RiverOak Strategic Partners

2.2
Draft Explanatory Memorandum

TR020002/ APP/ 2.2

Project Name:	Manston Airport Development Consent Order
Regulation:	Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, as amended
Date:	July 2018

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning
(Applications: Prescribed Forms Procedure) Regulations 2009,
As Amended

RiverOak Strategic Partners Limited

Manston Airport Development Consent Order 201[ ]

EXPLANATORY MEMORANDUM

CONTENTS

1 SUMMARY…….. 1

2 PURPOSE OF THE ORDER…….. 1

3 DRAFT ORDER……. 3

4 SCHEDULE 2 – REQUIREMENTS……. 16

1 Summary

1.1 This memorandum explains the purpose and effect of each article of, and the Schedules to, the draft Manston Airport Development Consent Order ('the Order'), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009[1].

2 Purpose of the Order

Nationally Significant Infrastructure Project – airport related and associated development

2.1 Manston airport is a disused airport on the Isle of Thanet in Kent. It has one of the longest and widest runways in the UK, comparable to other international airports making it a valuable infrastructure asset. Manston was the site of an operational airport between 1916 and 2014 and since has lain dormant. Its aerodrome licence has been withdrawn and some airport related equipment has been removed from the site. However, the runway remains in place.

2.2 RiverOak Strategic Partners Limited ('RiverOak') is proposing to secure the future of this valuable national asset by redeveloping and reopening it as a successful hub for international air freight which also offers passenger travel, executive travel and aircraft engineering services. The airport would be comprehensively rebuilt and upgraded, including increasing the number of aircraft stands from the current four to twenty-three. The proposals include:

2.2.1 Upgrade of Runways 10/28 to allow CAT II/III operations;

2.2.2 Re-alignment of the parallel taxiway (Alpha) to provide EASA compliant clearances for runway operations;

2.2.3 Construction of 19 EASA compliant Code E stands for air freight aircraft with markings capable of handling Code D and F aircraft in different configurations;

2.2.4 Installation of new high mast lighting for aprons and stands;

2.2.5 Construction of 65,500m² of cargo facilities;

2.2.6 Construction of a new ATC tower;

2.2.7 Construction of a new airport fuel farm;

2.2.8 Construction of a new airport rescue and firefighting service (RFFS) station;

2.2.9 Complete fit-out of airfield navigational aids (nav-aids);

2.2.10 Construction of new aircraft maintenance/recycling hangars;

2.2.11 Development of the Northern Grass area for airport related businesses;

[1] S.I. 2009/2264

2.2.12 Demolition of the redundant ‘old’ ATC Tower;

2.2.13 Safeguarding of existing facilities for museums on the site;

2.2.14 Highway improvement works; and

2.2.15 Extension of passenger service facilities including an apron extension to accommodate an additional aircraft stand and increasing the current terminal size.

2.3 RiverOak is applying to the Secretary of State for an Order to redevelop Manston Airport. The proposed development is a nationally significant infrastructure project (“NSIP”) for the purposes of the Planning Act 2008[2] (“The Act”). This is because the proposed development relates to airport development (section 14(1)(i) of the Act), specifically the alteration of an airport in England (section 23(4)(a) of the Act). Development involving such an alteration is only an NSIP if it is expected to have the effect specified in section 23(5) of the Act. The relevant effect for this development is that it increases by at least 10,000 per year the number of air transport movements of cargo aircraft for which the airport is capable of providing air cargo transport services. The proposals will result in a development comfortably in excess of that threshold. Therefore, the proposed development is an NSIP.

2.4 As the proposed development is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate (‘PINS’), under section 37 of the Act.

2.5 Schedule 1 to the Order contains a list of numbered works comprising the NSIP.

2.6 The Order also seeks consent for the development which would constitute associated development.

2.7 Guidance[3] on associated development has been issued by the Secretary of State for Communities and Local Government. In this guidance associated development is described as being "***typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project***" (paragraph 6) and "***requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development***" (paragraph 5).

2.8 Annex B of the above-mentioned guidance gives freight distribution centres, including freight forwarding and temporary storage facilities as an example of associated development for airport NSIPs.

2.9 However, in some cases it should be recognised that there may be some overlap, or the absence of the clear boundary, between associated development and works which form part of the NSIP. There is a danger that separating it out in the Order could potentially lead to an error defining it one way or another incorrectly, given this potential for overlap between the two

[2] c.29
[3] Guidance on associated development applications for major infrastructure projects

categories. For instance, there may be some on-highway, and some off-highway, diversion of the same piece of statutory undertaker equipment.

