



*Review of CPO  
Indemnity  
Partner Process  
for Manston  
Airport*  
Final Report  
22 June 2015

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# List of terms and abbreviations

The table below includes a description of the defined terms and abbreviations used within this report.

<b>Term</b>	<b>Description</b>
CPO	Compulsory Purchase Order
DfT	Department for Transport
Disclosure Request	PwC's request for additional information provided to DfT in April 2015
Falcon	Falcon Consultancy
GAAP	Generally Accepted Accounting Principles
Manston	Manston Airport
Partner Identification Process	The process undertaken by Thanet District Council to identify a suitable CPO indemnity partner
PIN	Prior Information Notice
Provided Documents	The contents of the original dossiers provided by Thanet District Council and RiverOak Investment Corp., LLC and additional information provided in response to the Disclosure Request
"PwC" or "we"	PricewaterhouseCoopers LLP
Review Timeframe	The period of time (18 September 2014 to 18 November 2014) where Thanet District Council were requesting information from RiverOak Investment Corp., LLC and assessing it in the context of a due diligence process
RfP	RM5340 SO8925 – Provision of consultancy for a due diligence review in assessing a potential indemnity partner – Manston Airport
RiverOak	RiverOak Investment Corp., LLC
RO	Reference prefixing RiverOak document submissions as part of their original Dossier
SMT Document	Soft Market Testing Document
TDC or "The Council"	Thanet District Council
TH	Reference prefixing TDC document submissions as part of their original Dossier
UK GAAP	Generally Accepted Accounting Practice in the UK
WLG	Wragge Lawrence Graham & Co (RiverOak Investment Corp., LLC's legal advisors in the UK)

# 1. Introduction

## 1.1. Introduction

By a letter dated 18 March 2015 (the “Appointment Letter”), PricewaterhouseCoopers LLP (“PwC” or “we”) was appointed by the Department for Transport (“DfT”) to provide consultancy for a due diligence review in assessing a potential indemnity partner in relation to the Compulsory Purchase of the Manston Airport site (“Manston” or “Manston Airport”).

This report sets out a summary of the work that we have performed and the findings and conclusions arising from our work.

## 1.2. Disclaimer

The report has been prepared for DfT and solely for the purpose and on the terms agreed with DfT. While, having considered its contents, DfT may decide to publish it, we accept no liability, including for negligence, to anyone other than DfT in connection with this report.

## 1.3. Background

Having previously operated as a military and then commercial airport, the privately-owned Manston Airport was closed to commercial aviation operations in May 2014 due to a prolonged decline in passenger and cargo traffic, which resulted in poor financial performance.<sup>1</sup> While the current majority shareholders have expressed their intention to redevelop the site for commercial and residential use, we understand that there has been strong interest from the local community and local Members of Parliament to re-open the site as a commercial airport (citing the economic benefits to the surrounding region).<sup>2</sup>

As part of its assessment of the future viability of Manston Airport, we understand that Thanet District Council (“TDC” or “the Council”) commissioned a viability report from an organisation of independent aviation experts, Falcon Consultancy (“Falcon”). The findings from the work performed by Falcon were provided to the Council in a report dated 16 July 2014 (the “Falcon Report”).

Our scope of work has not included a review or assessment of the findings of the Falcon Report. However, we understand that the Falcon Report concluded that commercial aviation operations at Manston were a viable option, provided that a suitable long-term operating model for Manston was developed.<sup>3</sup>

We understand that the Falcon Report itself did not propose or suggest any such long-term operating model for Manston. Further, we understand that the Falcon Report commissioned only considered the potential commercial viability of Manston Airport and did not, for example, consider other aspects of viability such as environmental viability and impact.<sup>4</sup>

In-light of the conclusions set out in the Falcon Report, the Council made a decision to assess the option of acquiring Manston from its current owners under the Compulsory Purchase Powers assigned to the Council under section 226 of the Town and Country Planning Act 1990 and the Circular 06/2004.<sup>5</sup>

As part of this assessment, the Council decided that the potential compulsory purchase of Manston could only proceed if a suitable operating partner could be identified for Manston and such a partner could indemnify the Council from the costs of issuing a Compulsory Purchase Order (“CPO”).

In order to identify suitable potential partners for this process, the Council issued a Prior Information Notice (“PIN”) on 9 August 2014 followed by a Soft Market Testing document issued on 13 August 2014. This exercise was undertaken to identify a suitable CPO indemnity partner and to identify if RiverOak were a suitable party to subsequently operate Manston Airport (the “Partner Identification Process”).

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<sup>1</sup> Financial statements for Kent Airport Limited show losses of £5.4million for year ended 31 March 2014 (2013: £3.6million loss).

<sup>2</sup> See the RfP.

<sup>3</sup> See the RfP.

<sup>4</sup> See the RfP.

<sup>5</sup> Included within TDC’s legal advice provided on 10 December 2014. See TH03 and RO25.

Four potential counterparties requested the questionnaire and we understand that two submitted returns. One of the two parties did not take up the subsequent offer of a meeting with TDC and did not provide any response to questions provided to them by TDC. The party was therefore considered not to have expressed an interest in being the Council's indemnity partner. On this basis only one company, RiverOak Investment Corp., LLC ("RiverOak") responded to the Council's offer for a meeting and was the only party to progress through to the Due Diligence stage.<sup>6</sup> Accordingly, upon receiving RiverOak's response to certain questions from TDC on 29 August 2014, the Council conducted due diligence on RiverOak from 18 September 2014 to 18 November 2014.

Following completion of this due diligence exercise, the Council announced on 11 December 2014 that, in its opinion, RiverOak did not have the necessary financial capacity to support the Council's plan for Manston and that RiverOak's business plan was insufficient. It was concluded that the Council would not take forward the Partner Identification Process any further at this time.<sup>7</sup>

#### **1.4. Overview of the conclusions reached by the Council from its Partner Identification Process**

The Council released their final report on 11 December 2014, outlining their conclusions on the soft market assessment. We note that at the time this report was released, TDC and RiverOak had entered into a confidentiality agreement and the latter were, therefore, referred to as "Party A" throughout the document.<sup>8</sup> TDC reached the following conclusions in their final report with respect to RiverOak's submission:<sup>9</sup>

- **Section 5.2 (Party A [CPO Process]):** *"Party A proposes to approach the CPO acquisition a stage at a time. This would be inconsistent with the requirements of Circular 6/2004, sections 20 and 21."*
- **Section 6.1 (Accounting and Investor Information):** *"The information provided by Party A does not demonstrate that it has the appropriate financial status or has committed investors: to enable it – if required – to acquire the site by private treaty prior to a CPO process being commenced; to fund the preparation of a robust case for CPO acquisition; to meet the expected compensation costs; to develop the airport and operate it viably in the long-term."*
- **Sections 7.1 and 7.2 (Business Plan):** *"The Business Plan provided by Party A is a short-term (5-year) business plan and the scope is insufficient in the light of the objective set out in 3.1 [i.e. 'a viable airport comes into sustainable long-term operation']. The plan does not provide for the CPO compensation cost, and this could be substantial. The business assumptions appear to be optimistic as regards revenues and the known costs of the operation... A 20 year business plan is required for a project of this scale to demonstrate long-term viability, and that the proposed operation is sustainable in the long term. Unless these requirements can be clearly demonstrated there is no prospect of achieving a CPO."*
- **Sections 8.1 and 8.2 (Indemnity):** *"The approach suggested by Party A is that funds would be transferred in tranches to a UK account managed by UK solicitors. The Council could then incur CPO costs to the value of funds in the account. The Council would not be obliged to proceed with further work until new funds were paid into the account by Party A. The Council is not seeking a CPO on a speculative basis and would not wish to put itself in a position whereby full achievement and vesting of the site would depend on the partner's ability to generate investment in the project."*

The Council, in concluding each of the above sections, stated that RiverOak (or "Party A") as "an indemnity partner would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council." In Section 10.1 of this document, they stated their final recommendation "that no further action be taken at the present time on a CPO of Manston Airport, on the basis that the Council has not identified

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<sup>6</sup> See TH23 and RO22.

<sup>7</sup> See TH23 and RO22.

<sup>8</sup> TDC provided the decision document to RiverOak on 3 December 2014, in advance of the council meeting on 11 December 2014. RiverOak sent a letter to TDC on 6 December 2014 outlining their views on the decision, which they considered to be unfair, and stated that they intended to publish the said letter on their website. As part of TDC's response to the Disclosure Request, they provided additional information indicating that RiverOak had issued a statement regarding the process and the findings of the report. However, at the time of the final report, we understand that the confidentiality agreement signed by TDC and RiverOak was still in effect and therefore they have been referred to as Party A throughout. In the Disclosure Request, we asked TDC for clarification regarding whether they considered this to be a breach of the confidentiality agreement. We have not been provided with any evidence regarding this point.

<sup>9</sup> See TH23 and RO22.

*any suitable expressions of interest that fulfil the requirements of the Council for a CPO indemnity partner and that it does not have the financial resources to pursue a CPO in its own right.”*

### **1.5. Terms of Reference**

The service requirements provided to us in conjunction with the Appointment Letter instructed PwC to perform the following reviews:

- (1) A review of a dossier of papers provided by TDC to the DfT on 13 January 2015 covering the due diligence process that TDC undertook in assessing RiverOak as a potential indemnity partner in a Compulsory Purchase of the site of Manston Airport (the “TDC Dossier”). A list of the documentation included in the TDC Dossier is set out in Appendix A.
- (2) A review of a dossier of papers provided by RiverOak to the DfT in December 2014, comprising RiverOak’s financial and other information previously provided to TDC to support their indemnity partner bid, as well as further information provided by RiverOak to TDC on 18 February 2015 and 25 February 2015 (the “RiverOak Dossier”). A list of the documents included in the RiverOak Dossier is set out in Appendix A.

Based on these reviews, we have been instructed to address the following three requirements (the “Requirements”):

Requirement	What we have been instructed to address therein
1	<i>Any key considerations that TDC could have taken into account at the time, based on a review of the information provided to TDC (at the time).</i>
2	<i>Further key considerations that TDC may wish to take into account in any further CPO review based on a review of the additional information provided by RiverOak to the DfT.</i>
3	<i>On the basis of the findings from the above, the consultant should also provide advice on what, if any, further work TDC may wish to undertake to help strengthen findings from any future due diligence exercise.</i>

Source: RfP

As set out in our Terms of Reference, the scope of our work has not included the provision of any opinion on whether TDC’s due diligence was sufficient, nor on the reasonableness or otherwise of TDC’s conclusions. Further, our scope of work has not included any consideration of the viability (financial or otherwise) of Manston Airport, nor of the potential CPO process which was considered by TDC. Accordingly, this report does not express any opinions on these matters.

Our findings and conclusions in respect of the Requirements are set out in this report.

### **1.6. Our approach**

#### **General principles**

As directed by our Appointment Letter, our primary focus throughout our work has been a review of the information contained in the TDC Dossier and the RiverOak Dossier.

The TDC Dossier included five bundles of documents, which we have broken down into 23 individual documents. As set out in Appendix A, we have assigned a unique reference number to each of these individual documents, in the form of TH[xx], with TH01, for example, being the first document included in our list.

The RiverOak Dossier included 31 documents. As set out in Appendix A, we have assigned a unique reference number to each of these documents, in the form of RO[xx], with RO01, for example, being the first document included in our list.

We have reviewed the dossiers provided to us to identify unique and common documents included in both. We set out in Appendix B a copy of a Venn Diagram that we have prepared to summarise the unique and common documents included in the TDC and RiverOak Dossiers.

As shown in Appendix B, of the 31 documents included in the RiverOak Dossier, 11 of these documents were also included in the TDC Dossier.

Our initial review of the TDC and RiverOak Dossiers identified a number of references to documents and other information which did not appear to have been included in the two dossiers provided to us. In light of this initial review and in order to allow us to understand the information that was available to TDC, we issued additional document disclosure requests to DfT on 16 April 2015 to forward to both TDC and RiverOak (the “Disclosure Request”).

In response to this request, we received additional documentation relating to some, but not all, of the questions and clarifications included within the Disclosure Request. This information was provided to DfT by TDC on Friday 15 May 2015, and forwarded to us on Monday 18 May 2015. Where this information was deemed to be relevant to our scope of work, we have sought to reflect this additional information in our report. We note that RiverOak did not provide any response to the Disclosure Request.

Based on the references to meetings and other communications that we have identified, we have prepared a timeline of key dates relevant to the Partner Identification Process. A copy of this timeline is set out in Appendix C. We set out below details of the approach that we have adopted, based on the information included in the TDC and RiverOak Dossiers, in order to address the Requirements.

Finally, we would note that the review performed by TDC was intended to be a soft-marketing exercise in order to identify a potential indemnity partner for any future CPO process, as well as for the future operation of Manston Airport. It did not constitute a full review of the potential viability of any CPO process. Our understanding of the requirements has therefore been framed on this basis.

### **1.6.1. Requirement One**

Under Requirement One, we have been instructed to address the following:

***Any key considerations that TDC could have taken into account at the time, based on a review of the information provided to TDC (at the time).***

We set out details of the work we have performed in responding to this requirement in Sections 3, 4, 5 and 6 of this report.

In responding to Requirement One, we have assumed that the term “*key considerations*” refers to considerations in respect of the Partner Identification Process which was undertaken by TDC. In order to provide a context to these “*key considerations*” we first set out our understanding of the framework under which TDC sought to assess the response during the Partner Identification Process (the “Review Framework”).

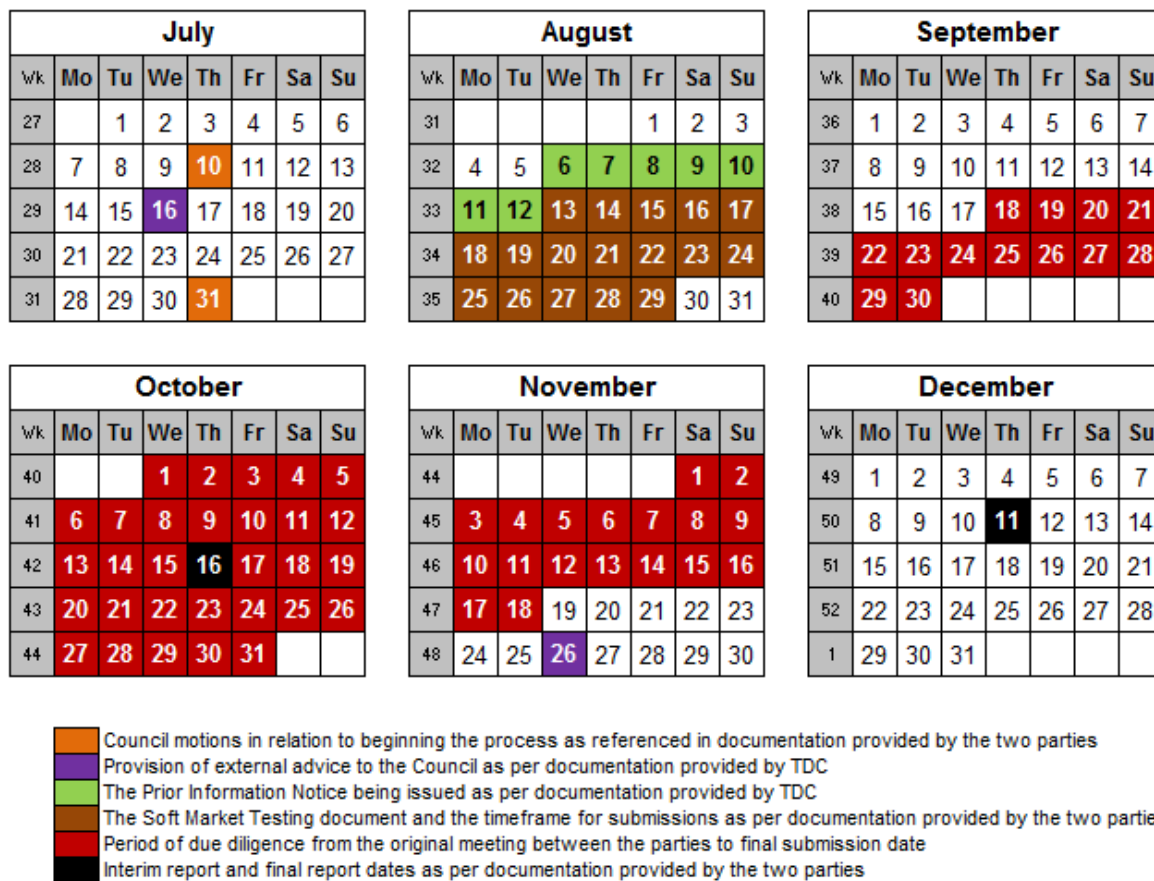
We then summarise the information requests issued by TDC to RiverOak (the “Information Requested”) in order to obtain the information it required under the Review Framework. We next review the information that we are aware of which was provided to TDC in response to these requests. Based on this we assess the key considerations, in light of the Review Framework, which TDC could have taken into account given this information.

In assessing the information provided to TDC and the key considerations which it could have taken into account under the Review Framework, we have only reviewed the information provided to TDC between the issuance of the PIN on 9 August 2014 and the announcement of TDC’s final decision on 11 December 2014 (the “Review Timeframe”).

Figure 1.1 summarises the key dates and periods covered by the Review Timeframe.



**Figure 1.1 – Overview of key dates and periods covered by the Review Timeframe (Year: 2014)**



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It has not been possible for us to establish the full range of information which was provided to TDC during the Review Timeframe. In responding to this requirement, we have solely relied upon the information included in the TDC and RiverOak Dossiers and the additional documents provided to us in response to the Disclosure Request (together, the “Provided Documents”). For the purpose of this report, we have therefore assumed that the Provided Documents represent the “...information provided to TDC (at the time)”.

It is possible that additional information not included in the Provided Documents was available to TDC during the Review Timeframe. We reserve the right to amend the views and opinions set out in this report should we be made aware of any additional information or documentation that exists beyond that included in the Provided Documents.

### 1.6.2. Requirement Two

Under Requirement Two, we have been instructed to address the following:

**Further key considerations that TDC may wish to take into account in any further CPO review, based on a review of the additional information provided by RiverOak to the DfT.**

We set out details of the work that we have performed in responding to this requirement in Section 7 of this report.

In responding to this requirement, we have assumed that the additional information provided by RiverOak to the DfT consists of the unique documents included in the RiverOak Dossier (as shown in the Venn Diagram attached in Appendix B).

<sup>10</sup> In response to one of the clarification questions raised by PwC as part of the Disclosure Request, TDC provided additional information relating to the issuance of the PIN and the SMT Document. We have noted that the deadline was extended for additional parties to register their interest and complete the SMT Document. However, we do not believe it bears any relevance to the requirements and, therefore, this information has been: a) excluded from the calendar provided; and b) excluded from the narrative discussion itself.

With regards to the “*...further key considerations that TDC may wish to take into account in any further CPO review*”, we note that the process which TDC had undertaken during the Review Timeframe does not appear to have included a full review of the potential viability of any CPO process. As set out above, the review performed by TDC during the Review Timeframe was intended to be a soft-marketing exercise in order to identify a potential indemnity partner for any future CPO process, as well as for the future operation of Manston Airport.

In the context of responding to Requirement Two, we have therefore assumed that the “*key considerations*” that we have been instructed to consider relate to the key considerations in respect of TDC’s soft-marketing process to identify a potential CPO indemnity partner.

### **1.6.3. Requirement Three**

Under Requirement Three, we have been instructed to address the following:

***On the basis of the findings from the above, the consultant should also provide advice on what, if any, further work TDC may wish to undertake to help strengthen findings from any future due diligence exercise.***

We set out details of the work that we have performed in responding to this requirement in Section 8 of this report.

In responding to this requirement, we understand that the term “*future due diligence exercise*” refers to any future process that TDC may undertake in order to identify a potential CPO indemnity partner for the redevelopment of Manston Airport. Accordingly, our work has focused on addressing this process and not considering any related processes, such as further due diligence which may be required to establish the overall viability of Manston Airport, or any related CPO process.

## 2. Executive summary

### 2.1. Introduction

In this section, we set out a summary of the key findings arising from our work in response to the Requirements. Given the summarised nature of this section of our report, it should be read and considered in conjunction with the rest of our report, which provides more detail and context to our key findings.

Based on the RfP, we have been instructed to address the following three requirements (the “Requirements”):

Requirement	What we have been instructed to address therein
1	<i>Any key considerations that TDC could have taken into account at the time, based on a review of the information provided to TDC (at the time).</i>
2	<i>Further key considerations that TDC may wish to take into account in any further CPO review based on a review of the additional information provided by RiverOak to the DfT.</i>
3	<i>On the basis of the findings from the above, the consultant should also provide advice on what, if any, further work TDC may wish to undertake to help strengthen findings from any future due diligence exercise.</i>

Source: RfP

The key findings arising from our work in relation to the above will be summarised in Sections 2.2, 2.3 and 2.4 below.

### 2.2. Requirement One

As noted within **Section 1.4: Overview of the conclusions reached by the Council from its Partner Identification Process**, TDC believed RiverOak had not demonstrated a viable interest on the following points:

- *Section 5.2 – Approach to the CPO;*
- *Section 6.1 - Accounting and Investor Information;*
- *Sections 7.1 and 7.2 - Business Plan; and*
- *Sections 8.1 and 8.2 – Indemnity.<sup>11</sup>*

In our response to Requirement One, we have considered a number of different factors which the Council have considered in reaching their conclusions on the above. We have approached our work under the following sub-headings:

Information received by the Council during the Partner Identification Process	Overview of the Council’s findings from the Partner Identification Process
<ul style="list-style-type: none"> <li>• The Council’s application of ‘Section 2.4.3: Financial information; last 3 years financial accounts’ during the due diligence process</li> <li>• The Council’s attempts to verify funding levels and the proposed funding structure through which TDC would be indemnified</li> <li>• RiverOak’s financial model, cash flow projections and wider business plan</li> <li>• Evidencing the level of funding and prospective investors</li> <li>• The credit check undertaken in the context of the Due Diligence Protocol and factors the Council may have considered at the time</li> </ul>	<ul style="list-style-type: none"> <li>• The process for informing the final decision document</li> <li>• Evidencing external advice sought in the final decision document</li> <li>• Underpinning the process and the final decision document with appropriate frameworks previously provided to respondents</li> <li>• The preparation and contents of the Soft Market Testing document with respect to framing the information gathering exercise</li> </ul>

Each of these sub-headings will now be considered in turn and the key recommendations outlined.

<sup>11</sup> See TH23 and RO22.

### **2.2.1. Information received by the Council during the Partner Identification Process**

#### *The Council's application of 'Section 2.4.3: Financial information; last 3 years financial accounts' during the due diligence process (relates to Section 6.1 – Accounting and Investor Information)*

The Council took a rigid interpretation of 'Section 2.4.3 Financial information; last 3 years financial accounts' of the Due Diligence Protocol. Given this interpretation, it would appear that RiverOak would always have struggled to demonstrate a viable interest on this point, since they do not prepare financial statements for all entities within the group and have not done so historically. We, therefore, note the following key considerations the Council may have taken into account at the time which may have provided an alternative mechanism by which comfort over their historic financial performance may have been derived:

- External expert advice on the disclosure requirements in Delaware and their comparability to United Kingdom Generally Accepted Accounting Practices ("UK GAAP")<sup>12</sup>;
- Specifically requested that the audited accounts, and the combined balance sheet, be presented using UK GAAP disclosures for comparable purposes;
- Sought clarification from RiverOak regarding their ability or willingness to indemnify the Council against the costs pertaining to the above input from reputable and independent third parties; and
- Have made it explicit to RiverOak at the beginning of the process that the provision of this information was considered to be fundamental and that failure to comply would likely lead to the Council concluding that they did not express a viable interest.

However, we note that should the Council have undertaken such alternative steps, these may have been inconsistent with the past approach taken by the Council. If the Council had adhered to the principles of the Due Diligence Protocol in previous procurement exercises, any alternative could be considered to set a precedent from which the Council could not be seen to deviate. Therefore, the Council could:

- Have sought external legal counsel on the rigidity with which they must adhere to the Due Diligence Protocol; and
- Have sought further external legal counsel on the extent to which, if any, they may have deviated from the said protocol and what information, if any, may be considered relevant or sufficient for obtaining comfort over the financial aspect of the due diligence.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

#### *The Council's attempts to verify funding levels and the proposed funding structure through which TDC would be indemnified (relates to Section 6.1 – Accounting and Investor Information)*

According to the final decision document of 11 December 2014, the Council were not satisfied with the evidence of funding provided by RiverOak or the indemnification procedures which they proposed to enter into with TDC.<sup>13</sup> Therefore, in addition to the procedures undertaken by the Council, we have noted the following additional key considerations which the Council could have taken into account at the time. The Council:

- Could have asked RiverOak to provide a letter of authorisation to the bank and contacted them directly to provide confirmation of the total funds in RiverOak's account as at a particular date<sup>14</sup>;
- Could have asked for bank statements to demonstrate historic levels of liquid cash on hand held with the bank;

<sup>12</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that they "did contact a number of the top accountancy firms for assistance but requests were declined". PwC has not been provided with any evidence of these requests or any responses the Council may have received from accountancy firms regarding such approaches for this work.

