

**CABINET**  
**18 DECEMBER 2012**  
**ROCHESTER AIRPORT**

Portfolio Holder: Councillor Alan Jarrett, Finance  
Report from: Nick Anthony, Head of Asset & Property Services  
Author: Noel Filmer, Valuation & Asset Management Manager

**Summary**

This report sets out recommendations in respect of Rochester Airport. It sets out how the Council intends to safeguard the future of the Airport, incorporating a modern airport facility with improved heritage and community facilities.

**1. Budget and Policy Framework**

- 1.1. As the value of the land, which in due course will be recommended for disposal is over £1,000,000, then the disposal of this land will be a matter for Council.
- 1.2. As the value of the rent likely to be achieved for the letting of the airport, is more than £20,000 per annum, but below £1,000,000 per annum, then the letting of the airport is a matter for Cabinet.
- 1.3. As the consideration for the variation or release of any covenants is likely to be more than £20,000 pa, but below £1,000,000 per annum, then these are matters for Cabinet.

**2 Background**

- 2.1. The council owns the Freehold of Rochester Airport as shown edged black, hatched black and crosshatched black on the attached plan A. The council also owns other adjoining land, including land to the south of the Innovation Centre Medway (I.C.M) and the area shaded grey (the latter being leased to BAE until 2079).
- 2.2. The facilities at the Airport are nearing the end of their economic lives and it is generally accepted that for the Airport to remain open in the medium/long term, investment is needed to make it sustainable.

- 2.3 The airport is currently let until January 2014 on a non-secure lease.
- 2.4 Policy S11 of the Local plan was the planning policy in place relating to the airfield from May 2003. This stated that “Rochester Airfield, is allocated for a high quality business, science and technology development, comprising of Classes B1, B2 and B8 uses. The development of the site will need to be guided by a development brief”.
- 2.5 It was originally envisaged that Runway 16/34 would be closed in 2004 but the rest of the airport would remain open, for at least the period of the Local plan. This would have meant that about one quarter of the airport could have been developed/disposed of. It would also have significantly increased the potential of the council’s land to the south of the ICM.
- 2.6 However, since then two 5-year non-secure, leases have been granted, to give the council time to work up proposals for the site. More recently the planning position has changed, as the Local Plan has been superseded by the Local Development Framework (LDF). The planning policy governing the use of the airport was then solely contained in the Kent and Medway Structure Plan 2006 (policy TP26). This policy stated that: “Rochester airport will be safeguarded against development, which would prejudice its operation for general business aviation”. This Plan covered the period up until 2021, but fell away when the South East plan was adopted in 2009. The South East plan does not contain any policies specific to Rochester airport and in any event, the Secretary of State has announced his intention to repeal all of the regional spatial strategies, of which the South East Plan is one. The draft LDF Core Strategy does contain some proposed policies regarding the Airport, (Policies CS17, CS24 and CS27) but none of these policies actually safeguard the continued use of the Airport. The Core Strategy has not been adopted yet, but would be a material consideration when the Council considers any proposals for the site.
- 2.7 Given this situation, it is considered that the various interests can be best balanced by preparing a Master plan for the site. This will set out a clear framework for the reconfiguration of the aviation facilities as well as the basis for redeveloping surplus and adjoining land for employment related uses. The Master plan is being prepared jointly by the Council, BAE Systems and Tonbridge & Malling Borough Council (whose administrative area takes in part of the site). A separate report will be submitted to Cabinet in 2013 concerning the Master plan. The Master plan will become a Supplementary Planning Document (SPD) when the Core Strategy is adopted (once adopted, the Core Strategy will cover the period until at least 2028). The Master plan will safeguard the Airport in the medium term and will provide the rationale for the council as landowner to grant a medium term lease of the Airport of up to 25 years.