2.10 For this reason, and noting that there is no requirement for a development consent order to distinguish between these two categories, RiverOak has chosen not to differentiate the NSIP and associated development works in Schedule 1 to the Order. Ultimately, all elements of the proposed development either constitute part of the NSIP or are "associated development" within the meaning of section 115(2) of the Act, and so can properly be authorised by the Order.In order to ensure that the authorised development and the associated development are constructed efficiently and without impediment, the Order contains the powers to carry out the other associated development listed (a) to (p) in Schedule 1. The use of such measures was explicitly approved in the A19/A1058 Coast Road (Junction Improvement) Order 2016 and extensive provisions were used in both the A14 Cambridge to Huntingdon Improvement Order 2016 and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016.

Ancillary matters

2.11 The Order also contains several ancillary matters, i.e. provisions not consisting of development.

2.12 The main ancillary matter is a power to acquire land or rights over land compulsorily or by agreement, in accordance with section 120(3) of the Act, required for the authorised development, or to facilitate, or that are incidental to the authorised development under section 122 of the Act. A justification for these powers is set out in the Statement of Reasons that accompanies the application.

2.13 Further to providing these powers, the Order seeks to apply and modify statutory provisions that relate to the compulsory acquisition of land. Under sections 117 and 120(5) of the Act, an order containing provisions of this nature must be made by Statutory Instrument. The Order is therefore presented in that form.

2.14 Other ancillary matters include the stopping up of lengths of existing highways and public rights of way and traffic regulation. .

3 Draft Order

3.1 The purpose and effect of the provisions of the draft Order are now explained in sequence. While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (S.I. 2009/2265) have lapsed, the draft Order draws on the model provisions (general and railway), as well as precedent set by development consent orders that have been made to date.

Part 1 – Preliminary

Article 1 – Citation and commencement

3.2 Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also gives the date on which the Order comes into force.

Article 2 – Interpretation

3.3 The purpose of article 2(1) is to define terms used in the remainder of the Order.

3.4 Definitions to note include:

(a) "the Order land", which comprises all of the land to be acquired or used permanently or temporarily as shown on the land plans;

(b) "the Order limits", which references the extent of the area within which the authorised development may be carried out;

(c) “commence” which explains the material operations that will be considered to be commencement for the purposes of the Order; and

(d) “maintain” which provides a non-exclusive list of those actions that are considered to be maintenance for the purposes of the Order.

3.5 Article 2(2) provides that a broad definition of ‘rights over land’ applies to the Order.

3.6 Article 2(3) provides that measurements are approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the DCO, there is no issue over whether the works are permitted by the DCO. Thus this provision allows for a small tolerance with respect to any distances and points, although works will take place within the limits of deviation. It is common-place to include such provision in and Act or instrument authorising linear infrastructure.

3.7 Article 2(4) provides that areas given in the book of reference are approximate as these are not covered by article 2(3). This is intended to clarify the position of the areas in the book of reference, the purpose and effect is the same as set out in the previous paragraph.

3.8 Article 2(5) and 2(6) tie references to lettered / numbered points and numbered works in the Order to the access and rights of way plans, the traffic regulation plans and Schedule 1 (authorised development) respectively.

Part 2 – Principal powers

Article 3 – Development consent etc. granted by the Order

3.9 Article 3(1) grants the development consent by giving RiverOak the power to construct the authorised development, which is described in Schedule 1. This article makes the consent subject to the requirements that are listed in Schedule 2.

3.10 Article 3(2) states that any enactment applying to land within the Order limits has effect subject to the provisions of the Order. This provision ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. There is precedent for such a provision, for example the Secretary of State approved the same wording in the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 5(2)).

Article 4 – Maintenance of the authorised development

3.11 This article empowers RiverOak to maintain the development. "Maintain" is defined in article 2(1).

3.12 It should be noted that powers of maintenance are subject to other provisions in the Order, in particular article 11, which makes provision in relation to maintenance of streets by the local highway authority

Article 5 – Maintenance of drainage works

3.13 The purpose of this article is to make it clear that any realignment of award drains or other works to them that are carried out as part of the scheme do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between RiverOak and the responsible party. The provision is well precedented (see for example article 4 of the A14 Cambridge to Huntingdon Improvement Order 2016).