<sup>13</sup> Final decision document of 11 December 2014; Sections 6.0 and 8.0. See TH23 and RO22.

<sup>14</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that "RO provided a letter from their bank and the Council independently contacted the said institution for independent confirmation that the communication had been generated by them." PwC has not been provided with any evidence of this correspondence with the bank or any responses the Council may have received related to this matter.

- Could have explored alternative funding mechanisms beyond an escrow account which the Council may have been satisfied with, or sought to obtain alternative guarantees regarding the depositing of relevant funds in a UK bank account<sup>15</sup>;
- Could have provided more detail to RiverOak regarding why they (TDC) required a more detailed estimate of the potential level of CPO compensation payable;
- Could have asked for evidence of any preliminary negotiations or otherwise which RiverOak had undertaken with any lending or banking institution with respect to obtaining sources of funding for the Manston project<sup>16</sup>; and
- Could have provided a more explicit list of parameters against which TDC would be appraising the level of funding required or against which TDC would be appraising the sufficiency of the funding proposed.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

*RiverOak's financial model, cash flow projections and wider business plan (relates to Sections 7.1 and 7.2 – Business Plan)*

According to the final decision document of 11 December 2014, the Council were not satisfied with the depth or scope of the business plan provided during the due diligence period. The Council's view, as expanded in the decision document, states that "...[it is] a short term (5-year) business plan and the scope is insufficient in light of the objective... [the business plan] does not provide for the CPO compensation cost... the business assumptions appear to be optimistic as regards revenues and the known costs of operation."<sup>17</sup>

We also note from our own review that there is no explicit cross-reference between the contents of the business plan and the four key areas of enquiry included within the PIN. Therefore, in addition to the procedures undertaken by the Council, we have noted the following key considerations which the Council may have taken into account at the time:

- Could have explicitly asked RiverOak to provide a business plan which specifically addressed the four key areas of enquiry included with the PIN;
- Could have requested the key assumptions underpinning the business plan and sought external aviation expert advice to determine the reasonableness of the underlying assumptions and therefore obtained an external, independent judgement on the commercial viability of the business plan;
- Could have sought specific clarification from RiverOak in relation to how the business plan addressed key headings within the Due Diligence Protocol including Corporate Image, Social Responsibility and Environmental Responsibility; and
- On the basis of the above points, considered how to critically challenge and audit RiverOak's business plan to provide greater comfort over its robustness and therefore the medium and long-term viability of the plan itself.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

*Evidencing the level of funding and prospective investors (relates to Section 6.1 – Accounting and Investor Information and Sections 8.1 and 8.2 - Indemnity)*

According to the final decision document of 11 December 2014, the Council were not satisfied with the evidence provided to substantiate the level of funding available and the level of commitment of investors. The said document states "the information provided... does not demonstrate that it [RiverOak] has the appropriate financial status or has committed investors: to enable it – if required – to acquire the site by private treaty

<sup>15</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that "there were a number of discussions with RO that gave them the opportunity to propose other options." PwC has not received any evidence of these discussions or any outcomes arising therefrom.

<sup>16</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that this "information was requested." PwC has not been provided with any evidence of this request or any response provided in relation to this request.

<sup>17</sup> Final decision document of 11 December 2014; Section 7.0. See TH23 and RO22.

*prior to a CPO process being commenced; to fund the preparation of a robust case for CPO acquisition; to meet the expected compensation costs; to develop the airport and operate it viably in the long-term.”*

We have not been provided with any evidence from either party (that is, TDC or RiverOak) as to which information pertaining to RiverOak’s investors was provided to TDC. Therefore, in addition to the procedures undertaken by the Council, we have noted the following additional key considerations which the Council may have taken into account at the time. The Council could:

- Have sought clarification from independent Counsel regarding the confidentiality and/or privacy of this information and whether it would be appropriate for a private equity fund to disclose such information;
- Have sought clarification from independent Counsel regarding the legal situation in the United States with respect to the privacy and/or confidentiality, specific to the States in which the investors and/or company were located, and whether it would be appropriate for a private equity fund to disclose such information; and
- Have discussed the process with RiverOak and Wragge Lawrence Graham & Co to provide details of the criteria upon which their submission would be judged, specific to the Due Diligence Protocol and the contents therein, to determine a disclosure mechanism that may have satisfied both parties.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

*The credit check undertaken in the context of the Due Diligence Protocol and factors the Council may have considered at the time (relates to Sections 7.1 and 7.2 – Business Plan)*

The Council were required, under section 2.4.4 of the Due Diligence Protocol, to undertake a credit check of RiverOak. The credit check undertaken returned a number of zero balances. We have not been provided with any evidence that shows the Council’s conclusions of the credit check, or any actions arising therefrom.

In addition to the work already performed, the Council could have undertaken the following:

- Seeking additional credit checks from an alternative source to provide further information on the financial status of RiverOak<sup>18</sup>;
- Seeking external advice on the information to obtain and/or on what was returned through the Council’s own credit check and whether such information can be obtained from public sources in a United States legal domain<sup>19</sup>; and
- Enquiring of RiverOak whether they would be prepared to indemnify the Council against the costs of a credit check or a more thorough financial due diligence process being undertaken by an independent third party.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

### ***2.2.2. Overview of the Council’s findings from the Partner Identification Process***

Following the information gathering exercise undertaken between 18 September 2014 and 18 November 2014, a final decision document was prepared for 11 December 2014. We have noted the following points with respect to the preparation process and the content of this document.

#### ***The process for informing the final decision document***

The final decision document should effectively be built upon the two publicly available documents available in the PIN and the Due Diligence Protocol. On the basis of the four key areas of enquiry included within the former,

<sup>18</sup> DfT provided TDC’s response to the final draft of this report on 18 June 2015. The Council stated that *“TDC has an existing contract with our current supplier for Credit Checks. However, we independently searched Companies House for available information which provided links to the USA and companies with Delaware registrations but limited information was available. In addition we went to the United States Securities and Exchange Commission.”* PwC has not been provided with any evidence of these credit checks or the findings the Council received therefrom.

<sup>19</sup> DfT provided TDC’s response to the final draft of this report on 18 June 2015. The Council stated that *“[TDC] contacted a number of large accountancy firms to assist. However, we were unable to find any that wanted to take on the work.”* PwC has not been provided with any evidence of these requests or any responses the Council may have received from such firms rejecting the work.

and in the context of the requirements of the latter, the Council should have provided a detailed body of evidence on ‘Step 3 – analyse the information gathered’ using the PIN (Section 3.3) and the Due Diligence Protocol (Section 3.2) themselves as a framework; that is, parameters against which the submission would be judged. We have not received any evidence that the Council has explicitly undertaken this cross-referencing between the submission and the Due Diligence Protocol and/or the PIN.

On the basis of the information provided at the time and which the Council had access to, we note the following considerations relating to the preceding documents which were used to inform and assess the information gathered. The Council:

- Should have made explicit reference in the final decision document to the four key areas of enquiry within the PIN and assessed the viability of RiverOak’s submission in the context of this; and
- Should have made explicit reference to further aspects of the Due Diligence Protocol for which we have seen no evidence of their being explicitly addressed.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

*Evidencing external advice sought in the final decision document (relates to Section 5.2 – Approach to the CPO)*

With the exception of the opinion from legal counsel that we discuss in Section 6.2.2., we have not been provided with any evidence that the Council consulted with external experts throughout the Review Timeframe. The legal counsel opinion sought on 20 November 2014, and provided on 10 December 2014, encompasses an assessment of the review process for identifying a CPO Indemnity Partner.

Therefore, the Council:

- Could have provided evidence of external advice sought beyond legal counsel in assessing the technical aspects of RiverOak’s submission;
- Where they did not, provided a rationale for assessing the specific element of the submission without external expert contribution and support; and
- Sought confirmation, and established an appropriate framework, by which the Council could be indemnified by RiverOak for seeking external expert advice.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

*Underpinning the process and the final decision document with appropriate frameworks previously provided to respondents*

Throughout our review, we were not provided with any internal working papers or meeting minutes which suggest that the Council undertook a process of directly and explicitly linking their requested information back to the two publicly available documents available to respondents (that is, the Prior Information Notice and the Due Diligence Protocol).<sup>20</sup> Further, TDC should have made more explicit reference to the Soft Market Testing document when raising questions with RiverOak. We have therefore noted the following considerations which the Council may have taken into account at the time they were requesting information from RiverOak. The Council:

- Could have provided greater clarity on the fundamental nature to be placed on the Due Diligence Protocol and asked questions which could be specifically and explicitly linked back to the financial elements of the Due Diligence Protocol on a line by line basis;
- Could have framed questions in relation to commercial viability and other wider business questions in a manner consistent with the four key areas of enquiry within the PIN;

<sup>20</sup> It is our understanding that the Due Diligence Protocol of TDC was publicly available on their website throughout the process.

- Could have structured the request in such a way to ensure that the information being requested was complete in terms of assessing RiverOak's submission;
- Could have ensured a greater explicitness of the requirements of both the PIN and the Due Diligence Protocol within the Soft Market Testing document;
- Could have ensured that all three documents specifically informed the questions and documents requested of RiverOak;
- Could have ensured that the first set of questions and documents requested were explicitly linked back to the requirements of the financial Due Diligence Protocol;
- Could have ensured that the first set of questions and documents requested were explicitly linked back to the requirements of the PIN;
- Could have highlighted for respondents, at all stages of the process, the appraisal framework upon which they would be judged and the fundamental nature of the Due Diligence Protocol in making that assessment;
- Ensured that all requirements in the four key areas of enquiry within the PIN and the Due Diligence Protocol were addressed for completeness; and
- May have considered seeking external advice from aviation experts on drafting the four key areas of enquiry for the PIN.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

*The preparation and contents of the Soft Market Testing document with respect to framing the information gathering exercise*

We would expect that both the Due Diligence Protocol and the PIN (specifically the four key areas of enquiry) would be referenced throughout the Soft Market Testing document. We note that the Council has not addressed all of the Due Diligence points within this Soft Market Testing document, particularly with respect to sections 2.4.3 Financial information and 2.5.6 Financial ability within the Due Diligence Protocol.<sup>21</sup>

Given the fundamental nature of this criteria for demonstrating viability of interest, as expressed in the final decision document presented to Cabinet on 11 December 2014, the Council should have made all respondents aware of the framework upon which they would be appraised at an earlier stage in the process and this should have been made explicit within the Soft Market Testing document.

We have been provided with no working papers in respect of the compilation of the Soft Market Testing document. We note that the Council had received external aviation advice from Falcon Consultancy prior to the information gathering process starting. However, it is unclear if the Council sought Falcon's input on the viability questions in the Soft Market Testing document and the structuring thereof. Further, the Council does not ask questions which explicitly link back to all four key areas of enquiry included within the PIN.

Therefore, the Council could have taken into account the following key considerations at the time of compiling this document for completion by respondents. The Council:

- Could have structured the organisational element of the document in a manner consistent with the Due Diligence Protocol and made explicit reference to this in the document;
- Could have structured the Project Questions element of the document in a manner consistent with the four key areas of enquiry within the PIN to ensure that respondents were being asked to provide information relevant to the appraisal parameters previously identified;
- Could have involved Falcon Consultancy in the drafting of the Project Questions element of the document and in the assessment of the initial responses by respondents to determine the reasonableness of the underlying assumptions; and

<sup>21</sup> See Exhibit 2.



- Could have structured the Financial Questions element of the document in a manner consistent with the Due Diligence Protocol and made explicit reference to the protocols and the fundamental nature of a respondent's need to meet these requirements to go forward in the process.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

### 2.3. Requirement Two

Under Requirement Two, we have been instructed to address the following:

***Further key considerations that TDC may wish to take into account in any further CPO review based on a review of the additional information provided by RiverOak to the DfT.***

As set out in Section 1.6, the RiverOak Dossier included a total of twenty additional documents which were not included in the TDC Dossier provided to the DfT. However, based on our review of these additional documents, it appears that whilst copies of these documents were not included in the TDC Dossier, they were provided to TDC. Table 2.3.1 below summarises the additional documents included in the RiverOak Dossier and our assessment as to whether these documents were also received by TDC.

**Table 2.3.1: Unique submissions in the RiverOak file and our assessment as to whether they were provided to TDC**

Additional RiverOak Documents (reference)	Description	Did TDC have access to this document?	Further information
R001	Letter from RiverOak to Thanet District Council	Yes	Sent directly to TDC on 24 July 2014
R002	Opinion of Counsel	Yes	Sent directly to TDC on 6 July 2014 <sup>22</sup>
R003	Heads of Terms for CPO Indemnity Agreement	Yes	Provided to the Council (specific date unknown)
R004	Thanet District Council OJEU prior information notice	Yes	Produced by TDC
R005	Thanet District Council's Soft Market Testing Questionnaire	Yes	Produced by TDC
R007	RiverOak's submission to the Davies Commission	Yes	Sent directly to TDC in August 2014
R009	Email correspondence between Thanet District Council and RiverOak	Yes	TDC involved in correspondence between 19 Sept 2014 and 25 Sept 2014
R011	Working draft of the CPO indemnity Agreement	Yes	Sent directly to TDC on 20 Oct 2014
R012	RiverOak's email attaching further due diligence material	Yes	Sent directly to TDC on 8 Oct 2014 to 31 Oct 2014
R019	RiverOak confirmation regarding the UK bank account	Yes	Sent directly to TDC on 2 Oct 2014
R020	RiverOak emails regarding discussions with a leading aircraft manufacturer	Yes	Email chain forwarded to TDC in Oct and Nov 2014
R021	Thanet District Council email confirming that no further information would be accepted	Yes	Produced by TDC (email sent from TDC to RiverOak on 24 Nov 2014)
R023	RiverOak's open letter to Cabinet	Yes	Sent directly to TDC on 6 December 2014

<sup>22</sup> Following the Disclosure Request, PwC were provided with an e-mail communication showing this had been provided to the Council on this date.

Additional RiverOak Documents (reference)	Description	Did TDC have access to this document?	Further information
RO24	RiverOak offers to purchase Manston Airport	No	Before Process with the Council had begun
RO26	RiverOak solicitors writing to John Hayes MP	After 11 December 2014	N/A
RO27	The Role of Smaller Airports	Document is undated	N/A
RO28	Index of documents	After 11 December 2014	N/A
RO29	WLG communication with Minister	After 11 December 2014	N/A
RO30	Letter from RiverOak to Iris Johnson 18/2	After 11 December 2014	N/A
RO31	Letter from RiverOak to Iris Johnson 25/2	After 11 December 2014	N/A

Source: Appendix B.

Our review of the additional information contained in the RiverOak Dossier identified that of the twenty additional documents in this dossier, thirteen of them appear to have been previously provided to the Council, but were not included in the TDC Dossier. We do not know why this information was not included in the TDC Dossier.

Of the seven additional documents included in the RiverOak Dossier which we have not been able to establish were provided to the Council, either, we do not believe that these documents contain any additional information of which the Council was not already aware of during the Review Timeframe, or the information or correspondence related to the period after the final decision document was prepared and released on 11 December 2014.

#### **2.4. Requirement Three**

Under Requirement Three, we have been instructed to address the following:

***On the basis of the findings from the above, the consultant should also provide advice on what, if any, further work TDC may wish to undertake to help strengthen findings from any future due diligence exercise.***

Following the consideration of the due diligence exercise undertaken with respect to RiverOak, PwC have been asked to consider the above. We have identified a number of points which the Council could consider undertaking and/or implementing in any future due diligence exercise to strengthen its findings and provide further support to the Council's decisions. The Council should consider the following points:

- Linking information gathering and decision making into a consistent framework and narrative;
- TDC needs to consider its handling of gaps in submissions and the extent to which they can or need to be addressed;
- Seeking external advice in relation to the requirements of the PIN and Due Diligence Protocol;
- Clear communication to all parties on the scoring system to be used in the process;
- Transparency of the process; and
- Enquire of prospective partners the extent of indemnification they are prepared to underwrite.

Additional detail on each of the above is included within **Section 8: Work TDC may undertake in any future due diligence.**

#### **2.5. Conclusion**

Following completion of the due diligence exercise, the Council announced on 11 December 2014 that, in its opinion, RiverOak did not have the necessary financial capacity to support the Council's plan for Manston and

that RiverOak's business plan was insufficient. It was concluded therefore that the Council would not take forward the CPO at this time.<sup>23</sup>

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<sup>23</sup> See TH23 and RO22.

## **3. The Council's framework for undertaking the Partner Identification Process**

### **3.1. Introduction**

In this section, we set out our understanding of the framework under which the Council sought to undertake the Partner Identification Process.

### **3.2. Background to TDC's procurement framework**

We understand that TDC's procurement framework is governed by a Due Diligence Protocol (the "Due Diligence Protocol").<sup>24</sup> We have not been provided with any specific timeframe regarding the preparation or publication of the Due Diligence Protocol. We have therefore assumed that this was the applicable framework and that it has been applied throughout the Review Timeframe.

The Due Diligence Protocol sets out a series of best practices to be considered by the Council during any procurement process, splitting the procurement process into the following five steps:

- Step 1 - Planning;
- Step 2 - Gathering information (basic information, financial information, web searches and government policy);
- Step 3 - Analyse information gathered (corporate image, social responsibility, environment responsibility, financial ability and policy compatibility);
- Step 4 - Further specific and supplementary enquiries; and
- Step 5 - Decision making.

This framework therefore sets out the key steps of the consideration process that the Council should undertake to inform decision making as part of any procurement decision. Accordingly, we have used this protocol as the basis for our assessment of the key considerations that TDC should have taken into account during the Partner Identification Process.

As part of Step 2 under the Due Diligence Protocol, we understand that TDC issued a Prior Information Notice dated 9 August 2014 (the "PIN").<sup>25</sup>

### **3.3. Prior Information Notice of 9 August 2014**

The stated objective of the PIN was to instigate a soft marketing exercise in order to identify whether there are suitable indemnity partners for the compulsory purchase of Manston Airport and subsequent investment in Manston Airport's development.<sup>26</sup>

The PIN stated the following:<sup>27</sup>

*"It is anticipated that this initial soft marketing exercise will inform a final outcome report produced by the council and external aviation experts and will cover four key areas of enquiry:*

- *Assessing capability of the market place to deliver the requirements;*
- *Assessing whether there is an established market to deliver and an adequate number of operators;*

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<sup>24</sup> A copy of this Due Diligence is Protocol is included in Exhibit 2.

<sup>25</sup> A copy of the PIN issued is included in Exhibit 1.

<sup>26</sup> Prior Information Notice – Official Journal; Section 11.3. See RO04.

<sup>27</sup> Prior Information Notice – Official Journal; Section 11.3. See RO04.

- *Assessing the capacity of the market to deliver the requirements;*
- *Assessing the feasibility and cost viability of any proposed action going forward.”*

Further, we note the following statements which were contained within the PIN:

- *“It is expected that any identified indemnity partner would make significant investment with a minimum 20 year business plan to deliver a viable and sustainable airport operation”;*
- *“If successful [a CPO process], the Council would incur significant costs which must be met by the indemnification of suitably qualified indemnity partners, to underwrite and meet all costs incurred by the Council, should it pursue a CPO course of action”;*
- *“It is imperative that the Council ascertains information...to ensure it is a feasible course and delivers requirements, ensuring the public interest is met”;* and
- *“This [process] must provide external perspectives, ideas and advice on scope of operation and challenge, to enable the Council to better understand and assess relevant market interest and capability of supporting this action”.*

The PIN outlined the following three phases to the Partner Identification Process that TDC was proposing to undertake:

- *Phase 1 - a “...registration of interest”;*
- *Phase 2 - This “...will include a number of structured questions posed to operators in the market to ascertain interest, capacity and capability within the market”;* and
- *Phase 3 - This “...may involve some face to face sessions with operators”.*

The PIN therefore appears to build upon the information requirements set out in the Due Diligence Protocol and provides an initial understanding of the additional, specific information that TDC was seeking to obtain during the Partner Identification Process.

### **3.4. General observations**

The Due Diligence Protocol and the PIN taken together provide a basis for understanding the information that TDC was seeking to obtain during the Partner Identification Process and a number of the key consideration areas that TDC was required to address during this process. In assessing the key considerations that TDC could have undertaken during the Partner Identification Process, we have therefore considered both the information provided in response to the PIN (and subsequent information requests) issued by TDC and, more broadly, we have then also considered the information requests issued by TDC in the context of the consideration areas set out in the Due Diligence Protocol and the PIN.

As part of its information gathering process to enable these key considerations to be made, TDC therefore issued a number of requests for information. We provide an overview of the information requested by the Council in the following section of this report.

## 4. Information requests issued by the Council as part of the Partner Identification Process

### 4.1. Introduction

In this section, we review the information requests issued by the Council in response to registrations of interest to the PIN. We first summarise the information requests that we understand were issued by the Council during the Review Timeframe. We then consider these requests for information in light of the Council’s framework for undertaking the Partner Identification Process.

### 4.2. Soft Market Testing Document of 13 August 2014

Following the issuance of the PIN on 9 August 2014, the Council issued a Soft Market Testing document (the “SMT Document”) on 13 August 2014. A copy of the SMT Document is included in Exhibit 4.

Table 4.1 below summarises the information requested in the SMT Document.

**Table 4.1: Information requests and questions contained in the SMT Document**

Organisational and Contact Information	Project Questions	Financial Questions
<ul style="list-style-type: none"> <li>• Organisation name</li> <li>• Contact name</li> <li>• Registered office address</li> <li>• Telephone</li> <li>• E-mail</li> <li>• Is your organisation:               <ul style="list-style-type: none"> <li>- Public Limited Company; if so, please provide number and date of registration</li> <li>- Limited Company; if so, please provide registration number and date of registration</li> <li>- Consortia and Sub-Contracting; please confirm if your organisation:                   <ul style="list-style-type: none"> <li>▪ Would provide the services itself</li> <li>▪ Would be Prime Contractor and intends to use third parties to provide some services</li> <li>▪ Is a consortium</li> </ul> </li> <li>- Other – please specify and provide relevant registration details</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Please list and explain your company’s involvement in any airport operation and development projects over the past ten years. Are you able to disclose future projects to which you are committed in this area?</li> <li>• So that we have an understanding of the scale and depth, would you please list projects that your organisation has been involved in attracting or providing long term investment for the construction of major facilities and their subsequent operation?</li> <li>• Having considered the first stage viability report by FCL, how do you see the future potential of Manston? What specific proposals do you feel would be appropriate for Manston?</li> <li>• The potential compulsory acquisition by TDC would require partner commitment to meet the full cost. What is your view on the management of the financial risks and the future long-term arrangement with TDC? How would you see the legal and financial structure working?</li> </ul>	<ul style="list-style-type: none"> <li>• Do you have an external credit rating? If so, please provide details.</li> <li>• Please could you provide your last three financial years’ accounts?</li> <li>• Would you undertake to provide a bank guarantee or operate an escrow account in relation to the compulsory purchase? Please could you provide evidence of similar arrangements in your past business activities?</li> <li>• Would this project fall within the scope of your normal business activities, or would you plan to raise specific project finance either in your own right or by introducing partner investors and syndication? (See financial question 5 below.)</li> <li>• If you intend to introduce partner investors or syndicate, what arrangements would you make to ensure their financial status and suitability for this project?</li> </ul>

Source: Exhibit 4.

As shown in Table 4.1, the questions and information requests included in the SMT Document fall into three categories:

- (1) *Organisational and contact information* – intended to provide contact details and registration details for parties interested in responding to the SMT Document;
- (2) *Project questions* – intended to establish the relevant experience of interested parties, as well as their initial assessment of the Falcon Report and their proposals for the future potential of Manston Airport; and

- (3) *Financial questions* – intended to provide details of the financial position of interested parties and proposed sources of finance for funding both the CPO process and the future redevelopment of Manston Airport.

### 4.3. Further information requests issued by the Council

Following RiverOak’s initial response to the SMT Document (details of which are set out in the following section of this report), on 19 September 2014 TDC issued eleven further questions to RiverOak and requested thirteen specific documents from RiverOak.<sup>28</sup> Table 4.2 below summarises the questions asked and the further information requested by TDC on 19 September 2014.

**Table 4.2: Additional information requested by TDC on 19 September 2014**

Ref	Documents requested
1	3 years accounts for RiverOak holding company and significant subsidiaries
2	3 years accounts for investment vehicles managed by RiverOak
3	Proof of sufficient funding for the CPO and the development of Manston
4	Auditor statement on i) the accounts and ii) proof of sufficient funding of RiverOak
5	Contact details of your auditor and permission to contact them with any questions regarding your funding, financial standing and accounting information
6	Group structure chart showing holding entity and all affiliated entities
7	Details of RiverOak Aviation Associates LLC
8	Current RiverOak financial projections for the airport
9	Details of the investors that will support the project
10	CVs of key individuals
11	Confirmation that RiverOak Aviation Associates LLC will enter into escrow agreements
12	Details of any connection with persons or organisations locally which might be seen as prejudicial or potentially awkward
13	Confirmation of insurance policy to cover any difference between the forecast and actual CPO consideration and associated costs

Source: Exhibit 3.

