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Date: **10 July 2014**
Our ref: **Extraordinary Cabinet/Agenda**
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CABINET

17 JULY 2014

An Extraordinary meeting of the Cabinet will be held at **2.00 pm on Thursday, 17 July 2014** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Johnston (Chairman); Councillors: Nicholson, Everitt, D Green, E Green and Harrison

SUPPLEMENTARY A G E N D A

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Subject

3. **MANSTON INTERNATIONAL AIRPORT - CPO INDEMNITY PARTNER PROCESS**
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MANSTON INTERNATIONAL AIRPORT – CPO INDEMNITY PARTNER PROCESS

To: **Extraordinary Cabinet – 17th July 2014**

Main Portfolio Area: **Business and Corporate Resources**

By: **Interim Director of Corporate Resources**

Classification: **Unrestricted**

Ward: **All**

Summary: **To inform the Cabinet of the timeline for identifying an indemnity partner in the event a CPO is sought for Manston Airport. To explain the process of a local authority bond issue.**

For Decision

1.0 Introduction and Background

- 1.1 Council on 10th July 2014 is considering a petition and a motion concerning the potential acquisition of Manston Airport by CPO. *‘Council affirms its considerable disappointment at the recent closure of Manston as a regional airport. We recognise the public support for its continuation as an airport and endorse the steps taken to date towards that objective. Council urges all available options to that end be explored, including a detailed examination of the legal and financial implications of a Compulsory Purchase Order before a final decision is reached.’*
- 1.2 This report sets out the timeline for identifying a CPO indemnity partner in the event the Council determines to apply for a CPO. It also explains that a Council bond issue is not appropriate or necessary in the event the Council decides to apply for a CPO.

2.0 Land Acquisition and Disposal

- 2.1 There are two options depending whether the disposal to the indemnity partner is subject to EU procurement rules. It will be necessary for the Council to secure legal advice as to whether EU rules apply.
- 2.2 **Option 1** The EU Procurement rules do not apply. The EU Public Procurement regime obligations do not apply to land acquisition where CPO criteria has been established and planning powers to give effect to the public interest are exercised. In this case the identification of the prospective third party to buy/lease the site – given appropriate external legal and advisory support – would be a 3 month timeline. The contracting authority’s role would be limited to the sale/lease of land to a third party with only some conditions/restrictions to high level planning requirements or town plans and which must be legally enforceable. The contracting authority also must not get an economic benefit from any agreement.
- 2.3 **Option 2** The EU Procurement rules do apply. Land transactions themselves are not always exempt from the EU public procurement regime and related tendering obligations. This is a complex, evolving area of law and primarily based on “what is the contracting authority’s role?”

- 2.4 Where a contracting authority is contributing funding/and or taking risk, i.e. actively seeking a commercial operator, there will be EU procurement requirements where the value is above the financial threshold (currently £4.3m). Below this threshold local tendering obligations as contained in the council's Contract Standing Orders will be required.
- 2.5 The EU Procurement regime is designed to provide fair, transparent and uniform processes for selecting third parties to undertake opportunities plus provides advantages to contracting authorities in mitigating risk including mitigation of both state aid and ineffectiveness risk relating to challenges to process.
- 2.6 An indicative minimum timeline in respect of the restricted procedure under the EU procurement regulations is seven months (217 days). This assumes that it would be possible to develop the Invitation to Tender during the time between publication of the contract notice and pre-selection of capable candidates (57 days).

Timeline	Days
Publish Prior Information Notice (PIN)	
Official Journal of the European Union (OJEU) - Contract Notice despatched	
Publish TDC/Kent Business Portal - minimum 48hrs after receipt of despatch of contract notice to OJEU	2
OJEU - Contract Notice published	
Expressions of interest due and Pre-Qualification Questionnaire return - regulatory minimum period of days	37
PQQ Evaluation	10
PQQ results and debrief of suppliers	10
Tenders issue and return following PQQ Evaluation - regulatory minimum period of days	40
Opening of tenders	2
Evaluation of tenders	56
Award Intention notified to all tenderers	10
Cooling-off period - regulatory minimum period of days	10
Debrief unsuccessful tenderers.	10
Finalisation of legal agreement and contract award	30
Minimum required timeline	217

3.0 Bond issues

- 3.1 Bond issues are typically for £100m's by large public sector organisations that do not have access to the capital borrowing resources of the Public Works Loan Board. Given the likely cost of any airport acquisition, the value needing to be borrowed would represent a tiny fraction of the normal scale of a bond issue. The scale and the access to PWLB facilities (see 3.2 below) make a bond issue inappropriate.
- 3.2 The main source of borrowing for Local Authorities is the Public Works Loan Board (PWLB), which is an Executive Agency of HM Treasury. The interest rate charged by PWLB is the gilt rate plus 0.8% (PWLB Certainty Rate). The gilt rate changes for different maturities and represents the market interest rate for UK government debt (gilts are listed on the London Stock Exchange). This borrowing source is available for the Council's capital expenditure.

4.0 Corporate Implications

4.1 Financial and VAT

4.1.1 The financial and VAT implications will be assessed once the report commissioned by the Council on airport financial viability has been finalised.

4.2 Legal

4.2.1 Contained in the main body of the report.

4.3 Corporate

4.3.1 None direct

4.4 Equity and Equalities

4.4.1 There are no direct equity or equality implications.

5.0 Recommendations

5.1 That the timetables are noted and that the appropriate process be initiated in the event that Cabinet determines a CPO should be applied for;

5.2 That no further action be taken on a bond issue.

Contact Officer:	Paul Cook, Interim Director of Corporate Resources
Reporting to:	Madeline Homer, Director of Community Services

Corporate Consultation Undertaken

Finance	Karen Paton, Strategic Procurement Manager
Legal	Steven Boyle, Interim Legal Services Manager

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