand pounds (£50,000.00) to be paid for a period of twenty years commencing on the 1st anniversary of the Initial Payment ("Annual Payment"). <p>such sums to be used for towards those requirements set out in the Education, Employment and Skills Plan; and</p>
"Education, Employment & Skills Plan"	<p>means the Education, Employment and Skills Plan required to be submitted under Requirement 20 of the Development Consent Order which, for the avoidance of doubt, must contain the following:</p> <ul style="list-style-type: none">• chapters addressing:<ul style="list-style-type: none">○ legal compliance;○ reporting procedures; and○ obligations to be placed upon third parties including local educational establishments and bodies;• plans and policy documents including:<ul style="list-style-type: none">○ a local hiring policy;○ an education and skills policy;○ a workplace training policy;• provision for the establishment of a local employment partnership board to include the relevant planning authority and the relevant local education authority and other relevant

Word or Phrase	Meaning
	<p>stakeholders as appropriate, to assist in the delivery of the plans and policies listed above;</p> <ul style="list-style-type: none"> • provision for a process under which the contents of the employment and skills plan is continually reviewed against relevant best practice and any consequent changes are submitted for approval by the Secretary of State; and • the employment and skills plan approved must be implemented in full.

2. RiverOak covenants with the District Council:

2.1 To pay to the District Council the Education & Training Contribution as follows:

2.1.1 the Initial Payment prior to the coming into Operation of the Project.

2.1.2 the Annual Payment on the first anniversary of payment of the Initial Payment and on the following nineteen such anniversaries.

2.2 Not to cause permit or allow the Project to come into Operation unless the Initial Payment has been paid in full to the District Council.

FOURTH SCHEDULE

BIODIVERSITY

DEFINITIONS AND INTERPRETATION

1. Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:-

Word or Phrase	Meaning
"Biodiversity Contribution"	means the sum of £100,000 (One hundred thousand pounds) Index Linked to be used for the Biodiversity Contribution Purposes; and
"Biodiversity Contribution Purposes"	<p>means the mitigation of adverse impacts of Manston Airport on the bird populations in Pegwell Bay with the Biodiversity Contribution split and utilised as follows:</p> <ul style="list-style-type: none">• Tranche 1 - £20,000 Index Linked to be used to support the current (as at the date of this Deed) bird disturbance monitoring study being undertaken by Kent Wildlife Trust;• Tranche 2 - £80,000 Index Linked to be used to develop and support projects directly relevant to species affected by the disturbance caused by the operation of Manston Airport such sum being made available to Kent Wildlife Trust, Thanet District Council and Natural England.
"Community Trust Fund"	means the community trust fund established through the noise mitigation plan required under Requirement 9 of the DCO
"Community Trust Fund Contribution"	means the sum of £50,000 to be paid annually for the lifetime of the operation of Manston Airport

2. RiverOak covenants with the District Council:
- 2.1 to pay Tranche 1 of the Biodiversity Contribution prior to the coming into Operation of the Project and not to cause permit or allow the Project to come into Operation until Tranche 1 the Biodiversity Contribution has been paid to the District Council.
- 2.2 in the event that the bird disturbance monitoring study (in relation to which Tranche 1 of the Biodiversity Contribution is to be used) shows that birds are affected by the

operation of Manston Airport to pay Tranche 2 to the District Council within 1 (one) year of the Project coming into Operation IT BEING AGREED THAT in the event that the bird disturbance monitoring study (in relation to which Tranche 1 of the Biodiversity Contribution is to be used) shows that birds are not affected by the operation of Manston Airport the Owner shall not be obliged to pay Tranche 2 to the District Council.

3. RiverOak covenants with the District Council to pay the first annual Community Trust Fund Contribution to the District Council on the first anniversary of the Project coming into Operation.
4. RiverOak covenants with the District Council to pay the annual Community Trust Fund Contribution to the District Council for the lifetime of the operation of Manston Airport (unless agreed otherwise in writing with the District Council) on each anniversary of the payment of the first annual Community Trust Fund Contribution pursuant to paragraph 3 above.