Ref	Written questions asked
1	The CPO process as you know has a number of tests that must be met at various stages. We consider the first stage is a comprehensive and deliverable business and master plan for development over the next 20 years. This will be needed to support the statement of reasons at the start of the CPO process. Are you aware this will be needed before the CPO process can start?
2	Your strategy for development of the airport is significantly different from that considered necessary for success by Falcon consulting. How do you consider that your approach would be any more successful than operations since 1998
3	We are concerned that over 75% of European airports handling <1m passengers p.a. are losing money. How can you reassure us that Manston would be viable under your strategy
4	We note your response that you have investor backing. In order that we fully understand the structure of your financing, are you able to give us details of the proposed investors?
5	How do you expect to meet the costs of the airport pending its reopening and return to profitable operation?
6	In order to quantify the scale of the project, we intend to commission an early valuation of the site. Can you confirm that you will underwrite all of the cost?
7	In order to protect the council from any possibility of cost, are you prepared to pay into an escrow account from the outset: I. Stage 1 – An estimate of all the costs of making a CPO II. Stage 2 – The valuation plus a realistic contingency to cover any revised valuation following an appeal.
8	We note that you refer to the use of debt to fund future stages of the project. Please could you clarify the proportions of debt and equity funding and how the debt would be serviced?
9	In your proposed heads of terms (2.1) you expect the Council to make the CPO and then you state you may serve notice on the Council to acquire the land. How does this fit with our requirements for an indemnity partner to fund the CPO process? Do you appreciate our expectation that any potential future transfer of the site will be conditional i.e. to ensure it remains an airport?

<sup>28</sup> See Exhibit 3.

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- 10 In your submission you state that no investment was made in the airport for 15 years, yet one of those managers is part of your current proposal?
- 
- 11 Is RiverOak Aviation LLC – incorporated in 2014 – the organisation that will operate this project? We note that the company is registered in Delaware USA. Would RiverOak be prepared to deal through a UK incorporated and registered company? There are potential operational difficulties in agreement being reached in terms of jurisdiction just in case there were to be any dispute in the future.
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Source: *Exhibit 3*.

A copy of RiverOak’s responses to the above questions, dated 25 September 2014, is included within Exhibit 3. We have not been provided with any information regarding the level of evidence which TDC would have deemed sufficient, or any evidence regarding the manner in which the above information was used.

#### **4.4. General observations**

The information requests issued by TDC appear designed to gather certain specific information as part of the Partner Identification Process. However, we note that the information requests issued by TDC do not address all of the Council’s framework for assessing potential indemnity partners (as set out in Section 3). We note that the four key areas of enquiry included within the PIN (outlined further in Section 3.3) do not appear to have been fully applied in the due diligence work undertaken. Further, we note that the Council’s own Due Diligence Protocol does not appear to have been fully addressed by the due diligence work undertaken. The extent to which these two documents have been used to inform the due diligence exercise undertaken is considered in more detail in the following sections of this report.

In addition, we note that the Council’s final decision document of 11 December 2014<sup>29</sup> stated that “*checks have been made with other local authorities that have recently sought and successfully identified CPO indemnity partners*”. No information pertaining to this was included within the original TDC dossier. Following the Disclosure Request, TDC provided evidence of discussions with two other municipal authorities relating to the process and possible frameworks to use. We have not been provided with any additional evidence regarding whether TDC implemented the said frameworks or undertook procedures consistent with the information provided.

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<sup>29</sup> Section 4.2 of the final decision document. See TH23 and RO22.



## 5. Information received by the Council during the Partner Identification Process

### 5.1. Introduction

In this section, we provide an overview of the information that we understand the Council received in response to the issued information requests. As set out in Section 1, RiverOak provided a response to the PIN and also responded to subsequent information requests, therefore allowing a due diligence exercise to be undertaken. Our understanding of the information provided by RiverOak in response to TDC's information requests is based on the information provided in the TDC and RiverOak Dossiers, and also on responses received from TDC following the Disclosure Request. However, the additional information provided did not address all of the queries included within the Disclosure Request, and only TDC provided any additional information. No response was provided by RiverOak to the request for additional information.

We therefore recognise that the overview of the information received by the Council that we set out in this report (the original dossier and the additional information provided following the Disclosure Request; that is, the "Provided Documents") is unlikely to represent the complete set of information actually received by the Council.

### 5.2. RiverOak's response to the SMT Document and the Council's further information requests

RiverOak provided its responses to the questions set out in the SMT Document on 29 August 2014.<sup>30</sup>

Additional information was provided by RiverOak on 25 September 2014 in response to the additional information requests issued by the Council. Table 5.1 summarises the information contained in RiverOak's response to TDC's information request of 19 September 2014.

**Table 5.1: PwC-prepared summary of information provided by RiverOak in response to TDC's information request of 19 September 2014**

Ref	Document requested	Deemed sufficient by TDC (Step 1)	Statement relating to the information included within the final decision document presented to Cabinet (Step 1)	Rationale (Step 2)
1	3 years accounts for RiverOak holding company and significant subsidiaries.	✘	6.1 – "The information provided by Party A does not demonstrate that it has the appropriate financial status or has committed investors."	RiverOak provided a combined (not consolidated) balance sheet only and did not provide three years accounts for the head company or the eight subsidiaries as requested by TDC.
2	3 years accounts for investment vehicles managed by RiverOak.	✘	6.1 – "The information provided by Party A does not demonstrate that it has the appropriate financial status or has committed investors."	RiverOak provided a combined (not consolidated) balance sheet only and did not provide three years accounts for the head company or the eight subsidiaries as requested by TDC.
3	Proof of sufficient funding for the CPO and the development of Manston.	✘	6.1 – "The information provided by Party A does not demonstrate that it has the appropriate financial status or has committed investors."	The final decision document presented to Cabinet discusses the level of funding available to RiverOak and states that they considered it to be insufficient for the level of investment required.
4	Auditor statement on i) the accounts and ii) proof of sufficient funding of RiverOak.	✓		

<sup>30</sup> See Exhibit 4.

Ref	Document requested	Deemed sufficient by TDC (Step 1)	Statement relating to the information included within the final decision document presented to Cabinet (Step 1)	Rationale (Step 2)
5	Contact details of your auditor and permission to contact them with any questions regarding your funding, financial standing and accounting information.	✓		
6	Group structure chart showing holding entity and all affiliated entities.	✓		
7	Details of RiverOak Aviation Associates LLC.	✓		
8	Current RiverOak financial projections for the airport.	✗	7.2 – “A 20 year business plan has been requested from Party A but this was not provided. A 20 year business plan is required for a project of this scale to demonstrate long-term viability.”	The Council requested a 20-25 year business plan with accompanying cash flow projections. This was consistent with the recommendations of the Falcon Consultancy report. The Council received a five year projection only.
9	Details of the investors that will support the project.	✗	6.1 – “The information provided by Party A does not demonstrate that it has the appropriate financial status or has committed investors.”	Anonymised "Know Your Client" checks were undertaken by RiverOak's solicitors and the results communicated to TDC. The Council also received the results of OFAC Investor representations from the same source. We have not been provided with any evidence that investor names were disclosed.
10	CVs of key individuals.	✓		
11	Confirmation that RiverOak Aviation Associates LLC will enter into escrow agreements.	✗	8.1 – “The approach suggested by Party A is that funds would be transferred in tranches to a UK account managed by UK solicitors.”	We have not been provided with any evidence which indicates that RiverOak would be prepared to enter into the substantive process one would undertake to deposit money specifically into a UK-based escrow account.
12	Details of any connection with persons or organisations locally which might be seen as prejudicial or potentially awkward.	✓		
13	Confirmation of insurance policy to cover any difference between the forecast and actual CPO consideration and associated costs.	✓		

Source: Exhibit 4.

Table 5.2 overleaf summarises the additional questions that TDC asked to RiverOak during the Review Timeframe and RiverOak’s responses to these questions.

**Table 5.2: PwC-prepared summary of RiverOak’s responses to the additional questions asked by the Council**

Ref	Question asked by TDC to RiverOak	Response received from RiverOak	Further documentation provided
1	The audited accounts of Realty Fund IV, Realty Fund III and MKRO I all show losses. Please explain.	“The funds’ financial statements (accounts) are reported on an US income tax basis, which allows for real estate and other costs to be depreciated, thus often offsetting or even eliminating net operating income from real estate but not affecting cash flow.”	N/A
4	Concerning the consolidated accounts:		
4A	Please split out investor capital and retained earnings.	“For the purposes of preparing the “combined” [PwC addition: not consolidated] Balance Sheet, retained earnings are effectively equal to the combined cash balances at year end. The investor capital and retained earnings balance could also be described as the total fair market value of all investors’ capital accounts.”	PwC has not received documentation from either TDC or RiverOak regarding any future provision of this information. No additional information of a material nature was provided following the Disclosure Request.
4B	Please also provide income statements and cash flow statements.	“Combining our funds into one balance sheet entailed totalling up all assets and liabilities for all of our funds across a wide spectrum of investment platforms with hundreds of individual investors and then restating long term investments at their estimated fair value and adding to liabilities all mortgage debt encumbering the long term investments.  “It is a “point in time” financial statement not intended to show the scope and breadth of all of our funds for which we serve as investment manager.  “The preparation of income statements and cash flow statements on a combined basis would entail a total restatement of our numerous ledgers and all of the transactions which have occurred over the past 3 years.”	PwC has not received documentation from either TDC or RiverOak regarding any future provision of this information. No additional information of a material nature was provided following the Disclosure Request.
4C	Please provide consolidation working papers and full notes.	“We have already provided full notes that accompany both the audited financial statements and the combined balance sheet. Not sure what is meant by consolidation working papers.”	PwC has not received documentation from either TDC or RiverOak regarding any future provision of this information. No additional information of a material nature was provided following the Disclosure Request.
13	Please confirm that investments are shown in your balance sheet at ‘marked-to-market’ values and the methodology you use to arrive at market values.	“The long term investments reflect the estimated value of all future cash flows, including future net sale proceeds, on an asset by asset basis.”  Techniques used for valuation: - NPV of future cash flows - Historic capitalisation rates on income producing properties - Historical price per square foot values - “Many other commonly used valuation metrics.”	N/A

Source: TH22 and RO18.

In the sub-sections below, we review further the information provided by RiverOak and set out the key considerations that we believe the Council could have taken into account based on this information. We consider the information received under the following categories:

- (1) Levels and sourcing of funding;
- (2) RiverOak’s financial model, cash flow projections and wider business plan;
- (3) RiverOak’s current and prospective investors; and

(4) The credit check undertaken by TDC on RiverOak's parent company.

We first, however, consider the information provided by RiverOak to the Council in the context of the Council's own Due Diligence Protocol (as set out in Section 3).

*The use of the Due Diligence Protocol in the Council's assessment of information and factors the Council may have considered at the time*

We have been provided with no evidence that the Council provided the Due Diligence Protocol to RiverOak. Further, we have not been provided with any evidence that RiverOak asked the Council to provide any information or details relating to the Due Diligence Protocol (or any other framework under which the Council's decision process was to be performed). We note, on the basis of the final decision document presented to Cabinet on 11 December 2014<sup>31</sup>, that the Council stated "...if [the counterparty] cannot [fulfil the due diligence requirements], no viable expression of interest is demonstrated".

As we discuss further below, we note that RiverOak was not able to provide three years of financial accounts for all funds, as required by Due Diligence Protocol '2.4.3 Financial information; last 3 years financial accounts'. It would therefore appear that RiverOak was always likely to struggle to demonstrate a viable interest on this point. In our opinion, the Council should therefore have made the fundamental nature of this requirement explicit to RiverOak at the very outset of the process (or, at least, once it became clear that it was not going to be possible for RiverOak to provide this information) and/or considered any alternatives to this Due Diligence Protocol requirement which would have allowed RiverOak's submission to proceed further.

Subject to this, on the basis of information provided to the Council at the time, key considerations which the Council could have taken into account include:

- External expert advice on the disclosure requirements in Delaware and their comparability to United Kingdom Generally Accepted Accounting Practices ("UK GAAP")<sup>32</sup>;
- Specifically requested that the audited accounts, and the combined balance sheet of RiverOak, be presented using UK GAAP disclosures for comparable purposes;
- Sought further clarification from RiverOak regarding their ability or willingness to indemnify the Council against the costs pertaining to the above input from reputable and independent third parties; and
- Have made it explicit to RiverOak at the beginning of the process that the provision of this information was considered to be fundamental and that failure to comply would likely lead to the Council concluding that they did not express a viable interest.

*Past legal precedent and the ability of the Council to deviate from the Due Diligence Protocol*

We note that compliance with such a requirement might be difficult for all interested entities to demonstrate, particularly should they be based outside the United Kingdom. As set out above, the Council could therefore have considered alternative mechanisms by which RiverOak could provide relevant financial information. For instance, the Council could have sought indemnification by RiverOak and employed a United Kingdom accounting firm with a United States office to undertake a due diligence procedure.

However, should the Council undertake such a procedure it may represent a potential legal challenge if the Council had adhered to the principles of the Due Diligence Protocol in previous procurement exercises. For example, this could be considered to set a precedent from which the Council could not be seen to deviate. Therefore, in relation to the information the Council possessed at the time of assessing RiverOak's financial accounts in the context of the Due Diligence requirements, the Council could:

- Have sought external legal counsel on the rigidity with which they must adhere to the Due Diligence Protocol; and

<sup>31</sup> See TH23 and RO22.

<sup>32</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that they "did contact a number of the top accountancy firms for assistance but requests were declined". PwC has not been provided with any evidence of these requests or any responses the Council may have received from accountancy firms regarding such approaches for this work.

- Have sought further external legal counsel on the extent to which, if any, they may deviate from the said protocol and what information, if any, may be considered relevant or sufficient for obtaining comfort over the financial aspect of the due diligence via other means.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the council have undertaken the above during the Partner Identification Process.

### **5.2.1. Levels and sources of funding**

#### *Background*

The Council received a number of documents and statements from RiverOak regarding the proof of sufficient funding for the advancement of the project. This request was consistent with Due Diligence Protocol '2.4.3 Financial Information: Evidence of funds required to complete the project' and a question pertaining to the provision of an escrow account is included with the Soft Market Testing document.<sup>33</sup> Based on the dossiers provided to us, we understand the Council received the following documentation from RiverOak:

- A letter from Hudson Valley Bank to RiverOak (forwarded by the latter to the Council) confirming the level of funds held with the bank as at 17 September 2014 and the existence of an available revolving credit facility as at that date;<sup>34</sup> and
- Confirmation from Tony Freudmann (of RiverOak) to Iris Johnston (of TDC) on 2 October 2014 that RiverOak would establish "...a properly set up and funded UK bank account."

The Council sought further confirmation regarding the funds which RiverOak had available as at 11 November 2014. This confirmation was provided by Wragge Lawrence Graham & Co and stated "...what is in the fund now is effectively the initial equity, and as would be the case on any commercial project, further sources of funding would be sought and obtained."

#### *The Council's attempts to verify funding levels and the use of the Due Diligence Protocol in the assessment of the information obtained*

The Council has sought confirmation regarding the levels of funding available to RiverOak, and this is consistent with '2.4.3 Financial Information: Evidence of funds required to complete the project' of the Due Diligence Protocol. Furthermore, the Council sought internal working papers from RiverOak regarding their finances in order to provide some context for their operations.

We note that the Council requested consolidated cash flows from RiverOak<sup>35</sup> and these were not provided. A consolidated cash flow may have been useful in terms of identifying the company's historic funding requirements and also providing evidence to the Council of the key expenditure streams which may potentially have reduced the funding available for the Manston project.

A phone conference between the Council and RiverOak's legal advisors Wragge Lawrence Graham & Co was held on 5 November 2014.<sup>36</sup> As per the summary of the call provided, the Council appear to have sought clarification on funding levels available to RiverOak on this date. This encompasses sufficient resources available "to prepare for a CPO; to pay the compensation determined; [and] to carry out a scheme of development in accordance with a business plan."

Within the same note, it states that "Wragge's stated that it was not a CPO requirement under 6/2004 to demonstrate availability of funds for the complete development". The Council take a different view on this point, and believe that "the aim of the whole exercise from TDC's perspective was to see a viable airport in operation and this required evidence of the funds able to be delivered."

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<sup>33</sup> See RO05 and RO06.

<sup>34</sup> See TH18 and RO08.

<sup>35</sup> Requested on 5 November 2014 during a conference call between Wragge Lawrence Graham and TDC.

<sup>36</sup> PwC requested minutes or any other relevant communications pertaining to this phone conference from both parties; that is, TDC and RiverOak. The Council provided a two-page summary of the call to DfT on 15 May 2015 and it is this document which informs this sub-section.

Further, we noted that the Council sought confirmation from RiverOak as late as 11 November 2014 regarding the funding available for the project. This figure was provided to the Council, alongside a revolving credit facility which represented 20% of the total funding available. The level of funding available to RiverOak was not deemed sufficient by the Council, as detailed in the final decision to Cabinet document of 11 December 2014.

This would be consistent with the Due Diligence Protocol requiring the Council to verify the level of funding available to prospective partners for the completion of a project. Furthermore, RiverOak asked the following question on 5 November 2014, and received the adjacent response on 10 November 2014.<sup>37</sup>

**Table 5.3: Question asked by TDC to RiverOak and response received in relation to management accounts**

Ref	Question asked by TDC to RiverOak	Response received from RiverOak	Further documentation provided
2	Please provide management accounts for each of your other funds.	"In our most recent submission to you, we sent our most recent audited financial statements along with a detailed explanation as to why the other entities on our organisation chart did not have audited financial statements. We are unsure as to what is being requested here."	PwC have not received documentation from either TDC or RiverOak regarding any future provision of this information. No additional information of a material nature was provided following the Disclosure Request.

The Council has therefore asked a number of questions and sought clarifications regarding the availability of funding; however, we have not received any evidence from either TDC or RiverOak which indicates that the former undertook this review with explicit reference to the Due Diligence Protocol. We have also not received any evidence regarding the level of evidence which TDC would have deemed sufficient, or any evidence regarding the manner in which the appraisal was undertaken.

We note that the primary focus of the information requests issued by the Council appears to be on establishing the level of funds which would have been available to RiverOak. However, in order to complete any assessment of the level of these funds, the Council would have been required to also assess the likely quantum of funds which would have been required, both for the CPO process and for the investment in Manston Airport.

With regards to the level of funds which may have been required for the CPO process, we note that the Council sought from RiverOak an estimate of the potential level of compensation which may have been payable under any future CPO process. Without this information, the Council would not have been able to assess the sufficiency of the funds that RiverOak was proposing to make available for this project. The Council could have sought to undertake further communication to clarify its position in respect of this point.

Further, since this information was not received from RiverOak, we do not know what process the Council itself would have undertaken in order to assess any CPO compensation estimate provided by RiverOak. Should any future process be undertaken by the Council to seek to identify a potential indemnity partner, we recommend that the Council considers the engagement of external advisors to assist with the assessment of the quantum of compensation which may be payable during any future CPO process.

With regards to the level of funds, post completion of any CPO process, which would have been required for the investment by RiverOak in Manston Airport, we set out below a more detailed review of the business plans and cash flow projections which were provided by RiverOak during the Review Timeframe. The parameters against which the funding requirement will be assessed should be made more explicit to respondents.

*The proposed funding structure through which TDC would be indemnified*

With respect to the manner in which such funding would be guaranteed against the project, RiverOak made specific reference within their response to the Soft Market Testing document to their desire for an escrow arrangement. The Council note in their final decision document presented to Cabinet that their legal counsel has advised that the Council must be able to demonstrate an ability on their own part to underwrite the CPO.

We have not been provided with any evidence from either party which confirms, in detail, any escrow account which RiverOak may have established in relation to Manston Airport. We note in the final decision document to

<sup>37</sup> We note that this query may have provided some information regarding the company's projects for the following year and therefore some evidence of funding available.

Cabinet prepared on 11 December 2014 that the Council make reference to RiverOak's preferred approach, this being: *"The approach suggested by Party A is that funds would be transferred in tranches to a UK account managed by UK solicitors."*<sup>38</sup>

The Council has made reference throughout the process to their view that they would welcome RiverOak establishing an escrow account against which funds could be deposited in a United Kingdom bank or similar financial institution. On the basis of the information provided to us, the Council has not been provided with details on an escrow account.

#### *Factors the Council may have considered at the time*

On the basis of the above, and in the context of the information gathering and information assessment exercise undertaken in respect to establishing the level and source of funding, the Council:

- Could have asked RiverOak to provide a letter of authorisation to the bank and contacted them directly to provide confirmation of the total funds in RiverOak's account as at a particular date<sup>39</sup>;
- Could have asked for bank statements to demonstrate historic levels of liquid cash on hand held with the bank;
- Could have explored alternative funding mechanisms beyond an escrow account which the Council may have been satisfied with, or sought to obtain alternative guarantees regarding the depositing of relevant funds in a UK bank account<sup>40</sup>;
- Could have provided more detail to RiverOak regarding why they (TDC) required a more detailed estimate of the potential level of CPO compensation payable;
- Could have asked for evidence of any preliminary negotiations or otherwise which RiverOak had undertaken with any lending or banking institution with respect to obtaining sources of funding for the Manston project<sup>41</sup>; and
- Could have provided a more explicit list of parameters against which TDC would be appraising the level of funding required or against which TDC would be appraising the sufficiency of the funding proposed.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

### ***5.2.2. RiverOak's financial model, cash flow projections and wider business plan***

#### *Background*

The Council received a nineteen page document encompassing RiverOak's business plan for Manston Airport and the reintroduction of cargo aeronautical services to the airport. The business plan included a number of assumptions regarding the growth of the airport's operations and was provided on 31 October 2014.<sup>42</sup> As noted in Section 3.3, the Council had indicated in the PIN that four key areas of enquiry would be considered when assessing the commercial viability of a submission. Further, they stated that this assessment would be undertaken in conjunction with external aviation experts.

We note that the financial model and the cash flow projections derived therefrom comprise one element of the wider business plan itself. Therefore, we will consider the financial model and cash flow projections first before considering the wider business plan prepared as a whole.

<sup>38</sup> See TH23 and RO22.

<sup>39</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that *"RO provided a letter from their bank and the Council independently contacted the said institution for independent confirmation that the communication had been generated by them."* PwC has not been provided with any evidence of this correspondence with the bank or any responses the Council may have received related to this matter.

<sup>40</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that *"there were a number of discussions with RO that gave them the opportunity to propose other options."* PwC has not received any evidence of these discussions or any outcomes arising therefrom.

<sup>41</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. In this response, the Council stated that this *"information was requested."* PwC has not been provided with any evidence of this request or any response provided in relation to this request.

<sup>42</sup> See RO12.

*The cash flow projections provided by RiverOak and their basis on the Falcon report*

As part of the business plan provided to TDC, RiverOak has provided a financial model containing cash flow projections. This took the form of an 18 month quarterly projection<sup>43</sup> and an extrapolation to a five year cash flow projection.<sup>44</sup> However, we note the Falcon Report<sup>45</sup> stipulated that any operator would only be able to demonstrate the long-term commercial viability of the airport through a 20-25 year business plan. The Council requested a financial plan for the airport that was consistent in duration with the recommendations of the Falcon Report; that is, forecasts of a twenty year period. Throughout the process, the Council repeatedly stated their request for financial projections of a longer period than those provided by RiverOak.

*Questions raised by TDC in relation to the cash flow and financial model provided, RiverOak’s response and the due diligence procedures undertaken thereon*

We note the following questions relevant to this section which the Council raised with RiverOak on 5 November 2014. The adjacent responses were received on 10 November 2014:

**Table 5.4: Questions asked by TDC to RiverOak and response received in relation to cash flow projections and the financial model**

Ref	Question asked by TDC to RiverOak	Response received from RiverOak	Further documentation provided
5	The cash flow projection is only for an 18 month period followed by an extrapolation to the end of year 5. Please instead provide a detailed 20 year cash flow projection together with a projected balance sheet and income statement for 20 years.	“We are willing to provide these numbers although we think that they will have almost no value in terms of their ability to predict the future with even remotely useful accuracy. “SEC regulations prevent us from ever showing such a projection to a current or prospective investor on the grounds that it would by definition be misleading because of the lack of predictive accuracy mentioned above.”	PwC have not received documentation from either TDC or RiverOak regarding any future provision of this information. No additional information of a material nature was provided following the Disclosure Request.
9	Please provide sensitivity analysis and key assumptions/variables for the 20 year financial projections.	“See number 5 above. The excel model that we sent in the previous due diligence package is fully functional and will allow for any kind of sensitivity scenarios that you would like to perform on it.”	PwC have not received documentation from either TDC or RiverOak regarding any future provision of this information. No additional information of a material nature was provided following the Disclosure Request.

We have not been provided with any evidence that RiverOak provided a 20 to 25 year business plan or cash flow forecast to the Council in relation to Manston Airport. The PIN references the need for a business plan of this length, and the Council has been consistent in its requests to RiverOak in highlighting the need for a longer-term forecast. Regarding the due diligence procedures the Council was undertaking, we have not been provided with any evidence that the Council undertook their own checks or assessment of the cash flow model. The model itself was provided to the Council in Microsoft Excel form by RiverOak. There is no evidence that the Council has explicitly considered the cash flow in the context of the Due Diligence Protocol.