- 2.8 The use of the site as an airport pre-dates the need for planning consent. Therefore no consent is needed for the current use, since an airport is the lawful use for the site. However, planning consent will be required for the relocation of the airside facilities and any other improvements which the operator wishes to make including adding a paved runway. This will give the council as planning authority the opportunity to impose conditions on the use of the airport such as the extent of flying hours and the number of aircraft movements. A parallel grass runway will be retained for those aircraft – including those of a historical nature – which are not able to use a paved runway. Heritage and community facilities will be enhanced, improved and extended.
- 2.9 The closure of Runway 16/34 will free up the council owned land shown approximately hatched black, the council owned land to the south of the ICM, the council owned (which is let to BAE) shaded grey and other third party owned land (which the council has the benefit of covenants over) to the south of the Airport for development. These areas can then be disposed of for development for employment uses with the council benefitting from any capital receipts from the first three areas and obtaining a payment for the variation/release of covenants over the third party land to the south.
- 2.10 The council has a duty under section 123 of the Local Government Act 1972 not to dispose of land at less than best consideration (other than by way of a short lease) except with the consent of the Secretary of State. Either selling or leasing the site long-term, purely as an airport would not be consistent with this duty. The council also needs to be aware of the state aid implications of any decision to lease land (even for a short term), if the rent is not best consideration, as such subsidy could constitute state aid. State aid is aid that is granted through state resources (including the council), that favours certain undertakings, distorts or threatens to distort competition and affects trade between Member States. Where unlawful state aid is granted, the person or organisation which benefits could be required by the European Commission to repay the aid with interest. (It is important to note that the airport with its improved facilities will revert to the council at the end of the lease.)
- 2.11 In order to ensure that the council complies with these duties, it would need to ensure that for any lease of over 7-years, best consideration is obtained. The normal way to do this is to offer the opportunity to take the lease on the open market.
- 2.12 BAE has a lease of the land shaded grey until 2079 and is interested in disposing of this area together with a small part of its operational freehold site. It makes sense for the council and BAE to jointly dispose of any surplus land and the terms for a joint disposal are currently under discussion.
- 2.13 The implementation of development on the freed up land will be the subject of future reports to Cabinet and Full Council. These reports will

set out in detail the advantages and disadvantages of each method of development implementation. The method used could range from:

- Simple freehold disposal – although this method is unlikely to be pursued.
- Freehold disposal by the way of a conditional contract.
- Disposal initially by way of a building agreement or lease whereby the purchaser only acquires the freehold once the development is underway/or has been completed.
- Disposal via a long lease whereby the council receives a ground rent.
- Appoint a development partner to install the infrastructure and take a share of the sale price of serviced plots once the partner has recouped its costs/profit margin.

It is important to note that any future use of the site will be determined through Medway Council's planning process, which will include full public consultation in the usual way.

### **3 Options/Way Forward**

- 3.1 Given the poor condition of the current facilities, there is a risk that without investment, the Airport may no longer be able to meet the licensing requirements of the Civil Aviation Authority (CAA). It is clear that the airport will not become sustainable without the council either investing in the site and/or granting a longer lease of it. For the Airport to remain sustainable, as a minimum a paved runway, new navigation aids and improved access/airside facilities are required. However, there is currently no funding identified to pay for these improvements and it is widely accepted that the economics of airports of this nature are such that they cannot sustain a significant one-off capital investment of this nature on a stand alone basis. They can however contribute towards an area's economic regeneration and vitality. It is clear to the Council that the successful operation of the airport is integral to Medway's future economic prosperity. Additionally it will be essential to enhance and develop heritage and community facilities at the Airport.
- 3.2 A more viable approach to fund this much needed investment, would be to amend the layout of the airport by closing runway 16/34 in order to free up Council owned land, land at the southern end of the airport and part of BAE's site at the North of the Airport for development/disposal. Currently, much of this land is within the Airfield's safeguarded area and as a result building heights are severely restricted. Closing runway 16/34 would resolve this issue and release the land's development potential. This would also have the benefit of bringing forward much needed additional employment land and of encouraging regeneration in the area. Investment in the airport would also improve safety, noise levels and long-term income potential.

