



Meeting note

File reference	TR020002
Status	Final
Author	The Planning Inspectorate
Date	2 November 2017
Meeting with	RiverOak Strategic Partners (RSP)
Venue	Temple Quay House
Attendees	The Planning Inspectorate Gareth Leigh – Infrastructure Planning Lead Richard Hunt – Senior EIA and Land Rights Advisor Nicola Mathiason – Lawyer Richard Price – Case Manager Louise Evans - Case Officer The Applicant Angus Walker (BDB Law) Alex Hallatt (BDB Law) Tony Freudmann (RSP) Niall Lawlor (RSP) George Yerrall (RSP) Rob Grinnell (RSP) Angela Schembri (RSP) Colin Smith (CBRE)
Meeting objectives	Review of the Planning Inspectorate’s comments on the draft application documents
Circulation	All

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on the project webpage on the National Infrastructure Planning website in accordance with s51 of the Planning Act 2008 (PA2008).

Project update

The Applicant confirmed that it was still in the process of finalising its application documents, and that it aimed to formally submit its application to the Inspectorate in early December 2017.

The Applicant received approximately 2200 responses to its consultation, which it was in the process of reviewing, as well as addressing how it would have regard to those responses within its Consultation Report.

The Applicant confirmed that Natural England (NE) and the Environment Agency (EA) were satisfied with its proposals for Pegwell Bay discharge requirements. At the time of the meeting the owners of some of the land at Pegwell Bay was unknown.

The Applicant stated that it had scheduled a meeting with the EA to discuss contamination issues. The EA had concerns regarding the fuel farm and the potential safety issue of the amount of fuel that would be stored there. The EA had asked the Applicant to provide evidence of its consideration of other sites for the purpose of fuel storage.

The Applicant confirmed that its draft Development Consent Order (DCO) would contain a Noise Mitigation Plan and a Noise Quota Count. The Applicant stated that fines would be levied against any infringements to the Noise Quota Count, and a Community Group would be set up who would decide how the money would be spent.

Stone Hill Park

Stone Hill Park (SHP), the current landowners of the site of the Manston Airport site, had written to the Inspectorate to express its concerns regarding the Proposed Development. The Inspectorate advised the Applicant that the concerns raised by SHP should be addressed, as far as possible, within its application.

Draft Documents

The Applicant had previously submitted a suite of draft application documents to the Inspectorate for feedback. The Inspectorate's review is summarised in the appendix to this meeting note.

The Applicant stated that further drafts of application documents may be submitted in more detail for feedback from the Inspectorate prior to the formal submission of the application.

Specific decisions/ follow up required?

- The Inspectorate advised that if the Applicant intended to submit further drafts of application documents for review that sight of the introductory chapters of the Environmental Statement (containing descriptions of the development and methodology) would be helpful.
- The Inspectorate advised the Applicant to refer to its most recently published 'good practice' document': National Grid's 'Guide to the Application'. It would assist the Inspectorate if a comparable document was submitted with the application. It is available to view here:
<https://infrastructure.planninginspectorate.gov.uk/application-process/example-documents/>
- The Applicant agreed to update the Inspectorate about any changes to the anticipated submission date.
- The Inspectorate confirmed that the Applicant would be copied in to its response to the owners of Stone Hill Park, and that all correspondence would be published on its website.

- Following the meeting the Applicant provided clarifications in respect of its position on the 2017 EIA Regulations:
[https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-000897-EIA%20transitional%20provisions%20\[BDB-BDB1.FID9947610\].pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020002/TR020002-000897-EIA%20transitional%20provisions%20[BDB-BDB1.FID9947610].pdf)

Manston Airport

Draft documents review

The following tables comprise the comments made by the Planning Inspectorate about the form and content of the suite of draft application documents offered by the Applicant (RiverOak Strategic Partners Ltd) in October 2017.

The review of draft documents forms part of the Planning Inspectorate's Pre-application service for applicants¹. The commentary included in this document comprises advice issued by the Planning Inspectorate under section 51 of the Planning Act 2008. It does not constitute legal advice upon which the Applicant (or others) should rely.

The suite of draft documents provided by the Applicant included:

1. Draft Development Consent Order (and draft Explanatory Memorandum).
2. Draft Book of Reference (Introduction and Part 1).
3. Draft Land Plans.
4. Draft Statement of Reasons.
5. Draft Funding Statement.
6. Draft Consultation Report.