We note that the Council requested that a number of sensitivities be run on the model on 5 November 2014<sup>46</sup>; however, the Council did not specify the sensitivities they wished RiverOak to undertake. We further note that RiverOak, in their response of 10 November 2014, highlighted that the cash flow model provided was “fully functional” and therefore the Council was in a position to undertake a number of sensitivity checks on it unilaterally. We have not been provided with any evidence that the Council, or RiverOak, undertook any sensitivity checks on the model on a unilateral basis.

*Factors the Council may have considered at the time in relation to the financial model and cash flow projections*

Therefore, on the basis of the information provided to us, and based on the information available to the Council at the time, we note the following considerations. The Council:

<sup>43</sup> See TH12 and RO17.  
<sup>44</sup> See TH12 and RO17.  
<sup>45</sup> See TH14.  
<sup>46</sup> See TH22 and RO18.



- Could have sought external aviation advice on the reasonableness of the cash flow projections in relation to those forecasts which are underpinned by traffic movements;
- Could have sought a long-list of underlying assumptions used throughout the model to determine their reasonableness and sought external expert advice where they believed that this was required;
- Could have undertaken a full audit of the financial model provided to them or sought external expert advice and/or input to undertake such an audit on the Council's behalf;
- Could have assessed the cash flow in the context of the Due Diligence Protocol and provided a transparent framework for this assessment to RiverOak;
- Could have developed a list of sensitivities and required RiverOak to provide an updated financial model which specifically considered the implications therein. The Council could have considered the use of external aviation experts to help define the sensitivities which should be employed on RiverOak's financial model; and
- Could have sought RiverOak's confirmation that they would have been prepared to indemnify the Council for the external advice sought in relation to either the cash flow or the business plan.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

*The business plan provided by RiverOak and its assessment by TDC in the context of the PIN*

Whilst the Council did receive a report on the commercial viability of Manston Airport from Falcon Consultancy in July 2014<sup>47</sup>, we have not been provided with any evidence that the Council discussed RiverOak's business plan in the specific context of the four key areas listed as the focus of the PIN (see Section 3.3) nor that they sought external advice from Falcon Consultancy on the contents of the business plan which was submitted by RiverOak.

Following receipt of the business plan on 31 October 2014<sup>48</sup>, the Council asked for one amendment:

**Table 5.5: Question asked by TDC to RiverOak and response received in relation to the business plan**

Ref	Question asked by TDC to RiverOak	Response received from RiverOak	Further documentation provided
8	Business plan needs to be updated for recent part-sale by Ann Gloag (including any complication this may cause to the CPO process) and to reflect the 20 year period for the financial forecasts.	"Our understanding is that the CPO process is for the land that has been known as the "airport" for many years. The recent "sale" of the land, where Ann Gloag still holds full controlling interest in the "purchasing" entity, would not seem to complicate the CPO process in any meaningful or significant way."	PwC have not received documentation from either TDC or RiverOak regarding any future provision of this information. No additional information of a material nature was provided following the Disclosure Request.

The PIN outlined four key areas of enquiry relating to demonstrating the commercial viability of the operations of the airport.

*"It is anticipated that this initial soft marketing exercise will inform a final outcome report produced by the council and external aviation experts and will cover four key areas of enquiry:*

- *Assessing capability of the market place to deliver the requirements;*
- *Assessing whether there is an established market to deliver and an adequate number of operators;*
- *Assessing the capacity of the market to deliver the requirements;*
- *Assessing the feasibility and cost viability of any proposed action going forward."*

We have not been provided with any evidence that the Council assessed the business plan internally or attempted to link the plan back to the four key areas of enquiry included within the PIN.

<sup>47</sup> See TH14 and provided to parties completing the Soft Market Testing document (see RO05 and RO06).

<sup>48</sup> See RO12.

Further, we have not been provided with any internal working papers or other evidence that the Council critically challenged the assumptions underpinning the business plan nor the merits of the arguments or assumptions therein.

*Factors the Council may have considered at the time in relation to the business plan*

Thus, on the basis of the information that the Council had access to at the time, the Council:

- Could have explicitly asked RiverOak to provide a business plan which specifically addressed the four key areas of enquiry included with the PIN;
- Could have requested the key assumptions underpinning the business plan and sought external aviation expert advice to determine the reasonableness of the underlying assumptions and therefore obtained an external, independent judgement on the commercial viability of the business plan;
- Could have sought specific clarification from RiverOak in relation to how the business plan addressed key headings within the Due Diligence Protocol including Corporate Image, Social Responsibility and Environmental Responsibility; and
- On the basis of the above points, considered how to critically challenge and audit RiverOak's business plan to provide greater comfort over its robustness and therefore the medium and long-term viability of the plan itself.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

**5.2.3. RiverOak's current and prospective investors**

*Background*

The Council requested information relating to the investors whom RiverOak intended to bring into the process.<sup>49</sup> This was consistent with the requirements of the Due Diligence Protocol outlined in the following sections:

- 2.4.5 Government policy;
- 2.5.3 Corporate image;
- 2.5.4 Social responsibility; and
- 2.5.5 Environmental responsibility.

*Evidencing the level of funding and factors the Council may have considered at the time*

We have been provided with no internal working papers which provide evidence of the Council explicitly linking the provision of this request to the above, nor have we been provided with any evidence in which the Council attributes the provision of this information to proving that RiverOak has access to the required level of funding.

In order to verify the investors of RiverOak, Wragge Lawrence Graham & Co undertook "Know Your Client" and OFAC investor checks on behalf of RiverOak and provided the findings to the Council.<sup>50</sup> However, they did not disclose the identities of the investors in question. The Council discussed RiverOak's investors with Wragge Lawrence Graham & Co in a phone conference on 5 November 2014. The Council were advised that all of the investors in question were "private investors" and were "primarily US residents"; however, Wragge Lawrence Graham & Co considered it would be "unlawful" to disclose the database of investors that RiverOak maintained to TDC.

Based on the information available to the Council at the time, the Council could:

- Have sought clarification from independent Counsel regarding the confidentiality and/or privacy of this information and whether it would be appropriate for a private equity fund to disclose such information;

<sup>49</sup> See TH18 and ROo8.

<sup>50</sup> See TH22 and RO18.

- Have sought clarification from independent Counsel regarding the legal situation in the United States with respect to the privacy and/or confidentiality, specific to the States in which the investors and/or company were located, and whether it would be appropriate for a private equity fund to disclose such information; and
- Discussed the process with RiverOak and Wragge Lawrence Graham & Co to provide details of the criteria upon which their submission would be judged, specific to the Due Diligence Protocol and the contents therein, to determine a disclosure mechanism that may have satisfied both parties.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

#### **5.2.4. The credit check undertaken by TDC on RiverOak's parent company**

##### *Background*

In addition to the information requested of RiverOak on 19 September 2014<sup>51</sup>, the Council undertook a web-based credit check of 'RiverOak Investment Corp LLC' on 15 September 2014. The credit check returned a number of zero balances. We have not been provided with any evidence that shows the Council's conclusions of the credit check, or any actions arising therefrom.

##### *The credit check undertaken in the context of the Due Diligence Protocol and factors the Council may have considered at the time*

The Council therefore did comply with the requirements of Section 2.4.4 of the Due Diligence Protocol, where "credit reference" is included under web searches. On the basis of the information this web search provided, the Council could have considered undertaking the following:

- Seeking additional credit checks from an alternative source to provide further information on the financial status of RiverOak<sup>52</sup>;
- Seeking external advice on the information to obtain and/or on what was returned through the Council's own credit check and whether such information can be obtained from public sources in a United States legal domain<sup>53</sup>; and
- Enquiring of RiverOak whether they would be prepared to indemnify the Council against the costs of a credit check or a more thorough financial due diligence process being undertaken by an independent third party.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council have undertaken the above during the Partner Identification Process.

As the Council has complied with the requirements of the Due Diligence Protocol in respect of the credit check, it should be noted that the above considerations therefore do not constitute a criticism of the sufficiency of the Council's Due Diligence Protocol document, nor on the reasonableness of their conclusions from the credit check procured.

<sup>51</sup> See TH18 and RO08.

<sup>52</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. The Council stated that "TDC has an existing contract with our current supplier for Credit Checks. However, we independently searched Companies House for available information which provided links to the USA and companies with Delaware registrations but limited information was available. In addition we went to the United States Securities and Exchange Commission." PwC has not been provided with any evidence of these credit checks or the findings the Council received therefrom.

<sup>53</sup> DfT provided TDC's response to the final draft of this report on 18 June 2015. The Council stated that "[TDC] contacted a number of large accountancy firms to assist. However, we were unable to find any that wanted to take on the work." PwC has not been provided with any evidence of these requests or any responses the Council may have received from such firms rejecting the work.

# 6. Overview of the Council’s findings from the Partner Identification Process

## 6.1. Introduction

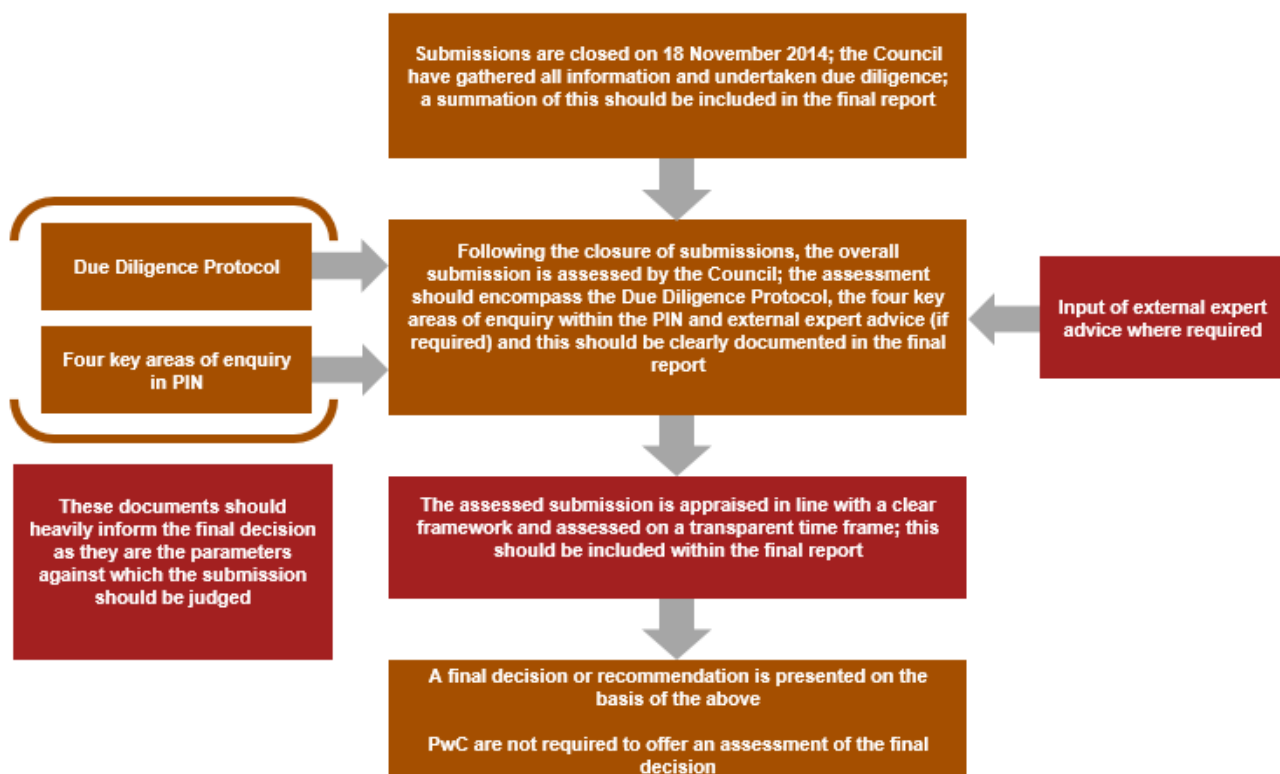
In this section, we summarise the Council’s stated findings and conclusions arising from the Partner Identification Process.

## 6.2. Final decision document and procedure for evidencing Council’s findings (11 December 2014)

The final decision document was released to RiverOak on 3 December 2014, and was presented before Cabinet on 11 December 2014. The document sets out the rationale by which the Council believes RiverOak did not meet the requirements to an extent sufficient for the Council to move forward with the process. The Council sought external legal advice on 20 November 2014, and was provided with this prior to the Cabinet decision document being finalised, with reference made to it throughout.

Figure 6.1 below is a possible or suggested approach to developing the final decision document for presentation to Cabinet; that is, the approach that PwC would have advocated given the Council’s position at the time. Steps highlighted in red are discussed in this section of the report. PwC is not providing an appraisal of the validity of the final decision itself.

**Figure 6.1: A possible or suggested approach to developing the final decision document presented to Cabinet**



### 6.2.1. The process for informing the document

The final decision document should effectively be built upon the two publicly available documents available: that is, the PIN and the Due Diligence Protocol. On the basis of the four key areas of enquiry included within the

former, and in the context of the requirements of the latter, the Council should have provided a detailed body of evidence on ‘Step 3 – analyse the information gathered’ using the PIN (Section 3.3) and the Due Diligence Protocol (Section 3.2) themselves as a framework; that is, parameters against which the submission would be judged. We have not received any evidence that the Council has explicitly undertaken this cross-referencing between the submission and the Due Diligence Protocol and/or the PIN.

On the basis of the information provided at the time and which the Council had access to, we note the following considerations relating to the preceding documents which were used to inform and assess the information gathered. The Council:

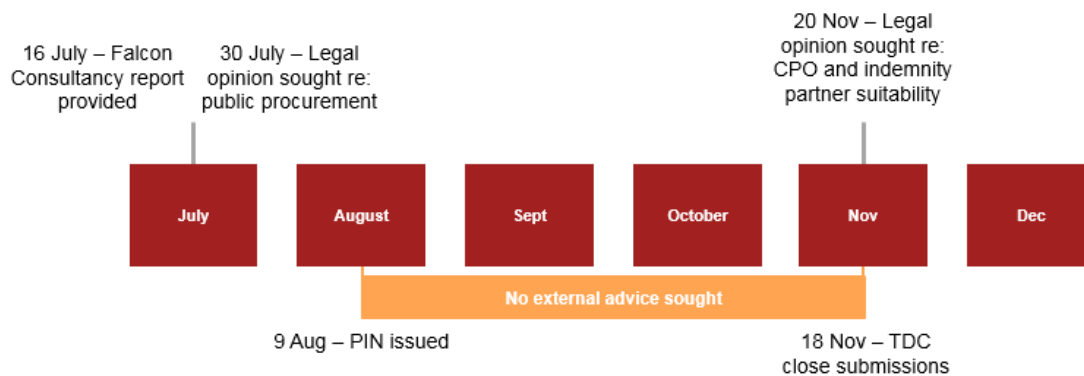
- Should have made explicit reference in the final decision document to the four key areas of enquiry within the PIN and assessed the viability of RiverOak’s submission in the context of this; and
- Should have made explicit reference to further aspects of the Due Diligence Protocol for which we have seen no evidence of their being explicitly addressed.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council undertook the above during the process.

### 6.2.2. *Evidencing external advice sought*

In the PIN, the Council stated that they would use external aviation experts to consider the four key areas of enquiry raised within that document. We have not been provided with any evidence that the Council considered all of these areas in the final decision document presented to Cabinet, nor that external aviation experts were sought to appraise the submission against the parameters noted therein. With respect to the external advice sought by the Council, we note the timeline in Figure 6.2 below.

**Figure 6.2 – Timeline of external advice sought by the Council before, during and after the due diligence process**



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With the exception of the opinion from legal counsel that we discuss further below, we have not been provided with any evidence that the Council consulted with external experts throughout the Due Diligence process. The legal counsel opinion sought on 20 November 2014, and provided on 10 December 2014, encompasses an assessment of the review process for identifying a CPO Indemnity Partner. Therefore, the Council:

- Could have provided evidence of external advice sought beyond legal counsel in assessing the technical aspects of RiverOak’s submission;
- Where they did not, provided a rationale for assessing the specific element of the submission without external expert contribution and support; and
- Sought confirmation, and established an appropriate framework, by which the Council could be indemnified by RiverOak for seeking external expert advice.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council undertook the above during the process.

<sup>54</sup> The first legal opinion sought in July 2014 was not included in either RiverOak or TDC’s original dossiers. It was provided as part of the Council’s response to the Disclosure Request.

We have not been provided with any internal working papers or meeting minutes which suggest that the Council has undertaken a process of directly and explicitly linking their requested information back to the two publicly available documents which should underpin this request. In addition to the financial due diligence points noted previously, there is no explicit link between the contents of the four key areas of enquiry within the PIN and the questions focusing on commercial viability.

At the time of requesting this documentation, the Council:

- Could have provided greater clarity on the fundamental nature to be placed on the Due Diligence Protocol and asked questions which could be specifically and explicitly linked back to the financial elements of the Due Diligence Protocol on a line by line basis;
- Could have framed questions in relation to commercial viability and other wider business questions in a manner consistent with the four key areas of enquiry within the PIN; and
- Could have structured the request in such a way to ensure that the information being requested was complete in terms of assessing RiverOak's submission.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council undertook the above during the process.

Section 4 discusses in-depth the information gathering framework that the Council has used throughout the process up to the 19 September 2014 when the first set of questions and document requests was provided to RiverOak for their response. In summary, on the basis of the above, and in specific relation to Requirement One of highlighting "any key considerations that TDC could have taken into account at the time, based on a review of the information provided to TDC (at the time)", we note that the Council:

- Could have ensured a greater explicitness of the requirements of both the PIN and the Due Diligence Protocol within the Soft Market Testing document;
- Could have ensured that all three documents specifically informed the questions and documents requested of RiverOak;
- Could have ensured that the first set of questions and documents requested were explicitly linked back to the requirements of the financial Due Diligence Protocol;
- Could have ensured that the first set of questions and documents requested were explicitly linked back to the requirements of the PIN;
- Could have highlighted for respondents, at all stages of the process, the appraisal framework upon which they would be judged and the fundamental nature of the Due Diligence Protocol in making that assessment;
- Ensured that all requirements in the four key areas of enquiry within the PIN and the Due Diligence Protocol were addressed for completeness; and
- May have considered seeking external advice from aviation experts on drafting the four key areas of enquiry for the PIN.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council undertook the above during the Partner Identification Process.

The above information gathering exercise was considered to be complete, with the Council moving on to the substantive due diligence procedures to be undertaken. As noted in the calendar in Figure 1.1, this due diligence incorporated the period from 18 September 2014 to 18 November 2014. This assessment of the information gathered has been considered in Section 5 above.

We would expect that both the Due Diligence Protocol and the PIN (specifically the four key areas of enquiry) would be referenced throughout the Soft Market Testing document. We note that the Council has not addressed all of the Due Diligence points within this Soft Market Testing documents, particularly with respect to sections 2.4.3 Financial information and 2.5.6 Financial ability within the Due Diligence Protocol.<sup>55</sup>

Given the fundamental nature of this criteria for demonstrating viability of interest, as expressed in the final decision document presented to Cabinet on 11 December 2014, the Council should have made all respondents

<sup>55</sup> See Exhibit 2.

aware of the framework upon which they would be appraised at an earlier stage in the process and this should have been made explicit within the Soft Market Testing document.

We have been provided with no working papers in respect to the compilation of the Soft Market Testing document. We note that the Council had received external aviation advice from Falcon Consultancy prior to the information gathering process starting. However, it is unclear if the Council sought Falcon's input on the viability questions in the Soft Market Testing and the structuring thereof. Further, the Council does not ask questions which explicitly link back to all four key areas of enquiry included within the PIN.

Therefore, the Council could have taken into account the following key considerations at the time of compiling this document for completion by respondents. The Council:

- Could have structured the organisational element of the document in a manner consistent with the Due Diligence Protocol and made explicit reference to this in the document;
- Could have structured the Project Questions element of the document in a manner consistent with the four key areas of enquiry within the PIN to ensure that respondents were being asked to provide information relevant to the appraisal parameters previously identified;
- Could have involved Falcon Consultancy in the drafting of the Project Questions element of the document and in the assessment of the initial responses by respondents to determine reasonableness of the underlying assumptions; and
- Could have structured the Financial Questions element of the document in a manner consistent with the Due Diligence Protocol and made explicit reference to the protocol and the fundamental nature of a respondent's need to meet these requirements to go forward in the process.

The above represent our own views of considerations the Council may have taken into account at the time. We have not received any evidence that the Council undertook the above during the Partner Identification Process.

The three documents discussed above (that is: the Due Diligence Protocol, the PIN and the Soft Market Testing document) should have informed the first set of questions and document requests which the Council presented to any respondents who were going forward in the process following responses received on the PIN itself.

# 7. Further considerations based on the additional information provided in the RiverOak Dossier

## 7.1. Introduction

Requirement Two in the review's Terms of Reference instructs us to address:

**Further key considerations that TDC may wish to take into account in any further CPO review based on a review of the additional information provided by RiverOak to the DfT.**

As set out in Section 1, we note that during the Review Timeframe, the Council was not undertaking a full CPO review. Rather, it was undertaking a soft market testing exercise in order to identify potential indemnity partners for a future CPO process. Whilst part of this exercise may therefore have included an initial CPO review, our understanding is that the Council was not undertaking a full CPO review during the Review Timeframe.

Accordingly, our response to Requirement Two of our instructions has been limited to an assessment of the further considerations during any future soft marketing process to identify a CPO indemnity partner that the Council may wish to take into account, based on the additional information provided in the RiverOak Dossier.

In the sections below we first set out details of the additional information provided in the RiverOak Dossier. We then provide an overview of the further considerations that the Council may wish to take into account, based on this additional information.

## 7.2. Additional information contained in the RiverOak Dossier

As set out in Section 1.6, the RiverOak Dossier included a total of twenty additional documents which were not included in the TDC Dossier provided to DfT. However, based on our review of these additional documents, it appears that whilst copies of these documents were not included in the TDC Dossier, they were provided to TDC. Table 7.1 below summarises the additional documents included in the RiverOak Dossier and our assessment as to whether these documents were also received by TDC.

**Table 7.1: Unique submissions in the RiverOak file and our assessment as to whether they were provided to TDC**

Additional RiverOak Documents (reference)	Description	Did TDC have access to this document?	Further information
RO01	Letter from RiverOak to Thanet District Council	Yes	Sent directly to TDC on 24 July 2014
RO02	Opinion of Counsel	Yes	Sent directly to TDC on 6 July 2014 <sup>56</sup>
RO03	Heads of Terms for CPO Indemnity Agreement	Yes	Provided to the Council (specific date unknown)
RO04	Thanet District Council OJEU prior information notice	Yes	Produced by TDC
RO05	Thanet District Council's Soft Market Testing Questionnaire	Yes	Produced by TDC
RO07	RiverOak's submission to the Davies Commission	Yes	Send directly to TDC in August 2014

<sup>56</sup> Following the Disclosure Request, PwC were provided with an e-mail communication showing this had been provided to the Council on this date.



Additional RiverOak Documents (reference)	Description	Did TDC have access to this document?	Further information
RO09	Email correspondence between Thanet District Council and RiverOak	Yes	TDC involved in correspondence between 19 Sept 2014 and 25 Sept 2014
RO11	Working draft of the CPO indemnity Agreement	Yes	Sent directly to TDC on 20 Oct 2014
RO12	RiverOak's email attaching further due diligence material	Yes	Sent directly to TDC on 8 Oct 2014 to 31 Oct 2014
RO19	RiverOak confirmation regarding the UK bank account	Yes	Sent directly to TDC on 2 Oct 2014
RO20	RiverOak emails regarding discussions with a leading aircraft manufacturer	Yes	Email chain forwarded to TDC in Oct and Nov 2014
RO21	Thanet District Council email confirming that no further information would be accepted	Yes	Produced by TDC (email sent from TDC to RiverOak on 24 Nov 2014)
RO23	RiverOak's open letter to Cabinet	Yes	Sent directly to TDC on 6 December 2014
RO24	RiverOak offers to purchase Manston Airport	No	Before Process with the Council had begun
RO26	RiverOak solicitors writing to John Hayes MP	After 11 December 2014	N/A
RO27	The Role of Smaller Airports	Document is undated	N/A
RO28	Index of documents	After 11 December 2014	N/A
RO29	WLG communication with Minister	After 11 December 2014	N/A
RO30	Letter from RiverOak to Iris Johnson 18/2	After 11 December 2014	N/A
RO31	Letter from RiverOak to Iris Johnson 25/2	After 11 December 2014	N/A

Source: Appendix B.

### ***7.3. Key considerations that the Council may wish to undertake based on the additional documents provided in the RiverOak Dossier***

As shown in Table 7.1, all of the additional documents in the RiverOak Dossier dated during the Review Timeframe appear to have also been provided to the Council.

We set out below our comments on the additional documents included in the RiverOak Dossier which we have not been able to establish were also provided to the Council (being documents RO24 and RO26 to RO31).

#### ***Document RO24 – RiverOak offer to purchase Manston Airport***

This includes communication between RiverOak and Mrs Gloag, the owner of the airport, in relation to the potential purchase of Manston Airport. The communication is between 4 May 2014 and 15 May 2015. We have not been provided with any evidence that RiverOak shared this communication with the Council. Based on our review of the information contained within RO24, we do not believe it would have resulted in any material impact upon the assessment undertaken by TDC.