FIFTH SCHEDULE

CAR PARKING MANAGEMENT STRATEGY

DEFINITIONS AND INTERPRETATION

1. Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:-

Word or Phrase	Meaning
"Controlled Parking Zone"	means the controlled parking zone to be implemented in the locality of Manston Airport further to the Travel Plan;
"CPZ Contribution"	means an annual contribution of £231, 400 (Two hundred and thirty one thousand and four hundred pounds) Index Linked towards the costs of implementing a Controlled Parking Zone to control parking used in relation to Manston Airport for 20 years;
"Car Parking Management Strategy"	means the Car Parking Management Strategy required to be submitted under Requirement 7 of the Development Consent Order;

2. RiverOak covenants with the District Council:

- 2.1 If required to do so by the District Council to pay the initial annual CPZ Contribution to the District Council (or the relevant local parking authority with powers for civil parking enforcement powers pursuant to section 75 of the Traffic Management Act 2004 ("the Local Parking Authority") when the payment becomes due) with 28 days of written notice by the District Council or the Local Parking Authority of implementation of the Controlled Parking Zone.
- 2.2 To pay the remaining nineteen annual payments of the CPZ Contribution to the District Council on the following nineteen anniversaries of payment of the initial annual CPZ Contribution.

SIXTH SCHEDULE

CONFIRMATORY DEED

THIS CONFIRMATORY DEED is made the day of 20[]

BETWEEN:

- (1) THANET DISTRICT COUNCIL of Cecil Street, Margate, Kent, CT9 1XZ (the District Council);
- (2) KENT COUNTY COUNCIL of the County Council Hall, Maidstone, Kent, ME1 1QX (the County Council); and
- (3) RIVEROAK FUELS LIMITED (Company Registration Number 11535715) whose registered office is situated at Calder & Co, 16 Charles II Street, London, SW1Y 4NW (RiverOak).

RECITALS

- (A) The District Council and the County Council are local planning authorities for purposes of the 1990 Act for the area within which the Site (as defined in the Principal Agreement) is situated and by whom the development consent obligations in this Deed are enforceable.
- (B) RiverOak is the freehold owner of [the Remaining Site].
- (C) This Deed is supplemental to the Principal Agreement and is entered into in accordance with Clause 4 of the Principal Agreement for the purpose of ensuring that the obligations, covenants and undertakings contained in the Principal Agreement are binding on RiverOak and the Remaining Site in so far as such obligations remain to be complied with.

NOW THIS DEED WITNESSES as follows:-

INTERPRETATION

1. Save as otherwise expressly stated, the words and expressions used in this Deed shall have the meaning assigned to them in the Principal Agreement:

Word or Phrase	Meaning
"Deed"	Means this Confirmatory Deed
"Remaining Site"	Means that part of the Site which excludes the Jentex Site to which this Deed relates which is registered at HM Land Registry under title numbers: K891199, K803975, K761039, K160548 and K915854 and [shown for the purposes of identification only edged red on the plan annexed at Appendix 1]
"Principal Agreement"	Means the agreement dated [July 2019] made between the District Council, County Council and RiverOak under section 106 of the 1990 Act and other enabling powers.

2. Operation of This Deed of Confirmation

2.1 This Deed and the obligations contained in it are:-

- 2.1.1 development consent obligations made pursuant to section 106 of the 1990 Act and other enabling powers referred to in the Principal Agreement;
- 2.1.2 executed by RiverOak so as to bind its interest in the Remaining Site to the obligations, covenants, agreements and other provisions referred to in the Principal Agreement (in so far as relevant and applicable to the Remaining Site); and
- 2.1.3 enforceable by the District Council and the County Council in accordance with the Principal Agreement against RiverOak and its successors in title to the Remaining Site.

3. RiverOak's Covenants

RiverOak hereby covenants agrees declares and undertakes to perform the obligations contained in the Principal Agreement and to have its interests in the Remaining Site bound by the terms covenants and obligations in the Principal Agreement as if such interest was acquired prior to the date the Principal Agreement was executed by the parties.

4. The District Council and County Council's Covenants

The District Council and the County Council hereby covenant to comply with their respective covenants and obligations contained in the Principal Agreement in so far as they relate to the Remaining Site.

5. Miscellaneous Provisions

5.1 This Deed shall be registered as a local land charge.

5.2 RiverOak shall on completion of this Deed pay the District Council's and County Council's reasonable and proper legal costs incurred in preparing and completing this Deed.

5.3 A person who is not a party to this Deed will not have any rights under or in connection with it by virtue of the Contract (Rights of Third Parties) Act 1999.