¹ <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>

1. Draft Development Consent Order (and draft Explanatory Memorandum)

Provision	Comments
Articles	
Article 2	<p>A2(1):</p> <p><i>"authorised development"</i> – Schedule 1 should describe associated development and a reference to associated development should be included in this definition.</p> <p><i>"book of reference"</i> - the words: <i>"under article 39 (certification of plans etc)"</i> should be included.</p> <p><i>"CEMP"</i> - the definition would be better here in A2 rather than in Schedule 2.</p> <p>commencement - definition missing and the phrase <i>"not to commence"</i> is contained in the Requirements.</p> <p>compulsory acquisition notice – the definition is missing.</p> <p>construction traffic management plan – the definition missing.</p> <p><i>"environmental statement"</i>– this should be expanded later if further documents are submitted during examination.</p> <p><i>"limits of deviation"</i> – words to be added at the end of the sentence: <i>"and shown on the works plans"</i>.</p> <p><i>"maintain"</i> - words to be added at the end of the sentence: <i>"provided such works do not give rise to any materially new or materially different environmental effects to those identified in the Environmental Statement, and any derivative of "maintain" must be construed accordingly"</i>.</p> <p><i>"Order land"</i> – should this read <i>"which is within the order limits"</i> with the following words deleted: <i>"limits of land to be acquired or used permanently or temporarily"</i>?</p> <p><i>"public rights of way management plan"</i> - is a definition needed?</p> <p>requirements - is a definition needed?</p> <p>special category land and Crown land plans – definitions are missing.</p>



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	<p>"statutory undertaker" – add in references to s138 (4A) and (4B) of the 2008 Act.</p> <p>traffic regulation order plans – necessary?</p> <p>trees and Hedgerow plans – necessary?</p>
Article 3 (and Requirement 10)	<p>A3(2): What is the purpose of this provision? The Applicant should provide a full explanation and justification.</p> <p>A3(3): The provision allows the undertaker to carry out archaeological investigations, ground conditions and remedial works (among other things) regardless of any other provisions in the order.</p> <p>In contrast, Requirement 10 states that development should not commence until surveys for protected species have been carried out. The two statements are therefore contradictory and could give rise to works being executed that impact protected species.</p>
Article 5	<p>A5(1): <i>"Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land"</i>.</p> <p>Is this a reasonable or normal provision given the expansion of the airport? The phrase <i>"nothing in this order"</i> seems excessively broad and it is unclear what would be additional to construction/ maintenance or operation. The Applicant should provide a full explanation and justification.</p>
Article 6	<p>Provides for lateral deviation (within plan areas) and vertical deviation (to a set height/ depth – not stated). It also allows for deviation in excess of these limits where effects <i>"would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement."</i> Whilst this addresses the environmental effect of changes in theory, it does not really allow the public full consultation on the final scheme to be delivered and could be subject to challenge. Could the additional deviation power be limited to a specific work and given additional justification.</p>
Article 8	<p>A8(1): The words <i>"with the written consent of the Secretary of State"</i> should be included after <i>"the undertaker may"</i>.</p>
Article 9	<p>The works referred to should be identified. The Applicant should confirm if the Highways Authority has any views on this.</p>
Article 10	<p>A10(1): These streets referred to should be identified on the streets, rights of way and access plan at Schedule 9</p>



	and words included in this article that reference that plan; similarly with the diverted/ altered streets.
Article 11	Could the streets referred to be listed in a Schedule?
Article 13	The words " <i>with the consent of the relevant planning authority and after consultation with the highway authority</i> " should be included.
Article 14	A14(1): This should state it is for the purposes of the construction of the authorised development. A14(2): Explanation and justification needed for this. A14(5): Further explanation about implications of this needed to assist Examining Authority. A14(6): Justification for this wording needed as the usual wording included in this article is " <i>at any time prior to the part of the authorised development to which it relates being brought into operational use</i> ".
Article 15	A15(6): This provision prevents the discharge of gravel, soil, other solid substances, oil or matter in suspension. It makes no reference to matter in solution, which given that antifreeze is the main chemical discharge is a potential gap. However, the provision does make reference to Environmental Permit requirements which are likely to address this. It also makes reference to 'reasonably practicable' twice. A15(8)(b): Should the reference to the Water Resources Act 1991 be replaced by a reference to the Environmental Permitting (England and Wales) Regulations 2016?
Article 22	A22(2): Refers to imposition of restrictive covenants. Justification for this and examples of these should be given.
Article 23	A23(3): The Applicant should provide further explanation and justification for the need to clarify that protective works to buildings and the temporary use of land is not caught by the counter notice procedures in Schedule 2A.
Article 23 and Article 24	Explain what changes were made by the Housing and Planning Act 2016 to the Compulsory Purchase (Vesting Declarations) Act 1981 and the effect of reflecting those changes in this article.
Article 28	A28(3): Add in the words at the end of the sentence: " <i>explain the purpose for which entry is taken in respect of land specified under paragraph 1(a)</i> ".
Article 29	The Applicant should note that where a representation is made under section 127 of the 2008 Act and has not



	<p>been withdrawn, the Secretary of State will be unable to authorise article 29 unless satisfied of specified matters set out in section 127.</p> <p>The Secretary of State will also be unable to authorise removal or repositioning of apparatus unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with section 138 of the 2008 Act. The Applicant should provide relevant justification either in the Explanatory Memorandum or Statement of Reasons.</p>
Article 32	<p>It is noted that A34 Trees subject to tree preservation orders is included in the draft order and the Examining Authority may wish to be satisfied that the power in A32 (to fell or lop any tree) does not affect any tree protected by a tree preservation order.</p> <p>It will be for the Examining Authority to consider whether this article should be made more certain by cross reference to a plan identifying the hedgerows to be removed.</p> <p>A32 would also appear to have the effect of disapplying the Hedgerow Regulations 1997 so that important hedgerows can be removed without the need to comply with the procedures in those Regulations. The Applicant should provide further justification.</p>
Article 33	The Applicant should explain why this article is necessary in the circumstances of this project.
Article 35	The Applicant should explain why this article is necessary in the circumstances of this project.
Article 37	The Applicant should explain why this article is necessary in the circumstances of this project.
Schedule 1: Authorised Development	
Works	The Applicant is advised to identify the works which comprise the proposed NSIP and the works which comprise Associated Development.
Schedule 2: Requirements	
General	There are missing requirements dealing with traffic management, surface water drainage, flood risk, air quality monitoring that may be necessary.