#### ***Document RO26 – RiverOak letter to John Hayes MP***

This letter reiterates RiverOak's position and commitment to the Partner Identification Process. However, in itself, the letter does not contain any additional relevant information which was not included in the information previously provided to the Council. TDC were not in a position to consider the contents of this document as it was produced after 11 December 2014 and therefore after the final decision document had been finalised and released.

### *Document RO27 – The Role of Smaller Airports*

This document is a copy of RiverOak's submission to the Transport Select Committee. It is a publicly available document and sets out a brief background on Manston Airport, key events leading to the closure of the airport and a summary of RiverOak's short to medium term plan for the airport. The report also includes information on the financial offers RiverOak provided to Mrs Gloag, the owner of the airport. We have not received any evidence that this was provided to TDC by RiverOak.

The contents of the document are a high-level summation and do not represent an in-depth analysis or business plan. Therefore, if TDC had access to this document during the Review Timeframe, it is likely that the contents therein would have been superseded by the additional information and business plan provided by RiverOak. It would therefore appear that it would not have materially impacted TDC's assessment.

### *Document RO28 – Index of Documents*

This is an index of the documents provided by RiverOak and does not in itself contain any further information relevant to any future partner identification process.

### *Document RO29 – WLG communication with Minister*

This is the covering letter prepared by WLG, RiverOak's legal adviser, in relation to providing DfT with the material that RiverOak has provided as part of the due diligence process. TDC were not in a position to consider the contents of this document as it was produced after 11 December 2014 and therefore after the final decision document had been finalised and released.

### *Documents RO30 and RO31 – RiverOak letters to Iris Johnson*

Two letters from RiverOak to Iris Johnson, the leader of TDC Council, in which RiverOak provides further assurances in relation to the willingness to set up a UK based and registered company and deposit into an appropriate account in the UK up to £2 million upon the mutual signing of a partnership and indemnity agreement with the Council. TDC were not in a position to consider the contents of these documents as they were produced after 11 December 2014 and therefore after the final decision document had been finalised and released.

## **7.4. Conclusion**

Our review of the additional information contained in the RiverOak Dossier identified that of the twenty unique documents in this dossier, thirteen of them appear to have been previously provided to the Council, but were not included in the TDC Dossier. We do not know why this information was not included in the TDC Dossier.

Of the seven additional documents included in the RiverOak Dossier which we have not been able to establish were provided to the Council, either, we do not believe that these documents contain any additional information of which the Council was not already aware of during the Review Timeframe, or the information or correspondence related to the period after the final decision document was prepared and released on 11 December 2014.

## ***8. Work TDC may undertake in any future due diligence***

### ***8.1. Introduction***

Requirement Three in the review's Terms of Reference instructs us to address:

***On the basis of the findings from the above, the consultant should also provide advice on what, if any, further work TDC may wish to undertake to help strengthen findings from any future due diligence exercise.***

Following the consideration of the due diligence exercise undertaken with respect to RiverOak, PwC have been asked to consider the above. We have identified a number of points which the Council could consider undertaking and/or implementing in any future due diligence exercise to strengthen its findings and provide further support to the Council's decisions. The Council should consider the following points:

### ***8.2. Linking information gathering and decision making into a consistent framework and narrative***

In future due diligence exercises TDC should closely align the PIN, Due Diligence Protocol and Soft Market Testing documents. This would provide the Council with a consistent and robust framework for carrying out Due Diligence exercises and would provide any prospective partners a clear set of criteria which they need to fulfil at the outset. The documents should be consistently cross-referenced.

The final decision document and accompanying internal working papers should demonstrate that key aspects of the PIN and all relevant Due Diligence Protocol issues have been considered by the Council and addressed throughout the process. All decisions should be linked back to the criteria therein and respondents should be passed or failed accordingly on the basis of clearly communicated guidelines.

### ***8.3. TDC needs to consider its handling of gaps in submissions and the extent to which they can or need to be addressed***

If a party has not matched all the criteria set out in the Due Diligence Protocol, TDC needs to consider a framework whereby these gaps can be addressed. Where all criteria cannot necessarily be met by a particular party, this may not necessarily mean that they are not suitable when taking a process forward. Therefore, the Council should consider the rigidity with which they must adhere to the protocol.

In this respect, the Council should seek legal advice on the extent to which this deviation could be undertaken. The Council should set robust guidelines which provide some flexibility when attempting to reach a well-informed decision. However, the Council must be wary of legal precedent established through previous decisions where the Due Diligence Protocol was strictly adhered to and should ensure that any deviation therefrom is reasonable and can be supported.

### ***8.4. Seeking external advice in relation to the requirements of the PIN and Due Diligence Protocol***

When assessing a submission, the Council should ensure that they have received sufficient information to be satisfied that all requirements denoted within the PIN and the Due Diligence Protocol have been adequately addressed. Where the Council cannot be satisfied with the responses received in relation to certain criteria set within either of the two documents, they should consider obtaining external expert advice which can provide an independent view thereof.

The Council should therefore be in a position to be fully satisfied on all necessary criteria within both the PIN and the Due Diligence Protocol through a combination of their own procedures and any additional external expert opinions sought to supplement the conclusions the Council has reached.

### ***8.5. Clear communication to all parties on the scoring system to be used in the process***

The Council should make clear in the PIN, and again in the Soft Market Testing document, the criteria upon which the respondent will be judged. This would provide prospective partners with a clear understanding of the Council's requirements. Furthermore, the Council should disclose at the earliest possible opportunity the elements of the Due Diligence Protocol or PIN requirements which are deemed to be wholly fundamental, and upon which failure to provide relevant information will make it impossible for the Council to take the prospective partner forward.

### ***8.6. Transparency of the process***

The Council should ensure that the process remains transparent throughout, providing a clear framework to prospective partners of the reason for information requests and the reasons underpinning the challenging of any documents or assumptions which have been provided or made respectively. This will demonstrate that the Council is working with the prospective partner in good faith, and it is expected that it would provide an established framework upon which the Council could rely in the event of any future querying of a decision by a third party or otherwise.

### ***8.7. Enquire of prospective partners the extent of indemnification they are prepared to underwrite***

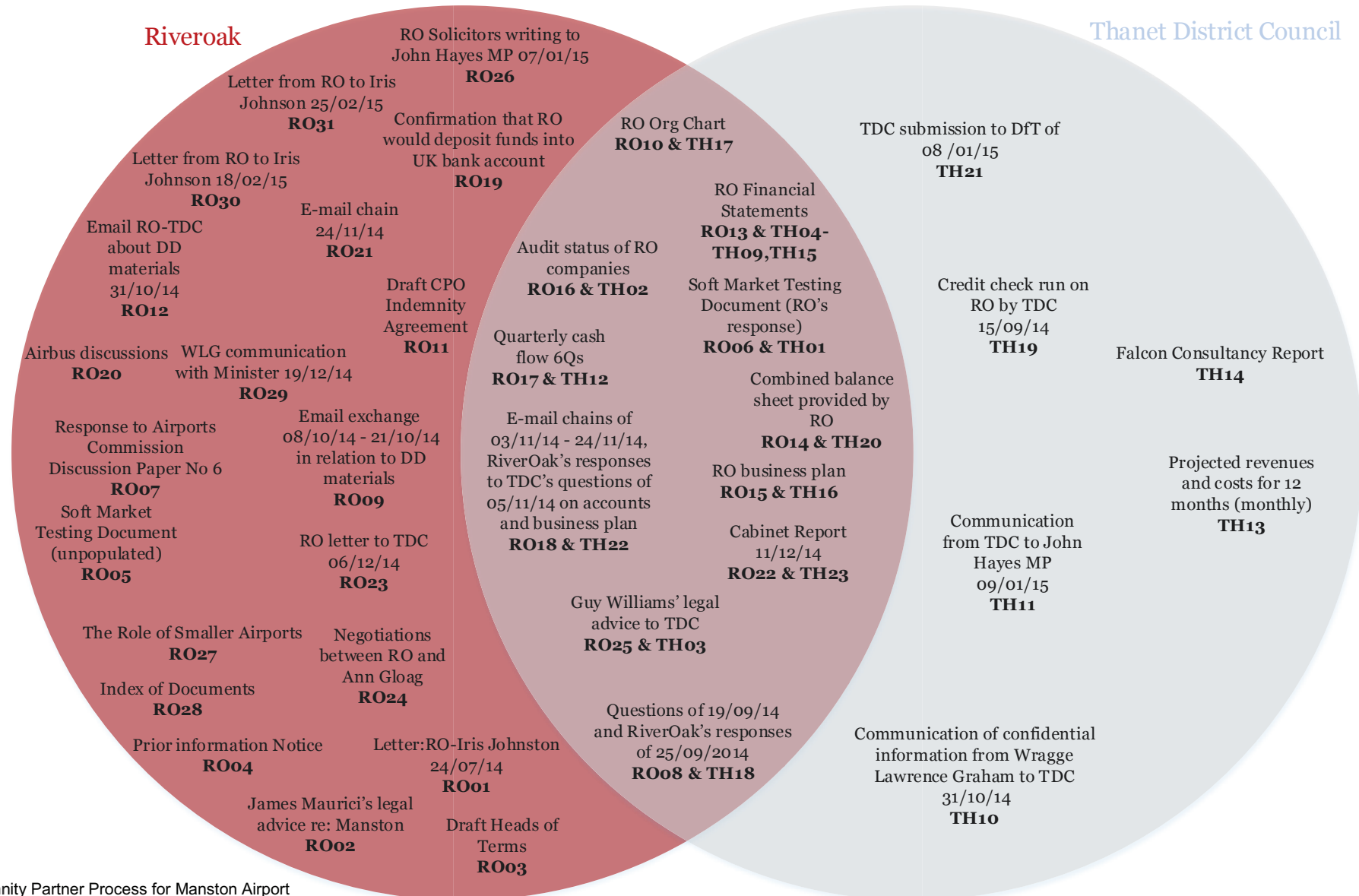
Throughout the process, the Council should seek clarification on the indemnification that prospective partners are willing to provide and should seek to receive indemnified independent advice wherever possible to strengthen their findings throughout the process. This independent advice may extend to legal counsel, accounting experts or industry and sectoral experts, and would provide the Council with additional foundations upon which any decision can be supported.

# Appendix A. - Document References

Ref	Document name and/or section content
<b>TH01</b>	Soft Marketing Testing Document (RiverOak's response)
<b>TH02</b>	Audit status of various RiverOak entities
<b>TH03</b>	Guy Williams' legal advice provided to TDC (10 December 2014)
<b>TH04</b>	RiverOak Realty Fund III, LLC 2011
<b>TH05</b>	RiverOak Realty Fund III, LLC 2012
<b>TH06</b>	RiverOak Realty Fund III, LLC 2013
<b>TH07</b>	RiverOak Realty Fund IV, LLC 2011
<b>TH08</b>	RiverOak Realty Fund IV, LLC 2012
<b>TH09</b>	RiverOak Realty Fund IV, LLC 2013
<b>TH10</b>	Communication of confidential information from Wragge Lawrence Graham to TDC (31 October 2014)
<b>TH11</b>	Communication from TDC to John Hayes MP (9 January 2015)
<b>TH12</b>	Quarterly cash flow for six quarters (an 18 month period)
<b>TH13</b>	Projected revenues etc. for 12 months (monthly)
<b>TH14</b>	Falcon Consultancy Report
<b>TH15</b>	MKRO I, LLC 2013
<b>TH16</b>	RiverOak business plan (a nineteen page document)
<b>TH17</b>	RiverOak organisational chart
<b>TH18</b>	RiverOak e-mail of 25 September 2014 detailing answers to questions of 19 September 2014
<b>TH19</b>	Credit check run on RiverOak by TDC (15 September 2014)
<b>TH20</b>	Combined balance sheet provided by RiverOak to TDC
<b>TH21</b>	TDC submission to DfT of 8 January 2015
<b>TH22</b>	<i>E-mail chains of 3-24 November 2014:</i> RiverOak's responses to TDC's questions of 5 November 2014 on accounts and business plan provided on 31 October 2014
<b>TH23</b>	Cabinet Report of 11 December 2014

<b>Ref</b>	<b>Document name and/or section content</b>
<b>RO01</b>	Letter to Iris Johnston from RiverOak dated 24 July 2014
<b>RO02</b>	James Maurici's legal advice in relation to Manston
<b>RO03</b>	Draft Heads of Terms for CPO Indemnity Agreement
<b>RO04</b>	Prior Information Notice – Official Journal
<b>RO05</b>	Soft Market Testing Document (unpopulated)
<b>RO06</b>	Soft Market Testing Document (RiverOak's response)
<b>RO07</b>	Response to Airports Commission Discussion Paper No 6
<b>RO08</b>	RiverOak e-mail of 25 September 2014 detailing answers to questions of 19 September 2014
<b>RO09</b>	E-mail exchange of 8-21 October in relation to providing materials for due diligence
<b>RO10</b>	RiverOak organisational chart
<b>RO11</b>	Working draft CPO Indemnity Agreement of 20 October 2014
<b>RO12</b>	E-mail detailing information to be provided on 31 October 2014
<b>RO13</b>	<i>Seven sets of accounts:</i> RiverOak Realty Fund III, LLC 2011-13 RiverOak Realty Fund IV, LLC 2011-13 MKRO I, LLC 2013
<b>RO14</b>	Combined balance sheet provided by RiverOak to TDC
<b>RO15</b>	RiverOak business plan (a nineteen page document)
<b>RO16</b>	Audit status of various RiverOak entities
<b>RO17</b>	Quarterly cash flow for six quarters (an 18 month period)
<b>RO18</b>	<i>E-mail chains of 3-24 November 2014:</i> RiverOak's responses to TDC's questions of 5 November 2014 on accounts and business plan provided on 31 October 2014
<b>RO19</b>	Confirmation that RiverOak would deposit necessary funds in a UK bank account
<b>RO20</b>	Airbus discussions
<b>RO21</b>	E-mail chain of 24 November 2014
<b>RO22</b>	Cabinet Report of 11 December 2014
<b>RO23</b>	RiverOak's letter to TDC of 6 December 2014
<b>RO24</b>	Details of negotiations between Ann Gloag and RiverOak in April and May 2014
<b>RO25</b>	Guy Williams' legal advice provided to TDC (10 December 2014)
<b>RO26</b>	Wragge Lawrence Graham & Co writing to John Hayes MP on behalf of RiverOak on 7 January 2015
<b>RO27</b>	The Role of Smaller Airports
<b>RO28</b>	Table of Contents and summary from WLG to the Minister dated 19 December 2014
<b>RO29</b>	WLG communication with Minister dated 19 December 2014
<b>RO30</b>	Letter from RiverOak to Iris Johnston dated 18 February 2015
<b>RO31</b>	Letter from RiverOak to Iris Johnston dated 25 February 2015

# Appendix B. - Venn Diagram



## Appendix C. - *Timeline*

As part of our work, PwC developed an extensive timeline of the key events arising during the process from April 2014 to March 2015. This was compiled using the original Thanet District Council and RiverOak Dossiers, and therefore does not include any additional information provided following the Disclosure Request.

### The date of issuing the Prior Information Notice

The Prior Information Notice is attached to this report in Exhibit 1. We were not originally provided with an issuance date of this document, and our inference from the contents of the PIN was that it was issued on 6 August 2014. Following the Disclosure Request, we noted that the PIN was issued on 9 August 2014. For factual accuracy in relation to this date, we have made this amendment to the timeline. All other dates are consistent with the information provided in the original Dossiers.

### Key

The following key has been using throughout the Timeline:

Colour coding	Description
TDC Ref #	A reference included within the Thanet District Council Dossier.
RiverOak Ref #	A reference included within the RiverOak Dossier.
Both Files Ref #	A reference included within both Dossiers.
Offer	Information relating to the offer to purchase Manston Airport.
Meeting or Communication	A meeting or communication between Thanet District Council and RiverOak.
Information Request	An information request by Thanet District Council to RiverOak.
Information Provision	The provision of information by RiverOak to Thanet District Council.
Information Challenged	Thanet District Council challenging information received from RiverOak as part of the Partner Identification Process.
Relating to the Process in general	Information relating to the Partner Identification Process in general.
Relating to the CPO specifically	Information relating to the CPO specifically within the Partner Identification Process.
Relating to Manston Airport Operations	Information relating to operations at Manston Airport.



	Monday 28 April 2014	Tuesday 29 April 2014	Wednesday 30 April 2014	Thursday 01 May 2014	Friday 02 May 2014	Saturday 03 May 2014	Sunday 04 May 2014
PERIOD OF INITIAL OFFER	RO24	RO01			RO01		RO24
	Full asking price communicated to Riveroak by Pauline Bradley SEVEN MILLION	RiverOak staff visit Manston Airport			RiverOak meet Ann Gloag at her Perthshire Home		RiverOak offer Ann Gloag FIVE MILLION for the airport
					RO24 Asking price confirmed by Ann Gloag at this meeting SEVEN MILLION		
	Monday 05 May 2014	Tuesday 06 May 2014	Wednesday 07 May 2014	Thursday 08 May 2014	Friday 09 May 2014	Saturday 10 May 2014	Sunday 11 May 2014
PERIOD OF INITIAL OFFER	RO24		RO24				
	Ann Gloag rejects offer of FIVE MILLION		Letter from RO to Ann Gloag in response to her rejection to RO's first offer of £5million				
	Monday 12 May 2014	Tuesday 13 May 2014	Wednesday 14 May 2014	Thursday 15 May 2014	Friday 16 May 2014	Saturday 17 May 2014	Sunday 18 May 2014
PERIOD OF INITIAL OFFER / CLOSING OF AIRPORT BEGINS	RO24	RO24	RO24	RO24			
	Notice of termination served to all staff at the airport	Letter from RiverOak to Ann Gloag offering SIX MILLION for the airport	Ann Gloag confirms intention to close airport and rejects SIX MILLION	RiverOak offer SEVEN MILLION			
			RO24	RO24			
			Raised at PMQs. Aviation minister phones RiverOak.	Ann Gloag rejects final offer of SEVEN MILLION			
				RO24 Closure of Manston Airport			
	Monday 19 May 2014	Tuesday 20 May 2014	Wednesday 21 May 2014	Thursday 22 May 2014	Friday 23 May 2014	Saturday 24 May 2014	Sunday 25 May 2014
	Monday 26 May 2014	Tuesday 27 May 2014	Wednesday 28 May 2014	Thursday 29 May 2014	Friday 30 May 2014	Saturday 31 May 2014	Sunday 01 June 2014

	Monday 02 June 2014	Tuesday 03 June 2014	Wednesday 04 June 2014	Thursday 05 June 2014	Friday 06 June 2014	Saturday 07 June 2014	Sunday 08 June 2014
	Monday 09 June 2014	Tuesday 10 June 2014	Wednesday 11 June 2014	Thursday 12 June 2014	Friday 13 June 2014	Saturday 14 June 2014	Sunday 15 June 2014
	Monday 16 June 2014	Tuesday 17 June 2014	Wednesday 18 June 2014	Thursday 19 June 2014	Friday 20 June 2014	Saturday 21 June 2014	Sunday 22 June 2014
FIRST MEETING BETWEEN TDC AND RIVEROAK			RO01 Informal meeting between RiverOak and Iris Johnston				
	Monday 23 June 2014	Tuesday 24 June 2014	Wednesday 25 June 2014	Thursday 26 June 2014	Friday 27 June 2014	Saturday 28 June 2014	Sunday 29 June 2014
	Monday 30 June 2014	Tuesday 01 July 2014	Wednesday 02 July 2014	Thursday 03 July 2014	Friday 04 July 2014	Saturday 05 July 2014	Sunday 06 July 2014
RIVEROAK SEEK LEGAL ADVICE FOR THE FIRST TIME			TH14 Falcon Consultancy visited Manston Airport for purpose of forming opinions on the present state of the airport. Report released to TDC on 16 July 2014.		RO02 James Maurici QC offers legal advice to RiverOak regarding the CPO arrangements and other associated matters relating to the acquisition of Manston		

	Monday 07 July 2014	Tuesday 08 July 2014	Wednesday 09 July 2014	Thursday 10 July 2014	Friday 11 July 2014	Saturday 12 July 2014	Sunday 13 July 2014
COUNCIL APPROVES MOTION TO START PROCESS				RO01 Council approves motion to begin process			
	Monday 14 July 2014	Tuesday 15 July 2014	Wednesday 16 July 2014	Thursday 17 July 2014	Friday 18 July 2014	Saturday 19 July 2014	Sunday 20 July 2014
FALCON REPORT RECEIVED			TH14 Falcon Consultancy provide TDC with a consultancy report				
	Monday 21 July 2014	Tuesday 22 July 2014	Wednesday 23 July 2014	Thursday 24 July 2014	Friday 25 July 2014	Saturday 26 July 2014	Sunday 27 July 2014
RIVEROAK SEND LETTER TO IRIS JOHNSTON				RO01 Letter from RiverOak to Iris Johnston of TDC			
	Monday 28 July 2014	Tuesday 29 July 2014	Wednesday 30 July 2014	Thursday 31 July 2014	Friday 01 August 2014	Saturday 02 August 2014	Sunday 03 August 2014
				TH23 & RO22 Cabinet decision on this date to seek expressions of interest and to carry out soft market testing exercise to identify a CPO partner			
	Monday 04 August 2014	Tuesday 05 August 2014	Wednesday 06 August 2014	Thursday 07 August 2014	Friday 08 August 2014	Saturday 09 August 2014	Sunday 10 August 2014
CPO PROCESS STARTS						RO04 Prior Information Notice for Indemnity Partner for CPO of Manston airport (official notice seeking CPO)	

	Monday 11 August 2014	Tuesday 12 August 2014	Wednesday 13 August 2014	Thursday 14 August 2014	Friday 15 August 2014	Saturday 16 August 2014	Sunday 17 August 2014
			RO05				
			Soft Market Testing Document - Indemnity Partner for Compulsory Acquisition of Manston Airport and Subsequent Investment in the Airport's Development (clean version)				
	Monday 18 August 2014	Tuesday 19 August 2014	Wednesday 20 August 2014	Thursday 21 August 2014	Friday 22 August 2014	Saturday 23 August 2014	Sunday 24 August 2014
	Monday 25 August 2014	Tuesday 26 August 2014	Wednesday 27 August 2014	Thursday 28 August 2014	Friday 29 August 2014	Saturday 30 August 2014	Sunday 31 August 2014
FIRST STAGE COMPLETED WITH RIVEROAK RESPONDING TO TESTING DOCUMENT					TH01 & RO06		
					Soft Market Testing Document - Indemnity Partner for Compulsory Acquisition of Manston Airport and Subsequent Investment in the Airport's Development (RiverOak version)		
	Monday 01 September 2014	Tuesday 02 September 2014	Wednesday 03 September 2014	Thursday 04 September 2014	Friday 05 September 2014	Saturday 06 September 2014	Sunday 07 September 2014
	Monday 08 September 2014	Tuesday 09 September 2014	Wednesday 10 September 2014	Thursday 11 September 2014	Friday 12 September 2014	Saturday 13 September 2014	Sunday 14 September 2014

	Monday 15 September 2014	Tuesday 16 September 2014	Wednesday 17 September 2014	Thursday 18 September 2014	Friday 19 September 2014	Saturday 20 September 2014	Sunday 21 September 2014
FIRST STAGES OF DD APPEAR TO START  COUNCIL DISCUSS RIVEROAK SUBMISSION	TH19			TH18 & RO08  Riveroak communicating to Thanet Council access to USD11M uncalled for but committed capital (available with 30 days notice)	RO08  TDC make additional request for information from RiverOak		
	Credit Report run by TDC on RiverOak			TH18 & RO08  Hudson Valley Bank confirming to Riveroak that it has access to USD9,538K and USD400K revolving line of credit as at 17 September 2014			
				RO08			
				Council meeting to discuss RiverOak's submission			
	Monday 22 September 2014	Tuesday 23 September 2014	Wednesday 24 September 2014	Thursday 25 September 2014	Friday 26 September 2014	Saturday 27 September 2014	Sunday 28 September 2014
LETTERS FROM RIVEROAK SUPPORTERS; ANSWERING FIRST ROUND OF QUESTIONS FROM TDC	TH18 & RO08  Letter from Salon Marrow Dyckman Newman & Broudy LLP confirming anti-fraud procedures  Letter from Salon Marrow Dyckman Newman & Broudy LLP confirming Riveroak are incorporated in state of Delaware		TH18 & RO08  Letter from Cohn Reznick confirming they have provided audit and tax services since 2010	RO08  RiverOak's response to the questions raised on 19 September 2014			
	Monday 29 September 2014	Tuesday 30 September 2014	Wednesday 01 October 2014	Thursday 02 October 2014	Friday 03 October 2014	Saturday 04 October 2014	Sunday 05 October 2014
				RO19  Confirmation that Riveroak has access to a UK bank account for payment purposes			
	Monday 06 October 2014	Tuesday 07 October 2014	Wednesday 08 October 2014	Thursday 09 October 2014	Friday 10 October 2014	Saturday 11 October 2014	Sunday 12 October 2014
CONFIDENTIALITY AGREEMENT SIGNED  TDC REQUEST MORE INFORMATION			TH17 & RO10  RiverOak provide organisational chart to TDC	RO09  Thanet Council requesting additional information including three years financial accounts, financial plan for Manston and other supporting documentation for the business plan			
				TH10  Confidentiality agreement signed between Thanet Council and Riveroak			
	Monday 13 October 2014	Tuesday 14 October 2014	Wednesday 15 October 2014	Thursday 16 October 2014	Friday 17 October 2014	Saturday 18 October 2014	Sunday 19 October 2014
LABOUR GROUP / CABINET MEETINGS  RIVEROAK AND TDC MEET		RO23  Labour Group meeting regarding the process		RO09  Cabinet meeting where progress on soft marketing for a CPO indemnity partner and further reports were discussed	RO09  Meeting between RiverOak and TDC that is mentioned in TDC's reply to George Yerrall - meeting appears to have been to discuss DD materials and information required/submitted		