Article 6 - Limits of deviation

3.14 Article 6 provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development within the limits of deviation shown on the works plans. Vertical deviation upwards is permitted to a maximum deviation of 2m subject to the limitations for the buildings listed in the table in paragraph article 6(1)(c). Vertical deviation downwards can be carried out to any extent, subject to the approval of the Secretary of State in consultation with the Environment Agency where such deviation is to a point below ground level.

3.15 The vertical limits can be exceeded where it is demonstrated to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such deviation would not give rise to any materially new or materially worse adverse environmental effects from those reported in the Environmental Statement.

3.16 The purpose of this provision is to provide RiverOak with a proportionate degree of flexibility when constructing the scheme, reducing the risk that the scheme as approved cannot later be implemented for unforeseen reasons but at the same time ensuring that any flexibility will not give rise to any materially new or materially worse adverse environmental effects.

Article 7 – Benefit of the Order

3.17 Article 7 overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to RiverOak rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to remain.

3.18 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others. Absent this provision, there would be a contradiction since strictly speaking only RiverOak could benefit from these works. The same wording was accepted and approved by the Secretary of State in the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 8(2)) and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 (see article 7(2)).

Article 8 – Consent to transfer benefit of the Order

This article allows powers under the Order to be transferred to others by RiverOak with the consent of the Secretary of State. The consent of the Secretary is not required where such a transfer is made to Kent County Council for the purposes of undertaking specified highway works.

Article 9 – Guarantees in respect of payment of compensation etc.

3.19 Article 9(1) ensures that no compulsory acquisition powers can be used and no authorised development commenced until RiverOak has provided appropriate security in respect of its liabilities to pay compensation for such compulsory acquisition and the Secretary has approved the security. The provisions of this article have precedent in the Swansea Bay Tidal Generating Station Order 2015 (see article 7(1))

3.20 Part 3 – Streets

Article 10 – Application of the New Roads and Street Works Act 1991

3.21 Article 10 modifies the application of the New Roads and Street Works Act 1991[4] (the 1991 Act) to works carried out under the powers of the Order.

3.22 Paragraph (1) provides that works carried out under the powers of the Order which match the description of "major highway works" in the 1991 Act will be treated as major highways works for the purposes of the 1991 Act. The effect of this is to clarify that the provisions for sharing the burden of dealing with apparatus in the street (under sections 84 and 85 of the 1991 Act), which would normally apply only to major works carried out by the highway authority, will apply in respect of the works authorised by the Order irrespective of who in fact carries them out.

3.23 “Major Highways Works” are defined at section 86 of the 1991 Act. The definition includes, at sub-sections 86(3)(b) and (f), works undertaken under powers conferred by sections 64 and 184 the Highways Act 1980. As that would not be relevant in this context (where the works will be undertaken under the powers of the Order), these sub-sections are omitted from paragraph (1)(a). Works equivalent to works undertaken under those sections of the Highways Act 1980, but carried out under powers conferred by the Order, are included through paragraph 1(b). The effect is that any works which would be “major highway works” under the 1991 Act if carried out by a highway authority in relation to one of its streets are also “major highway works” if carried out under the powers of the Order regardless of who carries them out.

3.24 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly article 3 and Schedule 1), and the provisions in the Order (including the requirements) which would regulate the carrying out of the Order works.

3.25 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to any streets which are temporarily stopped up under the Order. This is for two reasons: first, it

[4] c.22

prevents any confusion as to whether works in respect of a temporarily stopped-up street are "street works" for the purposes of the 1991 Act and, secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.

3.26 Paragraph (7)(a) of article 10 provides that nothing in article 11 shall affect the ability of the local highway authority (under s.87 of the 1991 Act) to declare a street in its area a maintainable highway, which would make maintenance of the street (once completed) the responsibility of the local highway authority, and would mean that the 1991 Act would apply to street works carried out in that street.

3.27 Paragraph (7)(b) provides that RiverOak will not be under the duties that apply to a “street authority” for the purposes of the 1991 Act by virtue of being responsible for the maintenance of a street under article 10.

3.28 Paragraph (7)(c) makes it clear that the maintenance obligations imposed by article 11 do not override the provisions of the 1991 Act that govern procedures for street works, i.e. works in streets involving the placing of or alteration to apparatus in the street. After the implementation of the Order it is appropriate that the 1991 Act should govern such works as it is specifically designed to ensure a fair and efficient procedure for the various parties affected by such works.

3.29 These modifications reflect those made in other DCOs affecting highways, for example the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 and the A19/A1058 Coast Road (Junction Improvement) Order 2016.