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Requirement 3	<p>R3(1): This provides considerable flexibility and therefore a full justification is needed. See paragraph 19.3 of Advice Note 15 – <i>“the tailpiece should not be drafted in a way which allows the LPA to dispense with the need for a scheme altogether. Neither should the tailpiece enable the LPA to vary the scheme”</i>.</p> <p>This comment also applies to other requirements which allow flexibility for the Applicant to vary or depart from the scheme.</p> <p>Why are the amendments to be approved by the Secretary of State rather than the LPA which is the usual position?</p>
Requirement 5	<p>Provides that the Construction Environmental Management Plan (CEMP) must be substantially in accordance with outline CEMP. There is no further information on CEMP content and some obvious omissions from the list of requirements are provisions to control:</p> <ul style="list-style-type: none">• Archaeological impact eg watching brief/ written scheme of investigation.• Preventative measures relating to contamination/ groundwater contamination.• Marine pollution controls relating to the discharge to Pegwell Bay.• Lighting controls during construction/ operation.
Requirement 8	<p>R8(2): Reference is made to use of appropriate British Standards or other recognised codes of good practice. This is somewhat vague in terms of the actual approach that will be taken and the preference would be to refer to specific standards.</p> <p>R8 should also say <i>“the landscaping scheme must reflect the mitigation strategy”</i> or similar wording.</p>
Requirements 6, 8, 9 and 10	<p>These Requirements all refer to approval in writing by the Secretary of State (SoS), following consultation with the relevant planning authority. The preference would be for approval from the relevant planning authority, unless submitted as part of the DCO in outline eg outline approval from SoS then detailed approval from relevant planning authority.</p>
Explanatory Memorandum	<p>The Applicant should explain the changes as a result of the Housing and Planning Act 2016.</p>

2. Draft Book of Reference (Introduction and Part 1)

Location	Comments
Introduction	The section 'Guide to the DCO documentation' does not belong in the Book of Reference, which has a prescribed format. If the Applicant intends to provide this information as part of the application (and the Planning Inspectorate acknowledges that it may be useful to do so), then it would sit more naturally as an appendix in to the Statement of Reasons, or as a standalone document.
Part 1	There is no correlation between the numbering of plots in the draft Book of Reference and plots numbered on the Land Plan. A substantive cross-check therefore could not be undertaken.
Part 1	It would assist the examination of the application for a column to be added to the Book of Reference which identifies the Articles in the draft DCO that apply to each plot. See Annex D of Planning Act 2008: guidance related to procedures for the compulsory acquisition of land (DCLG, 2013) ² .

3. Draft Land Plans

Location	Comments
General	There is no correlation between the numbering of plots in the Book of Reference and plots numbered on the Land Plan. A substantive cross-check therefore could not be undertaken.
General	All sheets comprising the Land Plan have the same reference number, and cannot therefore be uniquely identified. This should be addressed before the application is submitted.

² <https://www.gov.uk/government/publications/planning-act-2008-procedures-for-the-compulsory-acquisition-of-land>

4. Draft Statement of Reasons

Location	Comments
Annex	<p>It would assist the examination of the application if the annex 'Status of landowner negotiations' could be provided as a standalone application document (with appropriate explanatory introduction). This will enable the table to be updated in the course of the examination without necessitating the production of multiple iterations of the Statement of Reasons.</p> <p>The usefulness of the document could be enhanced by restructuring the table to address each plot separately; to make explicit the nature of each interest; and to record whether the interest is professionally represented, and by whom etc. The table could also be primed to acknowledge/ summarise any Relevant Representations made by any of the Affected Persons.</p>

5. Draft Funding Statement

Location	Comments
General	No substantive comments on make on the content provided at this stage.

6. Draft Consultation Report

Location	Comments
Section 3	It would be useful for an explanation here of the change in applicant from RiverOak Investment Corporation to RiverOak Strategic Partners, and to acknowledge that non-statutory consultation was undertaken by the former.
Section 6	This section could usefully cross-refer to the explanatory text suggested above.



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Para 7.3	This paragraph acknowledges the " <i>error with posting</i> " in respect of the Applicant's s46 notice. The Planning Inspectorate will take a view this matter if/ when an application is formally submitted.
General	There are no appendices provided with the draft Consultation Report which so the Planning Inspectorate is unable to corroborate many of the assertions made in the main body of the document.