	Monday 20 October 2014	Tuesday 21 October 2014	Wednesday 22 October 2014	Thursday 23 October 2014	Friday 24 October 2014	Saturday 25 October 2014	Sunday 26 October 2014
RIVEROAK RESPOND TO INFO REQUEST, TDC WRITE BACK; AIRBUS FIRST APPEAR	RO09 RiverOak's response to information request of 9 October 2014	RO09 TDC's response to e-mail of 20 October 2014	RO20 Communication from Airbus regarding setting up a meeting with RiverOak for 11 Dec 2014				
	RO11 Draft CPO agreement provided to Thanet by RiverOak						
	Monday 27 October 2014	Tuesday 28 October 2014	Wednesday 29 October 2014	Thursday 30 October 2014	Friday 31 October 2014	Saturday 01 November 2014	Sunday 02 November 2014
RIVEROAK AND TDC MEET FOLLOWING DISAGREEMENTS ON 20/21 OCT OVER INFO PROVISION - STEADY FLOW OF DOCUMENTS PROVIDED NEXT DAY  AIRBUS MEETING CONFIRMED BY RIVEROAK FOR 11 DEC		RO20	TH23 & RO22	RO12 Meeting between RiverOak and TDC held on 30 October 2014 regarding DD materials.	RO12 E-mail from RiverOak to TDC including documents to be sent		
		Airbus seek confirmation of arrangements for meeting on 11 Dec 2014	Meeting between Cabinet members, Group Leaders and the Council's Statutory Officers		TH04-TH09, TH15 & RO13 Seven accounts for audited funds		
					TH20 & RO14 Combined Balance Sheet for RiverOak		
					TH02 & RO16 Audit status of RiverOak companies		
					RO17 Five year cash flow projection for Manston		
					TH10 & RO18 Clare Fielding (WLG) provides contact details to TDC		
				RiverOak confirm meeting arrangements for 11 Dec 2014	TH12 18 month quarterly cash flow on known business		
					TH16 & RO15 Airport Restart and Operations Business Plan		
					RO18 Letter of Oct 31 regarding confidentiality agreement		
		Monday 03 November 2014	Tuesday 04 November 2014	Wednesday 05 November 2014	Thursday 05 November 2014	Friday 07 November 2014	Saturday 08 November 2014
DD DISCUSSION MOVES FROM TDC/RO TO TDC/WLG	RO18 TDC detail what they wish to discuss with Clare Fielding in relation to Due Diligence  - What they still need as part of evaluation  - Overcoming difficulties relating to release of investor information		RO18 Phone call between Paul Cook, Steven Boyle (Head of Legal Services) and Clare Fielding (WLG) regarding issues in DD				
			RO18 TDC ask a number of questions to RiverOak				
			RO20 Airbus contact provides details of his travel schedule for 11 Dec meeting				

	Monday 10 November 2014	Tuesday 11 November 2014	Wednesday 12 November 2014	Thursday 13 November 2014	Friday 14 November 2014	Saturday 15 November 2014	Sunday 16 November 2014	
SECOND ROUND OF QUESTIONS ANSWERED BY RO - INVESTOR CHECKS COMPLETED BY WLG (NOT BY COUNCIL), CLARITY SOUGHT FOR FINANCING BY TDC, WLG SEEKS CLARIFICATION ON TIME FRAMES	RO18	RO18			RO18			
	E-mail from Clare Fielding (WLG) to TDC regarding follow-up from 5 November phone call	RiverOak re-provide audit status letters to TDC			Clare Fielding (WLG) to TDC asking for confirmation of due diligence time frames (reply given 18 Nov)			
	TH22 & RO18	RO18			RO20			
	WLG provide answers to TDC's questions of 5 November 2014	RO18	WLG inform TDC that the "Know Your Client" checks are completed and the investors have cleared both searches			Reference to Joint Venture for recycling facility - Airbus communications		
		RO18	TDC seek clarification on actual funds available (USD1.6M + USD400K revolving)			Airbus contact seeks news on progress of CPO		
RO18	RO18	Clare Fielding confirms to TDC that funds are on hand and further financing will be sought and obtained			RO20			
					RiverOak provide e-mail chain of discussions with Airbus to TDC			
	Monday 17 November 2014	Tuesday 18 November 2014	Wednesday 19 November 2014	Thursday 20 November 2014	Friday 21 November 2014	Saturday 22 November 2014	Sunday 23 November 2014	
TDC CLOSE INFORMATION GATHERING AND SEEK LEGAL ADVICE; WLG CONTINUE TO PROVIDE INFORMATION REGARDLESS AND SEEK CLARIFICATION ON TIME FRAME		RO18	RO18	TH03 & RO25	RO18			
		Thanet Council confirming to Clare Fielding that information collecting for purposes of assessing submissions is finished	RiverOak receive letter from Hunton Williams, another UK law firm acting for them in relation to the transaction - communicated to TDC in Clare Fielding's e-mail of 21 Nov 2014	A telephone conference is held between TDC and their solicitors with oral advice provided	Clare Fielding (WLG) provides Airbus e-mail chain to TDC - communicates Airbus concerned by delay			
		In reply, Clare Fielding (WLG) seems confirmation on timing and timescale of the process			RO18			
					Letter from Hunton Williams sent to TDC by WLG			
					RO18			
					WLG request further clarification on timeline			
	Monday 24 November 2014	Tuesday 25 November 2014	Wednesday 26 November 2014	Thursday 27 November 2014	Friday 28 November 2014	Saturday 29 November 2014	Sunday 30 November 2014	
PAUL COOK (TDC) INFORMS RIVEROAK AND WLG SEPARATELY THAT INFORMATION GATHERING IS FINISHED; LEGAL ADVICE SUMMARISED BY TDC'S COUNSEL	RO21		TH03 & RO25					
	11.44am - Paul Cook (TDC) emails George Yerrall to say they are working towards 11 Dec cabinet							
	RO21							
	16.54 - George Yerrall seeks additional clarification on process etc.							
	RO21							
17.39 - Paul Cook informs George Yerrall they are not taking further information								
RO21								
18.00 - Paul Cook replies to Clare Fielding's email of 21 Nov to say no further information is being taken								
	Monday 01 December 2014	Tuesday 02 December 2014	Wednesday 03 December 2014	Thursday 04 December 2014	Friday 05 December 2014	Saturday 06 December 2014	Sunday 07 December 2014	
TDC INFORM RIVEROAK THAT PROCESS WILL NOT CONTINUE  RIVEROAK REBUTTAL AND RELEASE OF LETTER TO WEBSITE			RO22			RO23		
			TDC inform RiverOak that they are not proceeding with the CPO - they ask them to adhere to confidentiality agreements already signed.			RiverOak send letter to TDC regarding not proceeding with CPO and threaten to release the letter on their website immediately before 11 Dec Council Meeting		
			RO22					
			TDC provide RiverOak with attachment to be put before Cabinet					

	Monday 08 December 2014	Tuesday 09 December 2014	Wednesday 10 December 2014	Thursday 11 December 2014	Friday 12 December 2014	Saturday 13 December 2014	Sunday 14 December 2014
LEGAL ADVICE FINALISED AND RELEASED - CABINET MEETING TO FINALISE DECISION			TH03 & RO25	TH23 & RO22	RO29		
			Note from Guy Williams (relating to phone call of 20 November and subsequent review of 26 November) is dated and signed	Cabinet meeting regarding CPO decision (this is the cabinet which had been worked towards throughout the process)	In their letter to John Hayes MP, Minister of State for Transport, WLG claim that TDC reported to Cabinet on 12 December 2014 instead of 11 December 2014		
				RO20			
				Original date for Airbus meeting with RiverOak			
	Monday 15 December 2014	Tuesday 16 December 2014	Wednesday 17 December 2014	Thursday 18 December 2014	Friday 19 December 2014	Saturday 20 December 2014	Sunday 21 December 2014
PROVISION OF DOCUMENTS TO MINISTER OF STATE					RO29		
					WLG provide the Minister of State for Transport with a dossier of documents for review following the decision not to proceed with CPO		
	Monday 22 December 2014	Tuesday 23 December 2014	Wednesday 24 December 2014	Thursday 25 December 2014	Friday 26 December 2014	Saturday 27 December 2014	Sunday 28 December 2014
PROVISION OF DOCUMENTS TO MINISTER OF STATE		TH11					
		The Council would be sending for your consideration the documents which have been supplied to TDC by RiverOak through the soft market testing process (included in letter of 9 Jan 2015)					
	Monday 29 December 2014	Tuesday 30 December 2014	Wednesday 31 December 2014	Thursday 01 January 2015	Friday 02 January 2015	Saturday 03 January 2015	Sunday 04 January 2015
	Monday 05 January 2015	Tuesday 06 January 2015	Wednesday 07 January 2015	Thursday 08 January 2015	Friday 09 January 2015	Saturday 10 January 2015	Sunday 11 January 2015
TDC GET FORMAL RESPONSE FROM GRANT THORNTON; MORE INFORMATION PROVIDED TO MINISTER OF STATE	TH21		RO26 & RO27	TH21	TH11		
	Grant Thornton communicate their views to the Council's Director of Corporate Resources		Letter from Wragge Lawrence Graham on behalf of RiverOak to Minister of State regarding omission of 'Role of Smaller Airports' from previous dossier	TDC challenge RiverOak's version of events in a submission to the DfT	Thanet Council sends documents relating to soft market testing process to minister		



	Monday 12 January 2015	Tuesday 13 January 2015	Wednesday 14 January 2015	Thursday 15 January 2015	Friday 16 January 2015	Saturday 17 January 2015	Sunday 18 January 2015
	Monday 19 January 2015	Tuesday 20 January 2015	Wednesday 21 January 2015	Thursday 22 January 2015	Friday 23 January 2015	Saturday 24 January 2015	Sunday 25 January 2015
	Monday 26 January 2015	Tuesday 27 January 2015	Wednesday 28 January 2015	Thursday 29 January 2015	Friday 30 January 2015	Saturday 31 January 2015	Sunday 01 February 2015
	Monday 02 February 2015	Tuesday 03 February 2015	Wednesday 04 February 2015	Thursday 05 February 2015	Friday 06 February 2015	Saturday 07 February 2015	Sunday 08 February 2015
	RO26 RO appears before the Transport Select Committee to answer questions on their submission						
	Monday 09 February 2015	Tuesday 10 February 2015	Wednesday 11 February 2015	Thursday 12 February 2015	Friday 13 February 2015	Saturday 14 February 2015	Sunday 15 February 2015

	Monday 16 February 2015	Tuesday 17 February 2015	Wednesday 18 February 2015	Thursday 19 February 2015	Friday 20 February 2015	Saturday 21 February 2015	Sunday 22 February 2015
CLARITY ON COMPANY ARRANGEMENTS IN EVENT CPO PROGRESSED			RO30				
			Letter from RiverOak to Iris Johnston regarding company structure				
			RO31 This letter distributed to council by Iris Johnston				
	Monday 23 February 2015	Tuesday 24 February 2015	Wednesday 25 February 2015	Thursday 26 February 2015	Friday 27 February 2015	Saturday 28 February 2015	Sunday 01 March 2015
CLARITY ON COMPANY ARRANGEMENTS IN EVENT CPO PROGRESSED			RO31				
			Letter from RiverOak to Iris Johnston regarding company structure				
	Monday 02 March 2015	Tuesday 03 March 2015	Wednesday 04 March 2015	Thursday 05 March 2015	Friday 06 March 2015	Saturday 07 March 2015	Sunday 08 March 2015
	Monday 09 March 2015	Tuesday 10 March 2015	Wednesday 11 March 2015	Thursday 12 March 2015	Friday 13 March 2015	Saturday 14 March 2015	Sunday 15 March 2015
FINAL COUNCIL MEETING				RO31			
				Final council meeting this side of the election to discuss the CPO process			

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## ***Exhibit 1. PIN***

Please find attached overleaf the Prior Information Notice issued by Thanet District Council.

# PRIOR INFORMATION NOTICE – OFFICIAL JOURNAL

## Section I: Contracting Authority

### I.1) Name, Address and Contact Point(s)

<b>Official Name:</b> Thanet District Council		
<b>Postal Address:</b> PO Box 9, Cecil Street		
<b>Town:</b> Margate	<b>Postal Code:</b> CT9 1XZ	<b>Country:</b> UK
<b>Contact Point:</b> Corporate Resources <b>For the attention of:</b> Paul Cook		<b>Telephone:</b> +44 1843577617
<b>E-Mail:</b> paul.cook@thanet.gov.uk		<b>Fax:</b>
<b>General Address of the contracting authority (URL)</b> www.thanet.gov.uk <b>Address of the Buyers Profile (URL)</b> http://www.mytenders.org/search/Search_AuthProfile.aspx?ID=AA1166		
Further information can be obtained at		<input type="checkbox"/> As in above mentioned contact point(s) <input checked="" type="checkbox"/> Other: <i>Please complete Annex A.I</i>

### I.2) Type of contracting Authority and Main Activity or Activities

<input type="checkbox"/> Ministry or any other national or federal authority, including their regional or local sub-divisions	<input checked="" type="checkbox"/> General public services
<input type="checkbox"/> National or federal agency/Office	<input type="checkbox"/> Defence
<input checked="" type="checkbox"/> Regional or local Authority	<input type="checkbox"/> Public order and safety
<input type="checkbox"/> Regional or local Agency/Office	<input type="checkbox"/> Environment
<input type="checkbox"/> Body governed by public law	<input type="checkbox"/> Economic and financial affairs
<input type="checkbox"/> European Institution/Agency or International Organisation	<input type="checkbox"/> Health
	<input type="checkbox"/> Housing and community amenities
	<input type="checkbox"/> Social protection
	<input type="checkbox"/> Recreation, culture and religion
	<input type="checkbox"/> Education

The contracting authority is purchasing on behalf of other contracting authorities: No

## Section II.B: Object of the Contract(SUPPLIES OR SERVICES)

### II.1) Title attributed to the contract by the contracting authority

Indemnity Partner for the Compulsory Acquisition of Manston Airport and subsequent investment in the Airport's development

### II.2) Type of contract and place of delivery or of performance

Services:  Service Category: 3

Main place of delivery or of performance

Ramsgate, Kent

NUTS code: UKJ4

### II.3) Short description of nature and quantity or supplies or services

This prior information notice (PIN) is to instigate a soft market testing exercise and does not constitute a call for competition to procure any goods, services or works for the Thanet District Council (TDC) and the Council is not bound to accept any

proposals offered.

Thanet District Council is undertaking a soft market testing exercise to help it determine whether there are suitable indemnity partners for the compulsory acquisition of Manston Airport and subsequent investment in the Airport's development.

Thanet District Council does not own or operate the site, which is owned by a third party. The Airport closed and ceased operation as an Airport on 15th May 2014.

Ahead of closure the Council has been working to understand viability of both regeneration and sustainability of continuance of the site operating as an airport. Following a compulsory acquisition of the site it is expected that any identified indemnity partner would make significant investment with a minimum 20 year business plan to deliver a viable and sustainable airport operation.

Under planning powers the Council could apply for a Compulsory Purchase Order (CPO) however, if successful in this application, the council would incur significant costs which must be met by the identification of suitably qualified indemnity partner, to underwrite and meet all costs incurred by the Council, should it pursue a CPO course of action.

It is imperative that the Council ascertains information as to availability of experienced and interested indemnity partners to support any CPO action to ensure it is a feasible course and delivers requirements, ensuring the public interest is met. Therefore, this process must provide external perspectives, ideas and advice on scope of operation and challenge, to enable the council to better understand and assess relevant market interest and capability of supporting this course of action.

It is anticipated that this initial soft market testing exercise will inform a final outcome report produced by the council and external aviation experts and will cover four key areas of enquiry:

- Assessing capability of the market place to deliver the requirements;
- Assessing whether there is an established market to deliver and an adequate number of operators;
- Assessing the capacity of the market to deliver the requirements;
- Assessing the feasibility and cost viability of any proposed action going forward.

The soft market testing process will be conducted in three phases:

1st Phase: Registration of interest by providing contact and organisational details direct via email to: [Procurement@thanet.gov.uk](mailto:Procurement@thanet.gov.uk)

Deadline for registering: 20th August 2014

2nd Phase: Following registration further information will be provided, which will include a number of structured questions posed to operators in the market to ascertain interest, capacity and capability within the market.

Deadline for submission of an online questionnaire: 1st September, 2014.

3rd Phase: This phase may involve some face to face sessions with operators. The arrangements for the delivery of this phase are currently under discussion and will be dependent on the number of operators that respond to the structured questions in the 2nd phase. If this phase is progressed it is anticipated this will be undertaken mid september 2014.

NOTE: To register your interest in this notice and obtain any additional information please visit the myTenders Web Site at [http://www.mytenders.org/Search/Search\\_Switch.aspx?ID=138548](http://www.mytenders.org/Search/Search_Switch.aspx?ID=138548).

Divided into lots? No

#### II.4) **Common Procurement Vocabulary (CPV)**

	Main vocabulary	Supplementary vocabulary <i>(when applicable)</i>
Main object	63731000	
Additional objects	45213331	
	45235100	

#### II.5) **Scheduled date for start of award procedures**

30-09-2015

#### II.6) **Contract covered by the government procurement agreement (GPA)**

Yes

**II.7) Additional information**

**IMPORTANT INFORMATION:**

This Prior Information Notice (PIN) is issued solely for the purpose of conducting a soft market testing exercise and does not constitute any commitment by TDC to undertake any public procurement exercise in the future.

TDC is not liable for any costs, fees or expenses incurred by any party participating in the soft market exercise.

Interested parties will not be prejudiced by any response or failure to respond to the soft market testing exercise and a response to this PIN does not guarantee any invitation to participate in this soft market testing exercise or any future public procurement process that TDC may conduct.

TDC is under no obligation to follow up this soft market testing in any way or with any interested parties.

TDC wishes to provide fixed points of contact for this soft market testing exercise as set out within this PIN and interested parties are requested not to contact any other individual officer, member at TDC or any of its other advisors.

TDC is committed to ensuring fairness, openness and transparency, and to follow EU procurement regulations.

It is understood and accepted by participants that the use of a soft market testing process is for contracting authorities to have a better understanding of the likelihood of generating a competitive response to requirements.

## **Section III: Legal, Economic, Financial and Technical Information**

### **III.1) Conditions relating to the contract**

#### **III.1.1) Main financing conditions and payment arrangements and/or reference to the relevant provisions regulating them**

### **III.2) Conditions for participation**

#### **III.2.1) Reserved contracts**

No

The contract is restricted to sheltered workshops

The execution of the contract is restricted to the framework of sheltered employment programmes

## **Section VI: Complementary Information**

### **VI.1) Contract related to a project and/or programme financed by community fund**

No

### **VI.2) Additional information**

(MT Ref: 138548)

### **VI.3) Information on general regulatory framework**

Relevant governmental Internet sites where information can be obtained

Tax legislation:

Environmental protection legislation:

Employment protection and working conditions:

### **VI.4) Date of dispatch of this notice**

06-08-2014

## **ANNEX A**

### Additional Addresses and Contact Points

#### I) Address and contact points from which further information can be obtained

<b>Official Name:</b> Thanet District Council		
<b>Postal Address:</b> PO Box 9, Cecil Street		
<b>Town:</b> Margate	<b>Postal Code:</b> CT9 1XZ	<b>Country:</b> UK
<b>For the attention of:</b>		<b>Telephone:</b> +44 1843577617
<b>E-Mail:</b>		<b>Fax:</b> +44 1843290906
<b>Internet Address (URL)</b> <a href="http://www.thanet.gov.uk">www.thanet.gov.uk</a>		

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## ***Exhibit 2. - TDC Due Diligence Protocol***

Please find attached overleaf Thanet District Council's Due Diligence Protocol. This document was attached as an appendix to the final decision document of 11 December 2014.<sup>57</sup>

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<sup>57</sup> See TH23 and RO22.





# Due Diligence Protocol

Thanet District Council



## 1.0 Introduction

### 1.1. What is Due Diligence?

- 1.1.1. Due diligence is firmly established as an element of corporate good governance and is an investigation of a business or person prior to signing a contract.
- 1.1.2. For the Council this contract can take a variety of forms, examples of these are a contract to provide services, an agreement in relation to a grant, a lease agreement or a joint venture/development partner agreement.
- 1.1.3. Why do it?
- 1.1.4. Both the Bribery Act 2010 and Money Laundering Regulations 2007 contain sections pertaining to the use of due diligence when establishing relationships with third parties.
- 1.1.5. In essence due diligence is undertaken to:
  - (a) Identify the entity and verify the entity's identity on the basis of documents, data or information obtained from a reliable and independent source;
  - (b) Establish the ability of the entity to deliver the contract
- 1.1.6. Due diligence is implemented to cut down on unpleasant surprises and reduces the chance that business practices of a service provider or grant recipient reflect poorly on the Council.
- 1.1.7. Due diligence will not provide a yes or no answer as to if the authority should use/partner with an entity. However, performing these types of investigation results in informed decision making through the use of enhanced information gathered during the process.
- 1.1.8. Decision makers can then analyse information and deliberate regarding costs, benefits and risks prior to entering into contracts.

## 2.0 What are the steps involved?

- 2.1. As due diligence is such an important part of the contract process, planning is essential as it may take some time to gather the appropriate information, consult experts, analyse the information and provide answers to questions.
- 2.2. Staff resource should also be considered, for example particular legal advice maybe required.
- 2.3. **STEP 1 – Planning**
  - 2.3.1. The steps of due diligence should be planned so that work can be completed before the contract discussions are too far advanced. For contract partners that present concerns it may be useful to consult with legal and finance colleagues to establish the best form of due diligence.
  - 2.3.2. The level of due diligence is likely to vary considerably from contract to contract depending upon the risk to the authority of the contract being entered into.
  - 2.3.3. Therefore planning is a key stage to ensure that all questions are answered and concerns alleviated, prior to contract award.
- 2.4. **STEP 2 – Gather Information**
  - 2.4.1. The first major step is to gather the information required in order to perform due diligence. The planning stage should of assisted in assessing the information that is likely to be required, but at the very least the information that should be gathered can be split into four categories:

#### 2.4.2. Basic Information

- Name of organisation and directors/officers
- Registered address
- CVs of principals
- Contact details
- Group Structure (chart) showing how the contracting company fits into the overall corporate structure
- Company registration number and date of registration (where appropriate)
- VAT number
- Project outline
- Evidence the proposed project would not represent an excessive increase in the overall scale of the organisation's activities.
- Relevant experience of similar projects

#### 2.4.3. Financial information

- Last 3 years financial accounts
- Auditor contact details
- Financial Plan
- Evidence of funds required to complete the project.

#### 2.4.4. Web searches

- External credit rating
- Credit reference (taken by TDC)
- General search on company performance
- Press/media

#### 2.4.5. Government policy

- Compliance with money laundering regulations

### 2.5. **STEP 3 – Analyse the Information gathered**

2.5.1. Analysis of the information gathered is essential in order make an informed decision regarding contract award.

2.5.2. Key questions that should be considered are:

#### 2.5.3. Corporate image

- Has there been any negative publicity in the media around the company and how has the company dealt with and resolved these issues?
- Are there any pending legal cases against the entity?
- Is the entity only looking for a marketing opportunity by partnering with the Council?
- Is the entity looking only for procurement opportunities or money from the Council?
- Is the entity willing to engage in a transparent manner, with for example due regard to the Freedom Of Information Act?
- Is the entity willing to accept limitations around publicity of its relationship with the Council so that the Council is not perceived as endorsing the entity?

#### 2.5.4. Social Responsibility

- Is the entity involved primarily in activities that the Council do not wish to align with, i.e. tobacco, firearms.
- Does the entity openly discriminate against race, sex or religion?
- Are there any concerns with the entity around corporate social responsibility?

- Is there any history regarding child or forced labour?
- Does the entity endorse standard Health & Safety requirements for workers?

#### 2.5.5. Environmental Responsibility

- Does the entity assess the environmental impact of the project to be delivered?
- How does the entity monitor and set targets for improved environmental performance?
- Are there sufficient contingency plans to deal with emergencies relating to the contract?

#### 2.5.6. Financial Ability

- Does the entity have the resources to fulfil its obligations through the contract?
- Does the entity issue annual accounts?
- Does the entity have a long track record, how many years has it been established?
- Does the entity have a stable structure and good governance around financial decision making?

#### 2.5.7. Policy Compatibility

- Does the entity comply with all statutory regulations?
- Is it subject to any investigations by government, i.e. HMRC.
- Would entering into the contract cause the Council any issues with regards to its own constitution?

