

# Summary of PwC's Report on Thanet District Council's Indemnity Partner Process for Manston Airport

## Foreword

These notes have been prepared as a summary of PwC's "Review of CPO Indemnity Partner Process for Manston Airport" report, dated 22 May 2015. The full report is available [here](#).

Whilst every possible care was taken in the creation of these notes, they may not accurately reflect the content of the full report. No guarantee of accuracy is made, and no liability is accepted for errors or omissions.

## Introduction

PwC were appointed by Department of Transport on 18 March 2015 to provide consultancy on Thanet District Council's due diligence of potential indemnity partner RiverOak, in relation to the compulsory purchase of Manston Airport. The primary focus was to review information contained in dossiers given to PwC by TDC and RiverOak.

TDC provided 23 documents and RiverOak provided 31 documents. Some of these documents were duplicates. PwC requested additional documents from TDC on 16 April 2015 and these were received by PwC on 18 May 2015.

## Points PwC were instructed to address

1. "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)."
2. "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."
3. "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."

## Summary of advice given by PwC

### Last 3 years of financial accounts

The Council were very rigid in requiring 3 years of financial accounts for the Due Diligence Protocol. "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." The Council could have made the following considerations to establish RiverOak's historical financial performance:

- "External expert advice on the disclosure requirements in Delaware and their comparability to United Kingdom Generally Accepted Accounting Principles ("UK GAAP");
- Requested that the audited accounts, and the combined balance sheet, be presented using UK GAAP disclosures for comparable purposes;
- Specifically requested that all intercompany and intra-group balances within the combined balance sheet be cancelled out and highlighted;

- 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.”

If these alternative steps were inconsistent with past approaches taken by the Council on due diligence (therefore setting a precedent from which TDC could not deviate from), PwC suggests 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.”

#### Verification of funding levels and the proposed funding structure to indemnify TDC

TDC decided they were not satisfied with the funding evidence provided by RiverOak or the indemnity procedure proposed by RiverOak (final decision document on 11 December 2014). Thanet District Council could have made the following extra considerations:

- “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;
- 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; 12 Final decision document of 11 December 2014; Sections 6.0 and 8.0. See TH23 and RO22. Draft Final Private and confidential Review of CPO Indemnity Partner Process for Manston Airport PwC 12
- 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; 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.”

#### RiverOak’s financial model, cash flow projections and business plan

TDC were not satisfied with the depth and scope of RiverOak’s business plan (final decision document on 11 December 2014). The Council could have taken the following into account:

- “Could have 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."

### Evidence of funding and prospective investors

TDC were not satisfied with evidence provided to substantiate the funding available and commitment from investors (final decision document on 11 December 2014). The Council could have:

- "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."

### Credit Check undertaken by TDC

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;
- 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; 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."

### Process for creating the final decision document

The final decision document should have been based upon the prior information notice (PIN) and Due Diligence Protocol. RiverOak's submission should have been judged by the information and requirements laid out in these documents. PwC have not received any evidence that this was explicitly undertaken. 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."

### Evidencing external advice in the final decision document

PwC have not been provided evidence that shows TDC consulted with any external experts, apart from legal counsel discussed in section 6.2.2 of the PwC report. 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.”

### Underpinning the process and final document with frameworks provided to respondents

PwC were not provided with any evidence which suggests that the Council linked the requested information from PIN respondents back to the PIN and the Due Diligence Protocol. The Council “should have made more explicit reference to the soft market testing document when raising questions with 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;
- 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; 14 It is our understanding that the Due Diligence Protocol of TDC were publicly available on their website throughout the process. Draft Final Private and confidential Review of CPO Indemnity Partner Process for Manston Airport PwC 15
- 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.”

### Preparation and contents of the Soft Market Testing document

PwC expected references to the Due Diligence Protocol and PIN to be made throughout the soft market testing document. PwC also comments that the Council has not addressed all points in the Due Diligence Protocol (sections 2.4.3 and 2.5.6). The Council should have made all respondents to

the PIN aware of the framework upon which they would be judged at an earlier stage in the process. 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
- 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.”

#### Further considerations TDC may wish to take into account based on additional information provided by RiverOak to the DfT

PwC believe 7 documents may not have been available to TDC before their final decision document was presented on 11 December 2014. PwC do not believe “that these documents contain any additional information of note of which the Council was not already aware of during the Review Timeframe.”

#### Advice on strengthening future due diligence

Additional points the Council should consider to strengthen future due diligence exercises:

- “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 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.”

#### Information Requests Issued by TDC

PwC note that “information requests issued by TDC do not address all of the Council’s framework for assessing potential indemnity partners”. The 4 key areas within the PIN “do not appear to have been fully applied in the due diligence work undertaken.” Additionally, PwC note that “the Council’s own Due Diligence Protocol does not appear to have been fully addressed by the due diligence work undertaken.”

TDC did provide evidence that demonstrated they sought information from other local authorities on frameworks and processes to select indemnity partners. No evidence was provided to show whether TDC implemented these frameworks or procedures consistent with them.

## Information Received by TDC from RiverOak

Document Requested	Deemed Sufficient by TDC? If not, why not?
3 years of accounts from RiverOak and subsidiaries	No, RiverOak provided a combined balance sheet instead and did not provide 3 years accounts.
3 years of accounts for investment vehicles managed by RiverOak	No, RiverOak provided a combined balance sheet instead and did not provide 3 years accounts.
Proof of sufficient funding for a CPO and the development of Manston	No, TDC considered RiverOak's level of funding insufficient.
Auditor statement on the accounts and proof of sufficient funding	Yes
Contact details of the auditor and permission to contact them	Yes
Group structure of RiverOak	Yes
Details of RiverOak Aviation Associates LLC	Yes
RiverOak financial projections for the airport	No, TDC requested a 20-25 year business plan with cash flows. RiverOak provided a five year projection.
Details of investors that will support the project	No, although checks on investors were undertaken by RiverOak's solicitors and provided to TDC.
CVs of key RiverOak personnel	Yes
Confirmation that RiverOak Aviation Associates LLC will enter into escrow agreements	No evidence provided which indicates RiverOak would enter into a process to deposit money into a UK escrow account.
Details of any connections which may be prejudicial or awkward	Yes
Confirmation of insurance to cover difference between forecast and actual CPO costs	Yes

Supporters of  
Manston Airport