Article 11 – Construction and maintenance of new, altered or diverted streets

3.30 The standard position in respect of maintenance of streets is that Highways England is responsible for maintaining trunk roads and other streets are to be maintained by the local highway authority in respect of highways maintainable at the public expense, or whichever body is responsible for the maintenance of the street in respect of streets which are not maintainable at the public expense. This is reflected in paragraphs (1) and (2). These provisions are subject to any agreement to the contrary between RiverOak and the relevant street or highway authority.

3.31 The effect of paragraphs (3) and (4) are that in any action for damages against RiverOak alleging failure to maintain a street, RiverOak will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic. This extends the provision in s.58 of the Highways Act 1980 to RiverOak and draws on the approach taken in article 21 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and repeated in in article 9 of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 12 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 This article is needed to ensure RiverOak is covered by this defence in respect of all the roads that are comprised in the authorised development.

Article 12 – Temporary stopping up and restriction of use of streets

3.32 This article allows for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the scheme.

3.33 Access for pedestrians must be provided, and consent to any such stopping up or restriction must be sought from the street authority.

3.34 Paragraph (2) confers a power on RiverOak where the use of a street has been temporarily stopped up under this article to use it as a temporary working site.

3.35 Paragraph (6) states that where a street authority which fails to notify RiverOak of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. It is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by RiverOak in a timely fashion. The article is a standard provision in development consent orders affecting highways (see for example, article 11 of the A19/A1058 Coast Road (Junction Improvement) Order 2016).

Article 13 – Permanent stopping up of public rights of way

This article allows public rights of way named in Parts 1 and2 of Schedule 3 to be stopped up (i.e. the legal right of way along them to be extinguished). In the case of Part 1 a substitute is to be provided and is described. In the case of Part 2, no substitute means of access is to be provided. The wording is based on numerous development consent orders, see for example article 12 of the A19/A1058 Coast Road (Junction Improvement) Order 2016.

Article 14 – Access to works

3.36 This article allows works accesses to public highways to be created. It provides RiverOak with a general power to form means of access rather than accesses set out in a schedule, to provide an appropriate degree of flexibility in case the need for an access only becomes apparent at later stage in the implementation of the authorised development.

Article 15 – Traffic regulation

3.37 The purpose of this article is to provide RiverOak with powers to make traffic regulation orders so that it can implement traffic management measures (e.g. restrictions on the use of roads) necessary to construct the authorised development. This draws on the approach taken in article 37 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and article 43 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016.

3.38 Specific provision is made in paragraph (1) for traffic to be regulated in the manner specified in Schedule 4.

3.39 In addition to the traffic regulation specified in Schedule 4 this article would, at any time prior to 12 months following the opening of the authorised development for public use, allow RiverOak, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised development, to:

(a) revoke, amend or suspend in whole or in part any order made under the Road Traffic Regulation Act 1984;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic; and

(e) permit or prohibit vehicular access to any road.

3.40 Implementation of any of the measures is subject to the prior approval of the traffic authority in whose area the roads are situated. There is also a requirement for the chief officer of police and the relevant traffic authority to be notified in advance. This complies with the consultation and publicity requirements for Traffic Regulation Orders under the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990/1656.

Part 4 – Supplemental powers

Article 16 – Discharge of water

3.41 This article establishes statutory authority for RiverOak to discharge water into a sewer, watercourse or drain in connection with the carrying out or maintenance of the authorised development.

3.42 This statutory authority is subject to RiverOak obtaining the consent of the owner of the sewer, watercourse or drain, but that consent cannot be withheld unreasonably.

Article 17 – Protective work to buildings

3.43 The purpose of this article is to allow RiverOak to undertake protective works to buildings affected by the authorised development. The wording has broad precedent (see article 16 of the A19/A1058 Coast Road (Junction Improvement) Order 2016 and article 18 of the A14 Cambridge to Huntingdon Improvement Order 2016).

Article 18 – Authority to survey and investigate the land

3.44 This article gives RiverOak the power to enter certain land for the purpose of surveying and investigating. The article provides that RiverOak must give 14 days' notice before exercising the powers of entry, and that compensation is payable for any loss or damage. This, again, is a standard provision with broad precedent.

Part 5 – Powers of acquisition

Article 19 – Compulsory acquisition of land

3.45 This article authorises the acquisition of land by compulsory purchase. It grants the power to acquire such of that land as is required for the project. The power of acquisition over the Order Land is qualified and restricted by sub-paragraph (2), in the case of parcels of land specified in the Order where only rights are required (article 22), where acquisition of subsoil and/or surface rights only are permitted (article 23), or where possession of land parcels as specified in the Order may be taken temporarily only (article 29(9)).