### 2.6. **STEP 4 – Further Specific and supplementary enquiries**

2.6.1. Further supplementary enquires may be required to answer the concerns or questions raised, however the level of these enquiries is likely to be dependent on:

- The scale of the proposed project or contract
- Responses to the initial enquiries made

2.6.2. If the financial commitment is at a low level then enquiries made will be restricted. The nature of the project and the level of risk are also considerations.

2.6.3. The planning stage of the due diligence process will allow you to assess the required level of further enquiries.

2.6.4. It is essential that a specific time limit is set for entities to respond, so that the awarding of the contract is not unduly delayed.

### 2.7. **STEP 5 – Decision making**

2.7.1. Once a comprehensive picture is built up of the entity concerned, an informed decision making process can occur using the information obtained.

2.7.2. An entity that has struggled to provide information or answer some of the key questions is likely to be unsuccessful in winning the contract.

2.7.3. When it comes to decision making, a final decision must be reached in a timely manner and in conjunction with advice received from other departments such as legal and finance.

## 3.0 **Conclusion**

3.1. Due diligence assists in the detection and treatment of risk in relation to a contract award.

3.2. The process can be lengthy, but ultimately leads to the reputational protection of the Council and its finances, as well as the protection and reputation of the decision makers.

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## ***Exhibit 3. - Additional information requested by TDC on 19 September 2014***

Please find attached overleaf the responses of RiverOak on 25 September 2014 to the questions asked by Thanet District Council on 19 September 2014.<sup>58</sup>

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<sup>58</sup> See TH18 and RO08.

# RIVER OAK

INVESTMENT CORP., LLC

Dear. Ms Paton and Members of the Thanet District Council:

We are in receipt of your email dated 19 September, 2014 whereupon you ask for written responses to a series of questions. Our written responses to those questions, along with some key exhibits from third parties to further enhance our answers, are attached in the following pages.

Before you get to our answers on the ensuing pages, please indulge me the opportunity to give you a brief summary of where I thought we left off when we exited the Council's office last Thursday.

The Thursday meeting featured a broad range of topics and frank exchanges. In addition to referring to its submission to the Davies Commission, a copy of which has been made available to the Council, RiverOak outlined its "high-level" business plan. The plan consists of commercial aviation ventures in the form of cargo flights, repair and maintenance operations and tear down operations. One feature of the plan which notably differs from the plans of prior owners is RiverOak's lack of dependency on passengers as a source of revenue, which would stabilize airport operations in the near term. RiverOak produced a strictly confidential letter from a Senior Vice-President of Airbus in which Airbus continued to express both its interest in investing in and establishing a tear down facility at Manston as well as its frustration with what Airbus perceived as a lack of expedient progress. The Council asked various questions about these business ventures and also expressed some frustration of its own from the Council's perception that RiverOak didn't seem to fully comprehend some of the Council's needs from a commercial partner. In the end, a few consistent themes emerged. They were:

- From the Council:
  - Understand the Council's process
  - Show proof of Funds
  - Satisfy the Council that the money used for both the CPO and the purchase is "clean"
  - Ensure that the council is fully indemnified against any compensation award in favour of the property owner

- And from RiverOak:

# RIVER OAK INVESTMENT CORP., LLC

- Provide RiverOak with a schedule outlining the Council's procedure right up to the Council's CPO decision
- TDC to understand that some of the information they might ask for is not available due to various confidentiality agreements

RiverOak's desire and interest in becoming Thanet District Council's partner in the CPO process to acquire the land known as Manston Airport has only increased over the 5-month period that began when we first expressed our interest to the Council. We have spent countless hours reaching out to commercial partners, refining our plans and seeking to understand how we can best fit into the community and preserve the airport. In light of the declared intentions of the new shareholders in the entity that owns the airport, it should also be noted that our plan contemplates no housing being built on the site.

We look forward to your comments and response to our submission.

Sincerely,



George Yerrall  
Chief Investment Officer  
RiverOak Investment Corp., LLC

# RIVER OAK INVESTMENT CORP., LLC

Dear Mr. Freudmann,

Following the meeting of yesterday, with council members and officers, in respect of RiverOak Investment Corporation LLC's submission as part of the above exercise, whilst the council had hoped to ratify all areas requiring clarification, there remain outstanding areas that the council needs to validate further in respect of elements of the submission. As I am sure you will appreciate this information is imperative to assist with our considerations, therefore it would be appreciated if you could supply responses to the following questions, confirmations where requested and provide documented information as listed:

**Please provide written answers**

***Question 1:***

The CPO process as you know has a number of tests that must be met at various stages. We consider the first stage is a comprehensive and deliverable business and master plan for development over the next 20 years. This will be needed to support the statement of reasons at the start of the CPO process. Are you aware this will be needed before the CPO process can start?

***Answer:***

We have done much research with our Solicitor, Wragge Graham about the detailed procedures involved in a CPO. Therefore, for the reasons we explained to the meeting on 19 September, we do not agree that a "comprehensive and deliverable" business plan is needed prior to the start of the CPO process. There is nothing in the law which requires this. A high level strategic plan is required. This is broadly set out in our response to the Airports Commission, which was circulated to all members last month and was reiterated in our meeting with the Council members. A "comprehensive and deliverable" business plan will of course be required for the inspector at the CPO enquiry and will be developed by RiverOak in full consultation with the Council.

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***Question 2:***

Your strategy for development of the airport is significantly different from that considered necessary for success by Falcon consulting. How do you consider that your approach would be any more successful than the operations since 1998?

***Answer:***

We have rejected the thesis put forward by the "Falcon" report and instead made the "commercial airport" case in both our response to the Airports Commission and to the Council members who were present at the meeting on 19 September. Unlike Falcon, we have been able to conduct a detailed analysis of Manston's trading performance up to the end of March 2014, based on data supplied by Mrs. Gloag. Our conclusions from that exercise are that, as outlined at the Council meeting, a return to cargo flights will produce a break-even situation within no less than 18 months from the airport's re-opening. That will



# RIVER OAK

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provide a sound base from which to grow the cargo business still further while we initiate the teardown/recycling and “repair and maintenance” (MRO) parts of our plan with major partners such as the one whose strictly confidential letter was read at Thursday’s meeting.

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**Question 3:**

We are concerned that over 75% of European airports handling <1m passengers p.a. are losing money. How can you reassure us that Manston would be viable under your strategy?

**Answer:**

We are well aware of this fact which is why we are not relying on passenger traffic, at least until the cargo and engineering parts of our strategy have been successfully deployed. Many of these small airports have entered into disastrously uneconomic long term contracts with low cost carriers. Almost all these airports are in public ownership. Until recently their public sector owners have relied on a macro economic model in which their airports’ losses are offset against the stimulus to the local economy from tourism generated by passenger flights. This applies to many airports in Spain, Greece, France and Italy as well as some in Germany. The European Commission has recently announced that it regards these losses as another form of state aid which it intends to investigate and stop. In light of these passenger airport failures, RiverOak does not seek public money and it will not consider passenger flights until the restored airport cargo business is solidly positive on a cash flow basis.

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**Question 4:**

We note your response that you have investor backing. In order that we can fully understand the structure of your financing, are you able to give us details of the proposed investors?

**Answer:**

We have attached letters from our bank, our attorney and our accountants in order to answer the kinds of questions we were asked at the Council meeting on last Thursday. Those letters are attached to this submission and are labeled Exhibits A, B and C.

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**Question 5:**

How do you expect to meet the costs of the airport pending its reopening and return to profitable operation?

**Answer:**

# RIVER OAK INVESTMENT CORP., LLC

We have the funds immediately available.

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**Question 6:**

In order to quantify the scale of the project, we intend to commission an early valuation of the site. Can you confirm that you will underwrite all of the cost?

**Answer:**

We will underwrite all forward costs as soon as an agreement is in place between us. At that point, the valuation can be a joint one – as is normal in these situations. We are unwilling to underwrite the cost in advance of entering into an agreement with the Council as to do so would be to pre-empt any decision by the Council to take us on as the Council's partner and, as such, would be irregular and inappropriate.

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**Question 7:**

In order to protect the council from any possibility of cost, are you prepared to pay into an escrow account from the outset:

- i. Stage 1 - An estimate of all the costs of making a CPO
- ii. Stage 2 - The valuation plus a realistic contingency to cover any revised valuation following an appeal.

**Answer:**

The indemnity agreement would not require the Council to go 'out of pocket'. On (i), the Council's obligation to undertake the CPO process, and the discrete elements within it, could be made conditional on the Council either being put in funds in advance or on having its previous invoices paid (for example, we could agree upon a system under which the Council would render invoices to RiverOak for RiverOak-approved work done at agreed intervals, which invoices would need to be met in order for the Council to carry out further work for the next period).

On (ii) the agreement would not oblige the Council to acquire any land until it had first been put in funds by RiverOak. RiverOak would in addition be required to provide the Council with some form of security against the event that the compensation payable to the current owner exceeds the 'worst case' valuation that the parties would obtain under the agreement. This security would be in the form of a bond or insurance policy from a major financial institution (approved by the Council) in the Council's favour. Keep in mind that at the end of the Public Inquiry, the Secretary of State will render a decision on the CPO. At that time and only at that time would the Council submit in writing to the property owner its decision to take possession of the property via CPO and pay the compensation that flows from that decision. At that time, two conditions need to be satisfied before the Council exercises its right to take possession under the CPO:

# RIVER OAK

INVESTMENT CORP., LLC

- RiverOak must have given its consent to the Council taking possession.
- RiverOak must have demonstrated to the satisfaction of the Council, RiverOak's ability to hold the Council financially harmless for the compensation award. For the avoidance of doubt, the Council would immediately transfer possession to RiverOak according to the terms of our agreement.

There would therefore be no need for an escrow arrangement.

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**Question 8:**

We note that you refer to the use of debt to fund future stages of the project. Please could you clarify the proportions of debt and equity funding and how the debt would be serviced?

**Answer:**

The CPO costs including acquisition costs plus the costs of re-licensing, re-equipping and supporting Manston to a break-even point would all come from equity funding. Debt will be taken on only for specific projects, such as the construction of new teardown or MRO facilities and those specific businesses would be responsible for servicing that debt, not the main airport business.

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**Question 9:**

In your proposed heads of terms (2.1) you expect the Council to make the CPO and then you state you **may** serve notice on the Council to acquire the land. How does this fit with our requirements for an indemnity partner to fund the CPO process? Do you appreciate our expectation that any potential future transfer of the site will be conditional i.e. to ensure it remains an airport?

**Answer:**

Please refer to the answer provided in Question #7, section ii. The CPO process consists of two distinct major stages. One is the public inquiry and the second stage is the compensation award, which is contingent on a successful outcome of the public inquiry. RiverOak will fully indemnify the Council for both of these major stages.

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**Question 10:**

In your submission you state that no investment was made in the airport for 15 years, yet one of those managers is part of your current proposal?

**Answer:**

# RIVER OAK INVESTMENT CORP., LLC

The actual words were, "Little investment and almost no creativity or marketing" and we should probably have said 10 years. For the record, during the time of our colleague's involvement from 1999 to 2004, Manston was transformed from an RAF base into a fully licensed civilian airport. A new control tower was built and the runway was re-surfaced, together with other major capital improvements required by the CAA. In 2002 a border inspection post was installed, partly funded with grants from the EU. In 2004 the passenger terminal was upgraded and expanded and a new car park installed to support the EUjet project. At 2014 prices that total investment amounted to £12 million. Since 2004, with the exception of an equestrian facility, there has been no investment, apart from standard maintenance, save for a radar installation 18 months ago which was almost entirely paid for by the developers of the nearby wind farm. The border inspection post was de-commissioned, the loading equipment, so essential for efficient cargo operations, was never renewed or replaced and the marketing operation was run from Prestwick by a single manager who was responsible for both Prestwick and Manston.

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### **Question 11:**

Is River Oak Aviation Associates LLC – incorporated in 2014 - the organisation that will operate this project? We note that the company is registered in Delaware USA. Would River Oak be prepared to deal through a UK incorporated and registered company? There are potential operational difficulties in agreements being reached in terms of jurisdiction just in case there were to be any dispute in the future.

### **Answer:**

RiverOak Aviation Associates, LLC is the main investing entity, based in the US, into which the principals of RiverOak and our US investors will fund in order to make the required investments in both the CPO and ultimately in the award if we win the CPO and elect to move forward. The operational principals of RiverOak Aviation Associates LLC, whose resumes are attached as exhibit D to this submission include:

- Steve DeNardo
- Niall Lawlor
- George Yerrall
- Tony Freudmann

RiverOak is aware that a UK corporation is necessary to conform to CAA licensing requirements. A UK incorporated and registered company will therefore be formed. It will hold all the licences and will, in effect, be the UK operational company.

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### **Please provide the following Documents/Confirmation of deliverables:**

- 1) 3 years accounts for River Oak holding company and significant subsidiaries.
  - See Exhibit C

# RIVER OAK INVESTMENT CORP., LLC

## **Mr. Stephen DeNardo**

Stephen DeNardo is Chief Executive Officer of RiverOak Investment Corp., LLC, which he founded in 1999. During the past four decades, Mr. DeNardo has successfully been involved in all phases of real estate and private equity investing, development and management across all asset types, with a specialty focus on troubled assets. As a Partner or Principal in two national companies and a senior member of the management team in two additional companies, his experience includes more than 30 years of acquisition, disposition, development and financing of alternative assets throughout the United States and Canada. Mr. DeNardo also serves on the Brookfield Property Partners Board and is the Chairman of the Audit Committee.

Mr. DeNardo is also Managing General Partner of RiverOak Aviation Associates, a multifaceted asset management company focusing on off-market transactions in the aviation field including airports, MRO, and breakdown and recycling. The primary acquisition targets are under-managed assets in European markets. The aviation team has experience in airport operations, acquisitions and financing of aviation properties, repurposing of former military properties and aircraft leasing.

Prior to founding RiverOak, Mr. DeNardo was Partner and Senior Vice President of ING Realty Partners, where he managed a \$1 billion portfolio. Before joining ING Realty, he was President of ARES Capital, a division of Mutual of NY, where he led the turnaround team and managed a \$7 billion portfolio of diversified debt and equity assets, and a Partner at First Winthrop Corporation, where he was responsible for 30 million square feet of commercial real estate across the U.S. and Canada. Mr. DeNardo started his real estate career in New York City managing the Chrysler Building. He has held a license as a Certified Public Accountant since 1978 and received a B.S. in Accounting from Fairleigh Dickinson University.

# RIVER AK

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## Mr. Niall Lawlor

Niall Lawlor has over twenty years of experience in fixed income, capital markets and private equity. The primary focus of his recent professional experience has been on commercial loan assets and opportunistic real estate investments in the United States, United Kingdom and Europe. Since 2007, Mr. Lawlor has been working in private equity, including Ranieri Partners, Real Estate & Financial Services entities and managing various acquisition and co-investment opportunities coming out of the European financial services sector, both in terms of asset portfolios and operating entities.

Prior to that, Mr. Lawlor worked in tax-exempt institutional bonds trading and sales with large institutional clients for both UBS and Morgan Stanley. He previously specialized in high yield national municipal credits at First Albany Corporation and in institutional municipal bonds at Prudential Securities. Mr. Lawlor began his career as an analyst at a boutique regional investment banking firm in California, specializing in underwriting mainly non-rated real estate backed municipal infrastructure projects.

In 2009, Mr. Lawlor served on the European Union Working Group on Derivatives in Brussels. This group met monthly, and the experience provided good insight into the developing bank and financial industry regulations being proposed and currently being adopted, including Dodd-Frank, Basel Three etc, for hedging risk across the banking sector globally.

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**Mr. George Yerrall**

Mr. Yerrall is a principal of RiverOak investment corp., LLC and serves as the Chief Investment Officer. He is in charge of sourcing and analysis of investment opportunities and the execution of investment and asset management strategies for the Fund. Mr. Yerrall began his career as an Acquisition Associate and Assistant to the Chairman at First Winthrop Corporation where he became acquainted with Mr. DeNardo. Upon leaving First Winthrop, Mr. Yerrall assumed the position of President and majority owner of his family's residential real estate brokerage business in western Massachusetts. In his tenure, he nearly tripled the size and revenue of the company before selling the business. Mr. Yerrall has a B.A. in economics from Amherst College and an MBA in Real Estate Finance from the Columbia University Graduate School of Business. He has served as the President of the Board of the Real Estate Finance Association of Connecticut and the Ocean Point Colony Trust and on the Board of Directors of numerous other civic and business organizations.

# RIVER AK

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## **Mr. Tony Freudmann**

Mr Freudmann has over thirty years of aviation and travel industry experience.

He is the former Chairman of PlaneStation plc's European airport group and was responsible for planning and delivering capital projects valued at \$140 million during his tenure.

These included Kent Business Park site infrastructure, Manston Airport's site infrastructure, including control tower, new fire service, border inspection post and terminal refurbishment, Black Forest Airport Germany site infrastructure, Baltic Airport Germany site infrastructure, Odense Airport Denmark, masterplanning, Plzen Airport Czech Republic masterplanning project finance and zoning, Cuneo Airport Italy site infrastructure and terminal refurbishment and Alba Airport Hungary masterplanning joint venture and zoning.

As the owner of FT International Ltd he has provided consultancy services for aviation and tourism development to the public and private sectors in the US, UK and Germany. As the Senior Vice President at PlaneStation plc he prepared the group's global airport acquisition strategy.

Previously Mr. Freudmann was an elected county leader (US equivalent county executive) where he was responsible for delivering capital projects valued at over \$200 million. These included new roads, bridges, care homes, schools and a major library.

Mr. Freudmann earned a Bachelor of Laws ("LLB") degree at the London School of Economics.



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## ***Exhibit 4. – RiverOak’s responses to questions set out in the Soft Market Testing Document of 29 August 2014***

Please find attached overleaf the Soft Market Testing document completed by RiverOak and submitted on 29 August 2014.<sup>59</sup>

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<sup>59</sup> See TH01 and RO06.



Soft Market Testing Document –  
Indemnity Partner for Compulsory  
Acquisition of Manston Airport and  
Subsequent Investment in the  
Airport's Development.

Date of issue: 13 August 2014

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## Introduction

- a. Manston Airport closed in May 2014 and the current owner has no plans to reopen it as an airport.
- b. TDC has appointed Falcon Consulting Limited (FCL) to undertake a viability study of Manston Airport. The first stage report is now available and is attached at Appendix 1. The report concludes that Manston could be viable given a commitment to a 25 year business plan for its development.
- c. A second stage report is being prepared by FCL which will detail a 25 year business plan model and will become available should the Council proceed to a full procurement exercise...
- d. The Council is considering the use of its Compulsory Purchase Powers to acquire the airport and is seeking an indemnity partner to manage the financial risk. The indemnity partner would then be required to take forward the development of the airport over a 25-year period.

## Soft market testing and the next steps

- e. This Soft Market Test is intended to allow interested organisations with appropriate expertise and finances to outline their views and provide information with no commitment to them or the council. This is not part of a Compulsory Purchase Order process and the council is not committing to carrying out such a process.
- f. The council will then consider the responses received and its future options.

## Indicative timetable

	Completion date
Publish PIN	9 August 2014
Release information pack & questionnaire	13 August 2014
Completed questionnaires returned	5pm 29 August 2014
Supplier Day	TBC

## Instructions to Questionnaire

- g. Please answer all questions as indicated. Please limit your response to each question to a maximum of 1 side of A4.
- h. Brochures or other marketing material should not be attached in addition to this.
- i. If you have any queries regarding the questionnaire please detail your enquiry and email to the following address [madeline.homer@thanet.gov.uk](mailto:madeline.homer@thanet.gov.uk)
- j. The council will answer all queries via email. The deadline for all queries is 12:00 noon Friday 22 August 2014.
- k. **The completed questionnaire must be returned, together with supporting documents no later than 5:00pm Friday 29 August 2014 to the following email address** [procurement@thanet.gov.uk](mailto:procurement@thanet.gov.uk)

## Disclaimer

Disclaimer: The information contained in this document is preliminary in nature and may be subject to further amendment and revision. Accordingly, no representation or warranty, expressed or implied, will be made and no liability is, or will be, accepted by the Council as to the adequacy, accuracy or completeness of this document.

Further, the Council will not accept any responsibility or liability for advising any recipient of any changes or additions to the information contained in this document, or any other information relating to this soft market testing which comes to their attention.

Although every care has been taken in preparing this document, no representation, warranty or undertaking, expressed or implied is, or will be, made and no responsibility or liability will be accepted by the Council or by any of its officers, employees, servants, agents or advisors ("Connected Persons") as to the accuracy or completeness of the document or any other written or verbal information made available to any interested party or its advisors. Any liability however arising is expressly disclaimed.

Data provided by the Council to interested parties will be given in good faith but interested parties will have to make their own investigations and interpretation. No liability will be accepted by the Council for the accuracy or completeness of that data.

Neither the receipt of this document by any person, nor any information contained in it or distributed with it, or subsequently communicated to any interested party or its advisors is, or is to be taken as, constituting the giving of investment advice by the Council.

No information contained in this document or any other written or verbal information made available to any interested party shall form the basis for any warranty, representation or term of any contract by the Council with any third party.

Nothing in this document is, or should be relied on, as a promise or representation as to the future. The Council reserve the right, without principle, to change the procedure for the project or any of the proposals or information in relation to the project.

The Council reserve the right to follow up this soft market testing in any way it considers appropriate and in its sole discretion. If the Council

chooses to carry out a Compulsory Purchase Order process, information supplied as part of this soft market testing will not be taken into account as this is a soft market testing only and does not constitute any part of a Compulsory Purchase Order process.

No expense in responding to this soft market testing will be reimbursed by the Council.

The Council is bound by the Freedom of Information Act 2000 and interested organisations are advised that none of the information which is supplied nor any of the discussions which are carried out between the Council and interested organisations as part of the process will be considered confidential or will be exempt from disclosure.

### **Organisational and Contact Information**

Organisation name (or name of organisation acting as lead contact where a consortium bid is being submitted):

RiverOak Investment Corp., LLC

Contact name:

Anthony Freudmann

Registered Office Address:

1 Atlantic Street Stamford, CT 06901 USA

Telephone:

U.S. (203) 325-8009, U.K. +44 (778) 530 6715

Email:

t.freudmann@riveroakic.com

Is your organisation:

Public Limited Company? If so, please provide registration number and date of registration? No

Limited Company? If so, please provide registration number and date of registration? RiverOak is a limited liability company registered in the State of Delaware on May 11, 1999. The U.S. tax identification number is 06-1550639

Consortia and Sub-Contracting? Please confirm if your organisation:

1. Would provide the services itself.
2. Would be Prime Contractor and intends to use third parties to provide some services.
3. Is a consortium.

Most likely, all three of the above apply. Different phases of the business plan may require different expertise to be called for and/or different financial structures that may require a consortium of investors.

We are investment and asset managers. We invest in the acquisition of the asset and we make such further investments as may be required to develop and grow the business over time. In this case the investment will be:

- The costs associated with indemnifying the Council in respect of the CPO including eventual compensation to the owner
- The cost of re-starting the business including licensing, re-equipping and hiring of staff
- Supporting the business to the point where it becomes profitable
- Investing in additional revenue-producing assets such as buildings required for cargo storage or aircraft engineering services

We shall recruit an operating management team at the appropriate time. We have already identified key personnel from the former Infratil team who are available to be re-hired at the appropriate time under our oversight and overall management control.

Other – please specify and provide relevant registration details.



## **Project Questions**

**Project Question 1** Please list and explain your company's involvement in any airport operation and development projects over the past ten years. Are you able to disclose future projects to which you are committed in this area?

One member of our team was responsible for over-seeing the complex licensing procedures involved in the transfer of Manston from a military airport to a fully licensed civil airport between 1998 and 2000.

Post 9/11, with the international airline industry facing major difficulties, a principal member of the RiverOak team was involved in the restructuring of a senior debt facility secured by lease payments for an MRO at Alliance. The airline leasing the facility was experiencing significant financial issues with the rapid decline in traffic and revenue immediately following the 9/11 attacks on the US.

This commercially sensitive mandate included acquiring the debt facility from institutional investors, who were seeking to enforce covenant breaches on the debt facility and warehousing the debt while market conditions improved. This allowed the airline, over time, to operate its way out of these difficulties and be in a position to maintain aircraft at this major MRO facility.

This professional experience gave our principal a unique insight into the successful running and development of Alliance as solely an industrial, logistics and aviation services airport. It was a model that we as a team firmly believe is very much achievable at Manston, as detailed in our Davies submission.

Another of RiverOak's principals was involved in an effort to convert a portion of a decommissioned U.S. Air Force base into an MRO facility for a U.S. based shuttle airline.

In addition, RiverOak has been the equity finance source and asset manager for 50 development and redevelopment projects in 16 states valued at over \$1 billion (U.S.) in the last 15 years. This includes major

office building, hotels, apartment buildings and medical facilities.

Future Projects – RiverOak is involved in two other airport redevelopment/repositioning projects, both of which are subject to non-disclosure agreements. Both airports are in the European Union. One specializes in cargo and engineering and the other in passenger traffic.

RiverOak is also involved in discussions for the re-financing of a small European passenger carrier and the financing of a new European specialist cargo carrier.

