

# Public Document Pack



Date: **6 July 2015**  
Our ref: **Extraordinary Cabinet/Agenda**  
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## EXTRAORDINARY CABINET

**14 JULY 2015**

An extraordinary meeting of the Cabinet will be held at **7.00 pm on Tuesday, 14 July 2015** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

### Membership:

Councillor Wells (Chairman); Councillors: L Fairbrass, Brimm, Smith, Stummer-Schmertzing and Townend

## A G E N D A

Item  
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST**

To receive any declarations of interest. Members are advised to consider the advice contained within the Declaration of Interest form attached at the back of this agenda. If a Member declares an interest, they should complete that form and hand it to the officer clerking the meeting and then take the prescribed course of action.

3. **MANSTON AIRPORT CPO** (Pages 1 - 4)

**Declaration of Interest form - back of agenda**

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## MANSTON AIRPORT CPO

To: **Extraordinary Cabinet – 14<sup>th</sup> July 2015**

Main Portfolio Area: **Leader of Council**

By: **Monitoring Officer**

Classification: **Unrestricted**

Ward: **Thanet Wide**

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**Summary:** **The purpose of this report is to inform Cabinet of a recommendation by Council on the 21<sup>st</sup> May 2015 for Cabinet to review its position on a CPO for Manston Airport and if agreed to recommend to Cabinet the next steps for that review.**

### For Decision

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#### **1.0 Introduction and Background**

1.1 The key dates, decisions and actions which are relevant to this report are set out below. The whole background to this matter need not be rehearsed here, having been covered by previous reports.

1.2 On the 11th December 2014 a final outcome report on the soft market testing exercise to identify a suitable CPO indemnity partner for Manston Airport was considered by Cabinet. Cabinet decided:

2. *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;*
3. *That subject to obtaining written consent from Party A; relevant information is sent to the Minister of State for Transport for consideration.*

1.3 In March 2015 PricewaterhouseCoopers LLP (PwC) 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. In undertaking the review Pricewaterhouse Coopers was instructed to address:

- *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).*
- *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.*
- *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.*

- 1.4 On the 21<sup>st</sup> May 2015 an extraordinary Council meeting agreed (subject to the confirmation of the minutes) that:

*'Council recommends to Cabinet that it reviews its position in relation to the Manston Airport site, taking account of all the surrounding circumstances relating to an indemnity partner for a possible Compulsory Purchase Order.'*

## **2.0 The Pricewaterhouse Coopers Report**

- 2.1 On the 21<sup>st</sup> June 2015 the Council received the final DfT report from PwC. Before considering its contents, it is important to note the status of that report, it is not a Council report, it is a report commissioned by the DfT and for the DfT and the report says that PwC 'accept no liability, including for negligence, to anyone other than DfT in connection with this report.'
- 2.2 In considering the report, we should also be clear about what the report is not about. The PwC report does not include any opinion on whether the Council's due diligence was sufficient, nor on the reasonableness or otherwise of the Council's conclusions in relation to the appointment of a satisfactory indemnity partner. The report has not included any consideration of the viability (financial or otherwise) of Manston Airport, nor of the potential CPO process which was considered by the Council. Accordingly, the report does not express any opinions on those matters.
- 2.3 Turning to what the report does say. In accordance with its terms of reference, the PwC report sets out key considerations the council could have taken into account based on the information available at the time. It also sets out key considerations the Council may wish to take into account in any further CPO review. Further, it includes advice on what further work the Council may wish to undertake to help strengthen the findings from any future due diligence exercise.
- 2.4 The advice in the report on future work (and the report generally) is a relevant consideration to be taken into account by the Council in undertaking any review of the decision with respect to RiverOak.

## **3.0 Further Review**

- 3.1 The Council needs further advice and information if it is to satisfy itself that RiverOak fulfils the requirements as an indemnity partner. That advice will include specialist legal and other advice on the procurement, state aid, governance and financial aspects of the project.
- 3.2 Given the urgency and to move this matter forward, three major law firms have been asked to provide a cost estimate and work proposals for this advice. The PwC report indicates that in addition to the general legal advice we will need assistance from accountants and the advice of specialist counsel.
- 3.3 The advice to be commissioned is, to review the council's procurement process for the appointment of an indemnity partner in relation to a CPO for land at Manston Airport, (based upon the documentation provided to Pricewaterhouse Coopers LLC ('PwC') and their report 'Review of CPO Indemnity Partner Process for Manston Airport'), and to advise:
- In your opinion, in conducting a due diligence exercise, what information and assurances would the Council and its Section 151 officer need, to conclude that RiverOak have sufficient financial resources and standing to put them into a

position to indemnify the Council in relation to the Council's potential compulsory acquisition of land at Manston Airport?