5.4 If any provision in this Deed is held to be invalid illegal or unenforceable such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

IN WITNESS of which this Deed has been executed as a deed and delivered on the date stated at the beginning of it.

|

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ANNEX 1

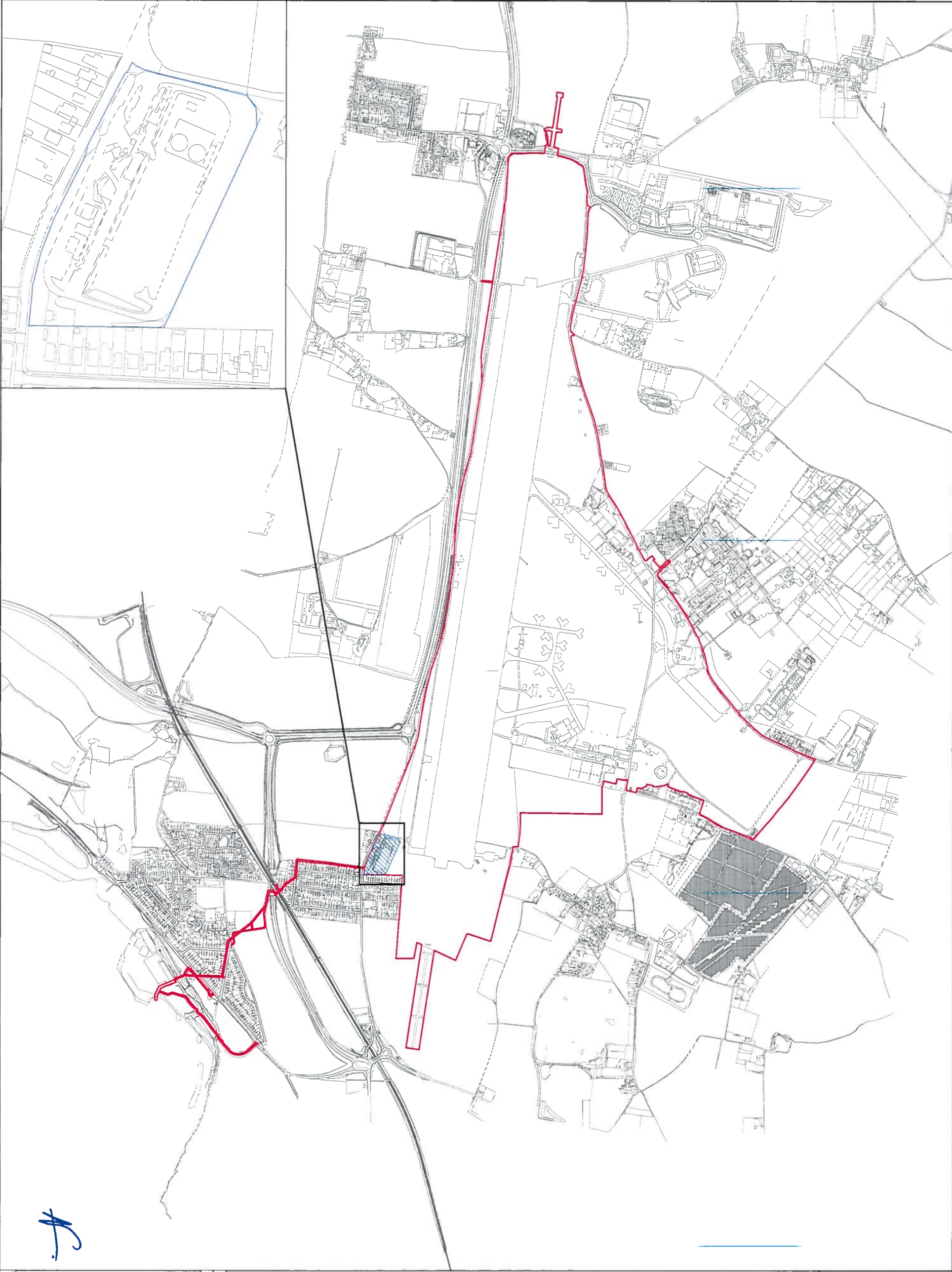
PLAN 1 - PLAN OF THE SITE



Key Plan
Scale: NTS

KEY

- Jentex Site
- Order limits



Notes

- 1. OS Data obtained from amapsite™ May 2017;
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Ordnance Survey 0100031673