Article 20 – Compulsory acquisition of land – incorporation of the mineral code

3.46 This article incorporates Part 2 of Schedule 2 of the Acquisition of Land Act 1981. This means that where RiverOak acquires land under the powers of the Order, it will not acquire any mineral

deposits present in the land (other than those necessarily extracted or used in constructing the authorised development) unless they are expressly included in the conveyance.

Article 21 – Time limit for exercise of authority to acquire land compulsorily

3.47 This article gives RiverOak five years to issue 'notices to treat' or to execute a 'general vesting declaration' to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should this Order be made.

3.48 The article also sets a 5 year time limits on the power of RiverOak to take temporary possession of land, although it does not prevent RiverOak from remaining in possession of land after that time if it took possession within the 5 year limit (this has consistently been approved by the Secretary of State, see for example article 22 of the A14 Cambridge to Huntingdon Improvement Order 2016).

Article 22 – Compulsory acquisition of rights and restrictive covenants

3.49 This article allows for rights in land to be acquired as well as the land itself, and also for new rights to be created over land.

3.50 This article provides for such rights as may be required to be acquired by RiverOak over land which it is authorised to acquire under article 19. The public benefit of this is that it would allow RiverOak, if possible, to reduce the area of outright acquisition and rely on rights instead. A provision of this kind is usual in Transport and Works Act orders and Hybrid Bills, and has been followed in a number of DCOs for example article 23 of the A14 Cambridge to Huntingdon Improvement Order 2016.

3.51 Paragraph (2) provides that for the land described in Schedule 4, RiverOak's powers of compulsory acquisition are limited to the acquisition of such rights as may be required for the purposes set out in the Schedule.

3.52 Paragraph (3) provides that where RiverOak needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.

3.53 Paragraph (4) and Schedule 6 impose modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).

3.54 For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled. Furthermore, the provisions have been amended so that the time limits are consistent with the Order (five years as opposed to three years) and the appropriate references to the Act.

3.55 Paragraphs 2 and 4 to 10 of Schedule 6 are amendments to ensure that the relevant compulsory purchase and compensation provisions apply to acquisition of rights/restrictive

covenants (and not just land). Paragraph 3 relates to correcting the references for the relevant time period (i.e. 5 years under the Order rather than 3 years under legislation).

3.56 The modifications are applicable generically to Orders of this kind and are based on changes made consistently in most schemes granted under the Act (see, for example, Schedule 6 of the A14 Cambridge to Huntingdon Improvement Order 2016 for a recent example). As a result of changes contained in the Housing and Planning Act 2016, the Order has been updated to ensure that the correct provisions are modified. These changes are based on the amendments contained in the High Speed Rail (London - West Midlands) Act 2017 and have also been adopted in the London Overground (Barking Riverside Extension) Order 2017.

Article 23 – Subsoil or new rights only to be acquired in certain land

3.57 Article 23(2) provides that RiverOak's powers of compulsory acquisition are limited in the case of the land described in Part 1 of Schedule 7 to the acquisition of subsoil or rights over subsoil,

3.58 Article 23(3) provides that RiverOak's powers of compulsory acquisition at surface level or above over the land described in Part 2 of Schedule 7 are limited to the acquisition of rights and imposition of restrictive covenants.

Article 24 – Private rights over land

3.59 In order for it to be possible to implement the proposed development, provision is needed for the extinguishment of private rights in the Order land that would be incompatible with that implementation. Article 24 supplies that provision.

3.60 Article 24(1) provides for the extinguishment of private rights over Order land subject to compulsory acquisition under the Order, from the moment of acquisition or occupation of that land.

3.61 Article 24(2) provides for the extinguishment of existing private rights over land that is subject to the compulsory acquisition of new rights (but where the underlying land is not subject to powers of compulsory acquisition), if the exercise of those existing rights is inconsistent with the implementation of the scheme, from the date of acquisition of the right or occupation of the underlying land.

3.62 Article 24(3) provides that rights over Order land that is already owned by RiverOak are also extinguished, at the point that any activity authorised by the Order interferes with or breaches those rights.

3.63 Article 24(4) provides for the temporary suspension of private rights over Order land that is not acquired but is occupied temporarily by RiverOak in order to construct the proposed development. The suspension is for the duration of the occupation.

3.64 Paragraphs (5) to (8) of article 24 make provision for compensation and for circumstances where rights are preserved.