- What additional steps, in relation to gathering further information or otherwise, should the Council take to reassure itself that RiverOak fulfil the requirements of the Council for a CPO indemnity partner?
- What assumptions have you made in giving your opinion and any limitations or caveats to that opinion?
- In a scenario where the council appointed an indemnity partner in mid July 2015, please provide an indicative timeline for a potential CPO process and describe the key steps in that process, including the decisions to be made by the council's decision making bodies as part of that process. (Note: The date of mid-July is merely indicative in order to give a start to the timeline)

#### **4.0 Options**

- 4.1 Cabinet do not agree the recommendation from Council and take no further action.
- 4.2 Cabinet agree the recommendation from Council and then commission specialist legal and finance advice to determine whether RiverOak are a suitable indemnity partner and also instruct them to provide advice on the indemnity agreement and CPO process generally.

#### **5.0 Corporate Implications**

##### **5.1 Financial and VAT**

- 5.1.1 The purpose of the work to be commissioned is to provide further information to the Council's Section 151 Officer so that the officer can be satisfied with the financial resources of the council's indemnity partner.
- 5.1.2 The estimated costs of the basic commissioned work are circa £10,000 plus additional costs for financial advice and counsel fees and there may be further costs if the matter becomes unduly complex or protracted.
- 5.1.3 Where the value of a contract exceeds £10,000 under the Council's Contract Standing Orders we are required to get at least three written quotes in advance.

##### **5.2 Legal**

- 5.2.1 The further review and specialist legal and financial advice is required to ensure that the Council's legal obligations in terms of probity, procurement, compulsory purchase and governance are met.

##### **5.3 Corporate**

- 5.3.1 The Council has requested the Cabinet to review its position in relation to the Manston Airport site, taking account of all the surrounding circumstances relating to an indemnity partner for a possible Compulsory Purchase Order. This report will enable the Cabinet to have the requisite information to undertake that review and to take the necessary decisions.

## 5.4 Equity and Equalities

5.4.1 There are no specific equality implications.

## 6.0 Recommendations

6.1 Cabinet agrees the recommendation from Council on the 21<sup>st</sup> May 2015 to review its position in relation to the Manston Airport site, taking account of all the surrounding circumstances relating to an indemnity partner for a possible Compulsory Purchase Order;

6.2 Cabinet authorises that specialist legal and finance advice be obtained to determine whether RiverOak are a suitable indemnity partner in relation to a CPO for Manston Airport and to provide advice on the indemnity agreement and CPO process generally.

## 7.0 Decision Making Process

7.1 This is a non-key decision.

Contact Officer:	Tim Howes, Interim Head of Legal and Democratic Services & Monitoring Officer, Ext 7906
Reporting to:	Madeline Homer, CEx

### Annex List

None	N/A
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### Background Papers

Title	Where to Access Document
None	N/A

### Corporate Consultation Undertaken

Finance	Tricia Marshall, Section 151 Officer
Legal	N/A

## THANET DISTRICT COUNCIL DECLARATION OF INTEREST FORM

### Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

### Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
  - exercises functions of a public nature; or
  - is directed to charitable purposes; or
  - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992

If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the

matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

### **Gifts, Benefits and Hospitality**

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £100 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

### **What if I am unsure?**

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Democratic Services and Scrutiny Manager well in advance of the meeting.

## **DECLARATION OF DISCLOSABLE PECUNIARY INTERESTS, SIGNIFICANT INTERESTS AND GIFTS, BENEFITS AND HOSPITALITY**

**MEETING** .....

**DATE**..... **AGENDA ITEM** .....

**DISCRETIONARY PECUNIARY INTEREST**

**SIGNIFICANT INTEREST**

**GIFTS, BENEFITS AND HOSPITALITY**

**THE NATURE OF THE INTEREST, GIFT, BENEFITS OR HOSPITALITY:**

.....  
.....  
.....

**NAME (PRINT):** .....

**SIGNATURE:** .....

Please detach and hand this form to the Democratic Services Officer when you are asked to declare any interests.