Rev	Description	Chd	DL	By	Chd	Appr	Date
P01	FOR INFORMATION						06/07/2018

Project: Manston Airport
Development Consent Order
Title: Site Plan
Sheet 1 of 1
Thanet District Council

Scale	Sheet Size	Sheet No	Scale
1:8,500	A1	1 of 1	FOR INFORMATION

ANNEX 2

PLAN 2 – PLAN OF THE JENTEX SITE

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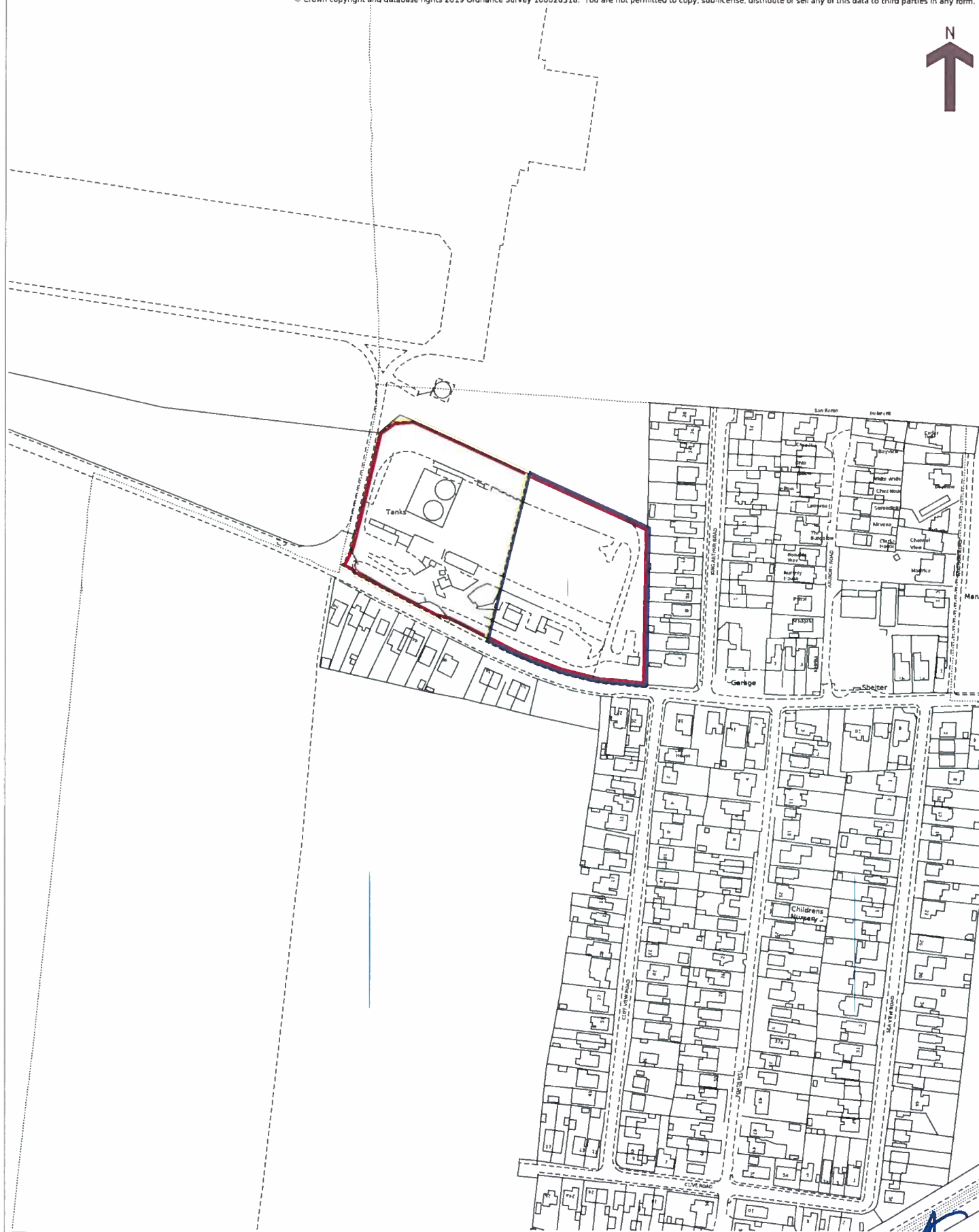
|