We are involved as a minority investor and consultant in the financing and construction of a portfolio of large scale telecommunications infrastructure with a major market participant in a developing southeast Asian market.

In addition, our principals have been involved in the origination and completion of projects in excess of EU 150m in Ireland and the UK since 2007.

**Project Question 2** So that we have an understanding of scale and depth, would you please list projects that your organisation has been involved in attracting or providing long term investment for the construction of major facilities and their subsequent operation?

A senior partner at RiverOak has in excess of fifteen years professional experience in large scale infrastructure and public / private partnerships to finance, build and operate such programs. These programs include airports and large scale aviation facilities, public housing, water & sewer infrastructure and many other local government financings for municipalities in the US. This principal was a senior member of the capital markets teams undertaking these roles while employed by Morgan Stanley and later UBS, commencing his career in Los Angeles and then moving to New York. We see these varied financings and views into the successful construction and operational management of such large scale facilities as being vitally important to the short and long term sustainability of Manston.

RiverOak has completed or is in the process of completing over \$1

billion (U.S.) encompassing 50 value-add projects in 16 states over the last 15 years. Some relevant examples include:

- The consultation for and financing of a major air cargo facility in Ft. Worth, TX.
- The conversion of a military-based airport to civilian use and the licensing of such.
- The rehabilitation and repositioning of a hotel in Washington, DC.
- The repositioning and remarketing of major office buildings in Stamford, CT.
- The development and construction of a large multifamily apartment complex in Groton, CT
- The conversion of a historically relevant mansion in New York City into condominiums.
- Significant detailed consultation on the creation and development of an MRO facility at a former U.S. Air Force base specifically for a shuttle airline.

**Project Question 3** Having considered the first stage viability report by FCL, how do you see the future potential of Manston? What specific proposals do you feel would be appropriate for Manston?

We agree with the FCL report that the long-term viability of Manston will require significant investment of capital and time. This is implicit in our Response to the Airports Commission's Discussion Paper Number 6 "Utilising the UK's Existing Airport Capacity" which has been circulated to all elected members and has been published on our website.

Our view is that rebuilding Manston will take creativity, marketing and energy. The past 15 years have seen little investment and almost no creativity or marketing applied to Manston.

We believe that the project must be attacked in phases. The first phase should be an emphasis on ongoing, sustainable business focusing on fiscal responsibility and outstanding service. Unlike previous owners, our operation will be anchored by making Manston a world-class cargo and logistics center.

The second phase is an "add-on" phase. Once the airport is stabilized, we will concentrate our efforts on enhancing the scope of services to encompass MRO operations, teardown and recycling, and warehousing

and cold-storage. These will create spinoff opportunities for further employment and investment such as new construction, engineering and technical training.

The third phase is an expansion of aviation services. This would require soliciting charter operators, private aviation and flight schools. If successful, we can then consider whether it is appropriate to expand to include regular passenger service.

There are other ancillary business opportunities that we believe will be presented along the way, but are not essential to the basic plan.

There may be some overlap to the phases, but we believe that each phase must be successful before moving on to the next phase.

In summary we will:

- \* Work with the CAA towards an early and full reinstatement of the aerodrome license
- \* Begin an urgent and comprehensive procurement process for essential equipment to replace what has been sold off in recent weeks
- \* Begin the work of recruiting and reinstating an operational team necessary to meet licensing requirements and to handle restored and new business
- \* Set a date for Manston's re-opening with maximum publicity and media exposure locally, in the UK and internationally.
- \* Make the reinstatement of Manston's perishable cargo business our top immediate operational priority. This will be accompanied by the re-commissioning of the Border Inspection Post and by a major marketing effort directed at growers in the countries of origin, as well as freight forwarders and carriers.
- \*. Make the promotion of outbound loads from Manston another important priority. In the past, inbound aircraft carrying perishables typically departed Manston empty to take on return loads at other airports
- \* We will handle new non-perishable cargo business for already identified carriers who seek a reliable base within the European Union, close to a major population center, at an airport which can offer them the

quality and speed of service not available at competitor airports. The relocation of these new carriers to Manston will be secured during the first 12 months following the airport's re-opening.

\* We will explore the continuing overtures from a major cost passenger carrier. If market conditions in the passenger sector enable a sensible and profitable deal to be done it is possible that passengers could return to Manston during the summer of 2016. RiverOak will never make the kinds of extravagant passenger forecasts of our predecessors, but at the same time we remain firmly of the view that there can be a role for Manston to offer flights to leisure destinations in southern Europe.

\* We will pursue opportunities in Aircraft engineering, in the form of teardown and aircraft maintenance and repair operations (MRO) as another core element in our plan. This will take longer to put in place but represents a major opportunity for Manston to secure first mover advantage in a market which is growing very rapidly as a direct consequence of soaring sales of new aircraft.

\* We will invest in the facilities necessary to support executive jet business which can be very profitable and is one of the fastest growth areas in aviation with demand in the south east of England particularly strong. Manston's strength is that it is outside London air space and has excellent road connections.

**Project Question 4** The potential compulsory acquisition by TDC would require partner commitment to meet the full cost. What is your view on the management of the financial risks and the future long-term arrangement with TDC? How would you see the legal and financial structure working?

We will work closely with the Council under the terms of our proposed partnership and indemnity agreement to ensure that the compulsory purchase order is achieved as quickly as possible. This includes a possible public inquiry and legal challenges. So far as the details of this are concerned we can do no better than set out below an extract from Heads of Terms previously submitted to the Council on an informal basis.

1. MAKING THE CPO

1.1 Following the completion of the Agreement and acting with the utmost expedition the Council and RiverOak shall liaise in:

1.1.1 carrying out a referencing exercise to identify the Airport Land and Third Party Interests (if any) to be acquired (including drafting and serving requisitions for information on any affected parties pursuant to Section 5A of the Acquisition of Land Act 1981 if necessary); and

1.1.2 preparing a Statement of Reasons, notices, certificates to support the CPO statements and attend to all other requisite procedural matters preparatory to making the CPO.

1.2 The Council shall, in full consultation with RiverOak, make the CPO in such form as RiverOak shall have previously approved in writing and shall submit the CPO to the Secretary of State for confirmation.

1.3 The Council will keep RiverOak fully informed at all times of the progress of preparation for, the making of the CPO, the progress of the CPO and any objections and will promptly provide to RiverOak copies of all relevant documents as these are drafted, issued, received or compiled.

1.4 The Council may appoint professional consultants (at RiverOak's expense, subject to the provisions of the Agreement) to support the Council in promoting and seeking the confirmation of the CPO, including the giving of evidence as to matters within their competence or proper expertise, the provision of expert witnesses and attendance or giving assistance at any public inquiry.

1.5 The Council and RiverOak shall co-operate in relation to the progress of the CPO, the holding of any public inquiry and all other relevant matters to the making of the CPO (including objections to the CPO).

1.6 RiverOak shall provide the Council with such support, information and documents as are reasonably required to prepare, make, promote and obtain confirmation of the CPO.

2. CONFIRMATION OF THE CPO / acquisition of the airport land

2.1 Once the CPO is confirmed, RiverOak may serve notice on the Council requiring the Council to exercise its powers under the CPO to take possession of and/or acquire the Airport Land and any Third Party Interests (by means of a general vesting declaration or notice to treat/notice of entry, as may be specified by RiverOak).

2.2 Prior to the service of notice under paragraph 4.1 RiverOak shall:

2.2.1 pay to the Council any Professional and Administrative CPO Costs which have become due but are not yet paid at that date; and

2.2.2 provide the Council with an estimate of the Land Acquisition CPO Costs (such estimate to be prepared by a professional valuer in accordance with the Compensation Code) (the "Compensation Estimate");

and the Council shall not be required to exercise its powers under the CPO to acquire the Airport Land and any Third Party Interests until those steps have been completed.

2.3 RiverOak (if it has not done so previously) will seek to negotiate the compensation payable in respect of the Airport Land and any Third Party Interests in accordance with the CPO Compensation Code directly with the current owners and:

2.3.1 in the event that RiverOak is unable to agree the amount of compensation payable the Council shall, in consultation and with RiverOak, refer the determination to The Upper Tribunal (Lands Chamber);

2.3.2 the Council and RiverOak will provide each other with all reasonable cooperation and RiverOak will be entitled to nominate appropriately qualified and experienced consultants to assist in the prosecution of such reference or proceedings which the Council will consider expeditiously and approve.

2.4 If the Council is requested to make an advance payment of compensation under Section 52 of the Land Compensation Act

1973 in respect of the Airport Land or any Third Party Interest the Council shall as soon as reasonably practicable (and in any event within ten (10) Working Days) serve a copy of the particulars of the claimant's interest on RiverOak and RiverOak shall negotiate with any claimant the amount of the compensation.

2.5 In the event of any shortfall between the amount standing to the credit of the CPO Account [defined as an interest bearing account in a UK bank account to be set up in the joint names of the Council and RiverOak] and the amount of compensation agreed or determined by The Upper Tribunal (Lands Chamber), RiverOak shall deposit forthwith funds equivalent to such shortfall in the CPO Account.

2.6 The funds standing to the credit of the CPO Account shall be used to pay the Land Acquisition CPO Costs due in respect of the acquisition of the Airport Land and any Third Party Interests.

2.7 Once all of the Land Acquisition CPO Costs have been paid in respect of the Airport Land and any Third Party Interests, as soon as practicable thereafter any balance held in the CPO Account shall be repaid to RiverOak (or as it shall direct).

2.8 The Council shall use all reasonable endeavours to secure vacant possession of the land and interests comprised in the general vesting declaration(s) and/or notice(s) to treat (as the case may be) as expeditiously as possible (such steps to be determined after consultation with RiverOak) and take all such steps as are reasonably necessary to secure the transfer of the relevant property to the Council as soon as reasonably practicable (updating RiverOak from time to time upon its reasonable written request).

2.9 The Council shall liaise with RiverOak in the preparation of the necessary applications for registration at the Land Registry.

2.10 The Council shall within [ ] of the registration of the Airport Land and any Third Party Interests in its name execute the Transfer of the Airport Land and any Third Party Interests to RiverOak.

3. CPO NOT CONFIRMED: legal CHALLENGE



3.1 If the Secretary of State does not confirm the CPO in whole or part in such a manner as prevents the Restoration of Airport Use) then:

3.1.1 the Council and RiverOak shall, upon joint instructions at RiverOak's cost, seek the written opinion of Counsel as to the prospects of success of a challenge in the High Court against the Secretary of State's decision and if Counsel advises that there is a 50% chance or more that such a challenge would be successful RiverOak shall in its absolute discretion determine whether or not it wishes to proceed with a challenge); and

3.1.2 if RiverOak decides to challenge the Secretary of State's decision all reasonable fees and expenses reasonably and properly incurred in connection with any actions shall be met by RiverOak (and for the avoidance of doubt the Council shall not pursue such a challenge without the prior written approval of RiverOak (acting in its absolute discretion)).

#### 4. INDEMNITY

4.1 RiverOak will indemnify the Council and hold the Council indemnified against the CPO Costs.

4.2 RiverOak shall put the Council in funds for Land Acquisition CPO Costs (including any advance payment under section 52 of the Land Compensation Act 1973) before the Council shall be required to proceed to acquire title to the Airport Land or any Third Party Interests. [NB in the Agreement there will be detailed provisions around this].

4.3 RiverOak shall pay the Council any Professional and Administrative CPO Costs by cleared funds within 10 Working Days of receipt by RiverOak of:

4.3.1 an invoice (in the agreed format) or a written demand from the Council for the Professional and Administrative CPO Costs; and

4.3.2 if not evident from the invoice or demand, evidence that the Professional and Administrative CPO Costs have been paid, have become due for payment or will

become due for payment within or on the expiry of the following twenty (20) Working Days.

4.4 Notwithstanding the termination of the Agreement RiverOak shall make payments of Professional and Administrative CPO Costs which are properly due under and in accordance with the provisions of the Agreement as if the Agreement were still in full force and effect:

4.4.1 which the Council was legally bound to make as at the date of termination of the Agreement; or

4.4.2 which have been paid by the Council in accordance with the terms of the Agreement prior to the date of termination of the Agreement.

### **Financial Questions**

Financial Question 1 Do you have an external credit rating? If so, please provide details.

RiverOak is a privately held private equity investment manager and, as such, does not have an external credit rating. The Company has no debt. We maintain no cross security provisions from one project to another. Therefore the security of each investment is autonomous.

**Financial Question 2** Please could you provide your last three financial years' accounts?

We are asset managers for several different investment vehicles and funds. Each entity has its own separate reporting requirements and accounts. We do not produce consolidated accounts.

However, these fund entities currently manage assets in aggregate of over \$350m. These include the structuring and management of a portfolio of medical office and administration facilities to large scale repositioning of brownfield commercial and mixed use assets.

There are different beneficial equity participants along with RiverOak's capital in each of these investment vehicles and fund entities.

**Financial Question 3** Would you undertake to provide a bank guarantee or operate an escrow account in relation to the compulsory purchase? Please could you provide evidence of similar arrangements in your past business activities?

See answer to Project Question 4 above. "As asset managers we always ensure that we have all the investment funds necessary for any project before we commit ourselves. This means that we can always prove funds before a project begins. That will be the case with Manston and it will be a small step for us to commit those funds to a CPO Account in the way envisaged in the Heads of Terms.

**Financial Question 4** Would this project fall within the scope of your normal business activities, or would you plan to raise specific project finance either in your own right or by introducing partner investors and syndication? (See financial question 5 below.)

The CPO process would fall within our normal business activities and is self-funded by RiverOak principal capital. This would also include the acquisition, although some of this capital may be syndicated with reputable aviation companies and/or historical private RiverOak capital partners.

Future phases of airport operational expansion are expected to be funded by a combination of joint venture investor/operators and debt. Example: we would expect in the teardown and recycling business to bring on a major OEM manufacturer to both invest in and assist to operate this business.

**Financial Question 5** If you intend to introduce partner investors or syndicate, what arrangements would you make to ensure their financial status and suitability for this project?

Since the syndication will be done on a "capital-upfront" basis, there would be no credit risk. The partners we have had formal, yet initial, discussions with are well known and highly respected in their respective fields, and some are globally recognized. Our vetting of such entities will include significant financial commitments and guarantees as required for the successful deployment of the respective projects.

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## ***Exhibit 5. – Final decision document of 11 December 2014***

Please find attached overleaf the final decision document presented by Thanet District Council on 11 December 2014.<sup>60</sup>

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<sup>60</sup> See TH23 and RO22.

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## MANSTON AIRPORT EXPLORATION OF CPO INDEMNITY PARTNER

To: Cabinet, 11<sup>th</sup> December 2014

Main Portfolio Area: All

By: Leader of the Council

Classification: Unrestricted

Ward: All wards

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**Summary:** To update Cabinet on the outcome of a soft-market testing exercise undertaken to identify a CPO indemnity partner for Manston Airport.

### For Decision

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#### 1.0 INTRODUCTION

- 1.1 Cabinet resolved on 31<sup>st</sup> July 2014 to carry out a soft-market testing exercise to identify a CPO Indemnity Partner – a third party who could cover the costs of compulsory purchase of the Manston Airport site. A progress report was received by Cabinet on 16<sup>th</sup> October 2014.
- 1.2 The purpose of this report is to inform Cabinet on the results of the soft-market testing. It does not address the wider options around the future of site, which will be considered separately as part of the Council's Local Plan process.

#### 2.0 PROCUREMENT PROCESS FOR A CPO INDEMNITY PARTNER

- 2.1 Expressions of interest were invited for a CPO indemnity partner. Counterparties expressing an initial interest were invited to respond to a questionnaire, composed of:
- Organisational and contact information
  - Project questions
  - Financial questions
- 2.2 The independent viability report produced by Falcon Consultancy was also made available to respondents.
- 2.3 Four counterparties requested a questionnaire; two submitted returns. (Parties A and B). Some discretion was shown over the 31<sup>st</sup> August 2014 deadline for questionnaire submissions. This allowed additional time for any party seeking to express an interest.
- 2.4 Both respondents submitting questionnaires were offered a meeting to discuss their responses more fully.
- 2.5 A meeting took place with Party A's principals on 18<sup>th</sup> September 2014 to discuss their responses. The meeting was attended by Cabinet members, Group Leaders

and the Council's statutory officers. Following the meeting, Party A was asked to respond to a written set of questions by 24<sup>th</sup> September 2014. This Party A did in a letter of 25<sup>th</sup> September 2014. Following the response, further clarification was sought from them on some issues. A further meeting attended by Cabinet members, Group Leaders and the Council's statutory officers took place on 29<sup>th</sup> October 2014. Discussions took place subsequently with Party A's solicitors and there followed various further meetings and correspondence with Party A.

- 2.6 The Council has entered into a confidentiality agreement with Party A. The Council is therefore prevented from disclosing the information provided by Party A for consideration.
- 2.7 Party B did not take up the offer of a meeting. Party B was sent the same written questions as Party A. No response has been received from Party B. It is therefore considered that Party B has conclusively not identified an interest in being the Council's indemnity partner.

### **3.0 RELEVANT CONSIDERATIONS**

- 3.1 The objective of seeking an indemnity partner is to ensure that - if the Council determines to pursue a CPO - a viable airport comes into sustainable long-term operation as quickly as is reasonably possible without any residual cost to the Council.
- 3.2 A majority interest in the site was acquired by new owners in September 2014. The new owners state they intend to bring forward regeneration proposals for the site. The new owners have a business record that includes the Discovery Park Enterprise Zone.
- 3.3 The new ownership of the site and any proposals put forward would make it much more challenging to demonstrate an overwhelming case for compulsory purchase. This compares to the situation before September 2014 when the then outright owner had announced no specific proposals following the airport closure. Given the now increased challenge of securing a CPO, it is essential that the Council establishes thoroughly on objective grounds the financial status of any prospective partner. The assessment must have due regard to the potential scale of the project, and the need to demonstrate that resources are available to complete it.
- 3.4 Any viable indemnity partner needs to demonstrate the resources to acquire by private treaty well before the stage of seeking a CPO.
- 3.5 There are numerous local authority examples of stalled developments or developments where the partner proves not to have the financial capacity to complete the agreement. This experience in other local authorities emphasises the need to ensure a prospective indemnity partner has the resources in place to acquire the site and complete the development. Once the land transfers to the indemnity partner any redress for delay or non-completion could prove difficult to pursue. The main purpose of the CPO is for the authority to achieve a viable development, so the status of the indemnity partner to deliver the development in its entirety is highly relevant.
- 3.6 Counsel's advice is that the Council would need to underwrite any CPO acquisition to demonstrate to the Secretary of State the likelihood of completion. The availability of funds to the prospective indemnity partner is therefore a key factor.
- 3.7 The Council does not have the resources to proceed with any CPO and the subsequent development in the event the indemnity partner could not raise

investment resources. The Council's Capital Programme agreed 13<sup>th</sup> November 2014 is fully committed and already assumes prudential borrowing of £3.645m 2015-16 to 2018-19. The Council would have to borrow to fund acquisition of the airport and its subsequent development in the event an indemnity partner did not prove capable of proceeding. Assuming £20m of borrowing this would result in a revenue capital financing charge of £1.8m. The basic minimum costs (business rates; air traffic; fire and security) of operating the airport are estimated at £2m a year. These revenue costs would prove an unbearable burden for the Council's General Fund.

#### 4.0 DUE DILIGENCE METHOD

- 4.1 Financial information was requested from Party A. Information was analysed in accordance with the Due Diligence Protocol attached at Annex A
- 4.2 Checks have been made with other local authorities that have recently sought and successfully identified CPO indemnity partners. Counsel's opinion has also been obtained on the CPO process and the validation of a prospective indemnity partner. The approach taken by Thanet is entirely consistent with both good practice and the process adopted by other local authorities.
- 4.3 In the event that the counterparty is able to fulfil the due diligence requirements, it would demonstrate a viable interest. Conversely if it cannot, no viable expression of interest is demonstrated. The information required is summarised in the table below.

<b><u>Financial information</u></b>
Last 3 years financial accounts
Auditor contact details
Financial Plan
Evidence of funds required to complete the project.
<b><u>Financial Ability</u></b>
Does the entity have the resources to fulfil its obligations through the contract?
Does the entity issue annual accounts?
Does the entity have a long track record, how many years has it been established?
Does the entity have a stable structure and good governance around financial decision making?

#### 5.0 PARTY A

- 5.1 Party A is an established organisation incorporated outside the European Union. It is an investment limited liability company. Its adopted strategy is to pursue opportunistic and value-add asset purchases and operational opportunities on behalf of a diversified set of investors ranging from institutions to individuals. It does not of itself have a record of successful airport operation; some team members have experience with other organisations of airport operation and airport financing.
- 5.2 Party A proposes to approach the CPO acquisition a stage at a time. This would be inconsistent with the requirements of Circular 6/2004, sections 20 and 21.

'The timing of the availability of the funding is also likely to be a relevant factor. It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years. Even more importantly, the confirming Minister would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the



compulsory acquisition within the statutory period following confirmation of the order. He may also look for evidence that sufficient resources could be made available immediately to cope with any acquisition resulting from a blight notice.'

## **6.0 ACCOUNTING AND INVESTOR INFORMATION**

- 6.1 The information provided by Party A does not demonstrate that it has the appropriate financial status or has committed investors:
  - 6.1.1 to enable it - if required - to acquire the site by private treaty prior to a CPO process being commenced
  - 6.1.2 to fund the preparation of a robust case for CPO acquisition
  - 6.1.3 to meet the expected compensation costs
  - 6.1.4 to develop the airport and operate it viably in the long-term
- 6.2 The use of Party A as an indemnity partner on the basis of the financial information provided would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council.

## **7.0 BUSINESS PLAN**

- 7.1 The Business Plan provided by Party A is a short term (5-year) business plan and the scope is insufficient in the light of the objective set out in 3.1. The plan does not provide for the CPO compensation cost, and this could be substantial. The business assumptions appear to be optimistic as regards revenues and the known costs of operation.
- 7.2 The viability report issued with the soft marketing questionnaire states that 'The success of Manston revival must be proved through a 20-year business plan with financial projections based on the assumption that the trigger will be realised'. A 20-year plan has been requested from Party A but this was not provided. A 20 year business plan is required for a project of this scale to demonstrate long-term viability, and that the proposed operation is sustainable in the long term. Unless these requirements can be clearly demonstrated there is no prospect of achieving a CPO.
- 7.3 The use of such an indemnity partner would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council..

## **8.0 INDEMNITY**

- 8.1 The approach suggested by Party A is that funds would be transferred in tranches to a UK account managed by UK solicitors. The Council could then incur CPO costs to the value of funds in the account. The Council would not be obliged to proceed with further work until new funds were paid into the account by Party A.
- 8.2 The Council is not seeking a CPO on a speculative basis and would not wish to put itself in a position whereby full achievement and vesting of the site would depend on the partner's ability to generate investment in the project.
- 8.3 The use of such an indemnity partner would therefore constitute a high risk option given the objective set out in 3.1 above and legal advice secured by the Council..

## **9.0 CORPORATE IMPLICATIONS**

### **9.1 Financial and VAT**

9.1.1 Set out in the main report

### **9.2 Legal**

9.2.1 This report has outlined the process undertaken following the decision of Cabinet on 31<sup>st</sup> July 2014 to seek expressions of interest.

9.2.2 It has also set out how we have considered the information provided by those interested parties and a thorough consideration of that information and the assurances provided by it.

9.2.3 The conclusions made by the Council's Section 151 Officer are that the information provided does not provide assurances which would satisfy him that a valid expression has been put forward and he is therefore unable to recommend moving ahead with this proposal.

9.2.4 Although the issues here are emotive Members should exercise extreme caution before seeking to move forward with any proposal which is at odds with advice from its officers particularly where there are likely to be significant risks which would affect the Council at a fundamental level.

9.2.5 The Council has secured further legal advice as summarised in 9.2.6 to 9.2.9 below on the financial assessment necessary to support the choice of an indemnity partner.

9.2.6 The Council need to be satisfied in promoting the CPO that it is able to meet the tests of Circular 06/2004 on the likelihood of the project going ahead. The Secretary of State will not confirm a CPO unless he is satisfied that there is a likelihood of the project going ahead.

9.2.7 If a scheme is not financially viable the S151 Officer would be expected to certify (e.g. in a witness statement) that he was satisfied that the project was viable and that the local authority would meet any funding shortfall if the partner investment was not forthcoming.

9.2.8 CPO is a last resort. It is necessary to make direct contact with the owners of the land with a view to determining whether a negotiated sale is possible.

9.2.9 The approach taken to determine whether the prospective indemnity partner is suitable before embarking on any CPO appears correct.

### **9.3 Corporate**

9.3.1 An operational airport is consistent with the Council's economic development objectives. The decision taken here would not affect the status of the site as an Airport within the Local Plan and a separate process is followed in that regard.

**9.4 Equity and Equalities**

9.4.1 There is no issue arising from the report and recommendations which adversely affects any specific category of Equality group.

**10.0 Recommendation**

10.1 That no further action be taken at the present time on a CPO of Manston Airport, on the basis that the Council has not identified any suitable expressions of interest that fulfil the requirements of the Council for a CPO indemnity partner and that it does not have the financial resources to pursue a CPO in its own right.



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