3.65 Article 24(9) sets out a list of matters deemed to be private rights to provide certainty as to the scope of the article. The list of deemed private rights is broad in order to ensure that any right which could potentially interfere with the implementation of the proposed development can be extinguished. A similar list appears in the equivalent article in the A14 Cambridge to

Huntingdon Improvement Order 2016 (see article 25) and the A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 24).

Article 25 - Application of Part 1 of the Compulsory Purchase Act 1965

3.66 The purpose of this article is to ensure consistency between the standard terms of development consent orders and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the Act. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017.

Article 26 – Application of the Compulsory Purchase (Vesting Declarations) Act 1981

3.67 This article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a development consent order) the provisions of the 1981 Act to compulsory acquisition under the Order so that RiverOak has the option of acquiring Order land that is subject to the powers of compulsory acquisition by vesting declaration.

3.68 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the land owner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.

3.69 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act (as amended by the Housing and Planning Act 2016).

3.70 The modifications ensure consistency with the standard five year period sought under the Order for acquisition of rights. It further ensures that the appropriate references are made to the Act. The modifications are based in large part on previous development consent orders, and following amendments to the 1981 Act in the Housing and Planning Act 2016, the High Speed Rail (London - West Midlands) Act 2017.

Article 27 - Acquisition of subsoil or airspace only

3.71 This article allows RiverOak to acquire land below the surface or above the surface, rather than having to acquire all of the land.

3.72 The purpose of this article is to give RiverOak the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners, and lower payments of compensation. This too is a standard provision used in many development consent orders (see for example article 27 of the A14 Cambridge to Huntingdon Improvement Order 2016).

Article 28 - Rights under or over streets

3.73 The purpose of this article is to allow RiverOak to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out

in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

Article 29 – Temporary use of land for carrying out the authorised development

3.74 The purpose of this article is to allow the land set out in Schedule 8 to be occupied temporarily while the works are carried out. This is land which is required during construction of the scheme but is not required permanently. This article also allows for the temporary occupation of any of the land for permanent acquisition that has not yet been taken possession of. In particular:

(a) Paragraph 1(a)(i) allows the land set out in Schedule 8 to be occupied temporarily while the works are carried out. This is land which is required during construction of the scheme but which is not required outright permanently, and includes land which will be occupied temporarily and then subject to permanent rights (e.g. diversion of utilities apparatus). Paragraph (8) prevents this land from being acquired permanently, although confirms that acquisition of rights over this land, or of subsoil / airspace only, is not prevented and is required in respect of certain parcels. Likewise some land taken temporarily will have permanent works undertaken to it, e.g. accommodation works (see further paragraph (4)(b), and Schedule 6).

(b) Paragraph 1(a)(ii) allows for the temporary occupation of any of the land that is subject to the powers of permanent acquisition, but in respect of which no process for acquisition has yet been commenced. The rationale for this is that it reduces the amount of land that is required to be subject to outright acquisition. Thus article 19 with article 29(1)(a)(ii) makes it possible for RiverOak to occupy land temporarily initially and only proceed to acquire permanently that part which is necessary for the scheme as constructed. The benefits of this are lesser impacts on landowners and lower costs to RiverOak, which is in the public interest. In line with this, paragraph (1)(d) confirms that the authorised development as listed in Schedule 1 can be undertaken on land that has been temporarily occupied.

Article 30 – Temporary use of land for maintaining the authorised development

3.75 This article provides that RiverOak may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. Both the A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 28) and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 (see article 29) reflect the wording used in this article.

Article 31 – Statutory undertakers

3.76 This article provides RiverOak with clear statutory authority to acquire rights over land owned by statutory undertakers (i.e. utilities such as electricity and gas companies).

3.77 It also allows RiverOak to extinguish rights that statutory undertakers have over the Order land, and to remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such

apparatus and so a general power for the extinguishment of rights and removal or relocation of apparatus belonging to statutory undertakers over or within any Order land is required.

3.78 Paragraph (2) restricts RiverOak's power to extinguish rights or move apparatus by excluding apparatus in streets. It applies alternative provisions more appropriate to balancing the interests of the various affected parties where the apparatus in question is in a street.

3.79 This article is subject to Schedule 9 which contains provisions for the protection of certain statutory undertakers to ensure their continued ability to carry out their functions despite the interference with their rights / apparatus required to facilitate the proposed development.

3.80 This too is an article with broad precedent in the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 32), the A19/A1058 Coast Road (Junction Improvement) Order 2016 (see article 29) and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016 (see article 30).