HM Land Registry
Official copy of
title plan

Title number **K315361**
Ordnance Survey map reference **TR3465SW**
Scale **1:2500**
Administrative area **Kent : Thanet**

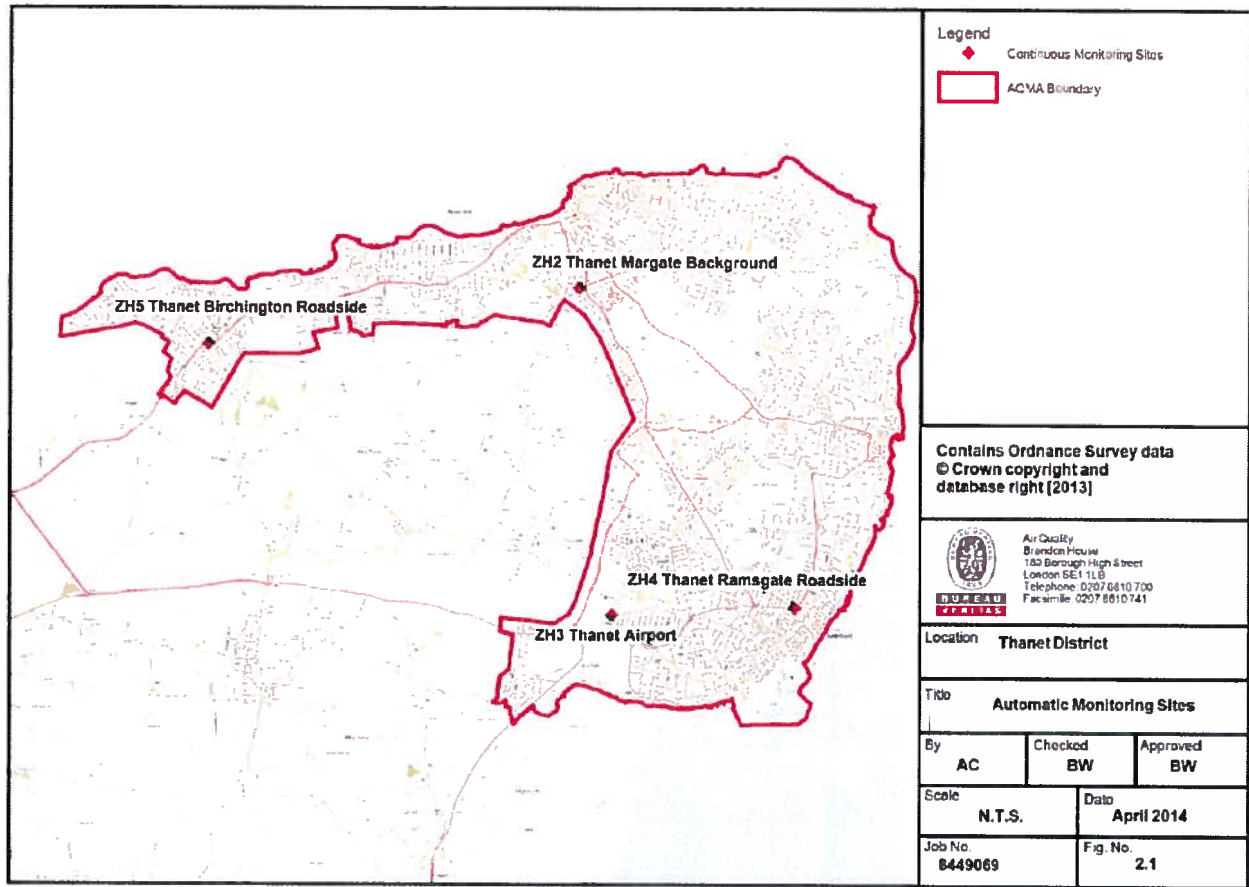


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ANNEX 3

AIR QUALITY ZH3 PLAN



AF

EXECUTED AS A DEED by
RIVEROAK FUELS LIMITED acting
by a Director and Secretary of two
Directors


.....
Director

Witness Signature


.....

Witness Name
(block capitals)

..... JESSICA GRAHAM

Witness Address

..... 50 BROADWAY

LONDON

SW1H 0BZ.