Article 32 – Apparatus and rights of statutory undertakers in stopped-up streets

3.81 This article governs what happens to statutory undertakers' apparatus under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there will no longer be a right of way along the street. The statutory undertaker may remove, relocate or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by Secretary of State.

3.82 The statutory undertaker would receive compensation from RiverOak for any relocation works and associated costs. Paragraphs (4)-(5) discount from this compensation the cost associated with a higher specification in the replacement apparatus. Paragraph (6) discounts from this compensation the increase in value to the statutory undertaker for having new rather than old (i.e. older than 7½ years) apparatus.

3.83 Paragraph (7) provides that where statutory undertakers are affected by a stopping up in relation to those parts of the project that constitute "major bridge works", "major transport works" or "major highways works", as defined in the New Roads and Street Works Act 1991, the cost sharing provisions under that Act will apply instead of the compensation provision in this article.

3.84 This article is standard for development consent orders (see, for example, article 30 of the A19/A1058 Coast Road (Junction Improvement) Order 2016).

Article 33 – Recovery of costs of new connections

3.85 This article provides that if any statutory undertaker's apparatus is removed and this cuts a service to anyone, then the cost of establishing a new service can be claimed from RiverOak.

Part 6 – Operations

Article 34 – Felling or lopping of trees and removal of hedgerows

3.86 This article allows any tree or shrub that is near the project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone using it. Compensation is payable for any loss or damage caused. This article also allows for the removal of hedgerows as defined in the Hedgerow Regulations

1997. This article has been inserted into numerous orders (see, for example, article 36 of the A14 Cambridge to Huntingdon Improvement Order 2016).

Part 7 – Miscellaneous and General

Article 35 – Abrogation of agreement

3.87 Article 35 abrogates an agreement made between Thanet District Council and Kent International Airport plc under s.106 of the Town and Country Planning Act 1990 and the Local Government Act 1972 which binds the Manston Airport Land and imposes certain obligations on its operation as an airport. The abrogation of agreements relating to land is one of the matters ancillary to development which may be provided for under s.120(3) of the Planning Act 2008.

3.88 The obligations under the agreement which is abrogated by this article will be replaced by modernised obligations which will be secured by requirement in Schedule 2.

Article 36 – Application of landlord and tenant law

3.89 This article governs the leasing of land by RiverOak to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.

Article 37 - Operational land for the purposes of the Town and Country Planning Act 1990

3.90 This article means that the land within the Order limits in which RiverOak holds an interest shall be treated as "operational land of a statutory undertaker" for the purposes of the Town and Country Planning Act 1990.

3.91 The effect of that Order land being treated as operational land is that the person responsible for operating and maintaining the proposed development (RiverOak or any transferee of its powers) will benefit from certain permitted development rights on that land in connection with the operation of the airport.

Article 38 – Defence to proceedings in respect of statutory nuisance

3.92 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally, subject to any contrary provision made by a particular DCO. This article is such a contrary provision, amending the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by s158).

3.93 The defence is available if the noise relates to:

(a) the construction or maintenance of the project, and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, or cannot reasonably be avoided; or

(b) the use of the project and cannot reasonably be avoided.

3.94 This is an article has precedent in recent development consent orders, for example article 38 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016.

Article 39 – Protection of interests

3.95 This article simply gives effect to Schedule 9, which contains provisions protecting the interests of third parties. This schedule is based on the standard protective provisions approved by the Secretary of State in the A14 Cambridge to Huntingdon Improvement Order 2016 and the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016. RiverOak has sought the views of the undertakers who have interests affected by the authorised development and continues to negotiate with the undertakers to ensure any concerns are dealt with appropriately. RiverOak will provide a full update of the status of the negotiations throughout the examination.

Article 40 – Crown rights

3.96 This article provides that should any of the Order land be found to be Crown land, the powers conferred by the Order on RiverOak to compulsorily acquire such land are not exercisable over that land without the consent of the Crown. However, this article does not prevent RiverOak from exercising powers conferred by this Order to extinguish or interfere with any rights exercisable by any persons over that land. This article is the standard wording accepted in numerous development consent orders, see for example article 37 of the A19/A1058 Coast Road (Junction Improvement) Order 2016.

Article 41 – Certification of documents, etc.

3.97 This article provides for various plans and other documents listed in Schedule 10 to the Order to be certified by the Secretary of State.

Article 42 – Service of notices

3.98 This article governs how any notices that may be served under the Order shall be deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.

3.99 It is common to have such an article in an order authorising development such as this. The article has precedent in a number of DCOs including the A14 Cambridge to Huntingdon Improvement Order 2016 (see article 42).

3.100 The provision is useful because it provides clarity on the issue. It is noted that the service of notice provisions under sections 229 and 230 of the Act apply to notices served under that Act rather than notices served under a development consent order made under that Act.

Article 43 – Arbitration

3.101 This article governs what happens when two parties disagree in the implementation of any provision of the Order. The matter is to be settled by arbitration, and if the parties cannot agree on who the arbitrator should be, this is decided by the President of the Institution of Civil Engineers.

4 Schedule 2 – Requirements

4.1 The requirements in Schedule 2 are the equivalents of planning conditions. Approvals are to be sought from the Secretary of State for Transport, following consultation with the local planning authority and / or other relevant third party.

4.2 Turning to the purpose and effect of requirements 1 to 17:

(a) Requirement 1 contains a number of definitions used in Part 1 of Schedule 2.

(b) Requirement 2 provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.

(c) Requirement 3 provides that no part of the authorised development can commence until masterplan(s) for each part of the development have been submitted to and approved by the Secretary of State.

(d) Requirement 4 states that the detailed design of certain Works must be submitted to and approved by the Secretary of State before a part of the authorised development containing those Works is commenced. It also provides that all elements of the authorised development must be carried out in general accordance with certain documents certified under article 41 unless otherwise agreed by the Secretary of State.

(e) Requirement 5 requires that no part of Work No. 19 is to commence until detailed design and operation processes for that work are submitted to, and approved by the Secretary of State. Construction, maintenance and operation of that work must be in accordance with the details approved.

(f) Requirement 6 provides that the authorised development must be carried out in accordance with the construction environmental management plan.

(g) Requirement 7 states that the authorised development must be operated and maintained in accordance with the operation environmental management plan which must, amongst other things, contain those mitigation measures from the register of environmental actions and commitments which are relevant to operation and maintenance of the authorised development.

(h) Requirement 8 provides that no part of the authorised development must be commenced until full written details of the ecological mitigation are submitted to and approved by the Secretary of State in consultation with Natural England. The undertaker must provide and implement the mitigation in accordance with those approved details.

(i) Requirement 9 states that the authorised development must be operated in accordance with the noise mitigation plan.

(j) Requirement 10 requires the preparation of a landscaping scheme covering all hard and soft landscaping works for approval by the Secretary of State. There is a requirement that the proposed landscaping scheme must reflect the relevant mitigation measures in the register of environmental actions and commitments.

(k) Requirement 11 makes provision for dealing with any contaminated land and groundwater discovered during construction of the works, in consultation with the relevant planning authority and the Environment Agency.

(l) Requirement 12 states that RiverOak must carry out final pre-construction survey work to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

Where, following pre-construction survey work or at any time when carrying out the authorised development the conditions listed in sub-paragraph (2) are met then the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State. Consultation with Natural England is required unless a qualified ecologist determines that the works in question do not require a protected species licence.

(m) Requirement 13 provides that no part of the authorised development can commence until written details of a surface and foul water drainage system, reflecting the mitigation measures included in the register of environmental actions and commitments and including means of pollution control, have been prepared in consultation with the relevant planning authority and approved in writing by the Secretary of State.

(n) Requirement 14 provides that no authorised development can commence until a traffic management plan has been prepared and approved by the Secretary of State following consultation with the relevant planning authority.

(o) Requirement 15 provides that no piling operations can commence unless a method statement has been submitted to and approved by the Secretary of State following consultation with the Environment Agency and Southern Water. Any piling must then be carried out in accordance with such approved method statements.

(p) Requirement 16 states that no part of the authorised development is to commence until for that part a written scheme for the investigation of areas of archaeological interest, reflecting the mitigation measures included in the register of environmental actions and commitments, has been submitted to and approved by the Secretary of State following consultation with the relevant planning authority. The requirement puts further limitations on construction activity within 10 metres of any archaeological remains which were not previously identified but are revealed when carrying out the authorised development.

(q) Requirement 17 provides that where the authorised development must be carried out in accordance with approved details or schemes then that must be taken to include any amendments to those details or schemes that are approved or agreed in writing by the Secretary of State.

4.3 Part 2 of Schedule 2 (Requirements 18-21) provides a clear procedure for the discharge of requirements by the Secretary of State. It sets out clear time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement. Part 2 as drafted reflects the discharge of requirements provisions approved in the A14 Cambridge to Huntingdon Improvement Order 2016.

4.4 Any steps RiverOak takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.