- 3.3 The airport could be marketed on the basis that it is let to an operator on a non-secure lease, either of a medium length (around 25 years) or a longer-term lease with a break-clause after about 25 years. This lease would require the operator to do the works to re-configure the airport into a “smaller but better” facility. The council will then be able to “take back” the land freed up as a result of the closure of runway 16/34 and dispose of this for redevelopment together with other land that will no longer be in the safeguarded zone. This has the advantage of allowing the operator to keep the airport running, whilst the improvements are done and would mean that the council would not need to “tie up” the site in the long term. Such a lease is likely to be initially at a low rent, but will hopefully give potential operators the chance to amortise their capital investment. The Council will contribute towards the cost of the works. Any bid for funding will be covered in a future report to Cabinet/Full Council.
- 3.4 The grant of a longer lease, will allow the operator to invest in facilities for improved public access to the airport (without the need for the public to cross a runway as is the case now). Existing established users and heritage groups would also be able to invest in improved facilities. As a result, it is anticipated that there will be improved public facilities and access and that the existing heritage offer will also be improved.

#### **4. Advice and analysis**

- 4.1 The option discussed above would safeguard the future of the airport, (as will be required by the Master plan). The airport will include a smaller fully functional modern airport with heritage and community facilities. The proposal will also make available much needed employment land.
- 4.2 In order to make this option a reality, the council would have to take the following steps:
- A) Offer the airport for lease in the near future, on the basis set out in paragraph 3.3 above, with break clauses to allow the Council to take back the land freed up by the closure of 16/34. This would allow the Airport to stay open whilst the operator, supported by the Council, implements the improvements. Such a lease should be openly marketed, to demonstrate that the Council has achieved best consideration and to avoid any state aid implications. Potential operators will amongst other things be required as part of their submission to set out their proposals and business plan for the Airport.
  - B) Adopt the Master plan for the site and surrounding area.
  - C) Work with the adjoining owners including BAE to maximise the value and use of the freed up land.

## 5. Risk Management

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>	<b>Risk Rating</b>
The airport is forced to close due to lack of investment, as it is no longer meets CAA and health and safety requirements	The operator cannot invest in the facility due to uncertainty and lack of time to amortise its investment.	Grant a medium term lease or long lease with a break clause and agree to contribute towards the cost of improvements.	C2
Adverse reaction against proposals to improve the facilities.	That the operator may bring in larger aircraft more often and flying will take place at night.	The airfield is too small to accommodate large aircraft and planning conditions can control the operation of the new facilities.	C2

## 6. Consultation

- 6.1 Discussions and consultation have taken place with the Regeneration, Community and Culture directorate, the current airport operator and the Portfolio Holder for Finance and no objections have been received.

## 7. Financial and legal implications

- 7.1 The financial implications are contained in this report. It is hoped that by the Council offering to grant a medium to long-term lease, that the private sector, in the form of the successful airport operator will be able to carry out a proportion of the required improvements even if this means that the initial rent payable for the letting of the airport is low. The council will contribute towards the cost of the works and any bid for funding will be covered in a future report to Cabinet/Full Council. The site together with the improved facilities will revert to the council at the end of the lease.
- 7.2 The Council has a duty under s123 of the Local Government Act 1972 to obtain best consideration, when it disposes of property, unless consent is obtained from the Secretary of State or one of the general consents applies. The Council also needs to avoid the giving of state aid in granting any leases at less than best consideration. State aid is aid that is granted through state resources (including the Council), that

favours certain undertakings, distorts or threatens to distort competition and affects trade between Member States.

- 7.3 The Council could be in breach of EU procurement rules if it contributes more than £4,348,350 towards the improvements without going through a formal OJEU competitive tender as the improvements could be classed as public works.

## **8. Recommendations**

- 8.1 That Cabinet delegates authority to the Assistant Director of Legal and Corporate Services in consultation with the Finance Portfolio Holder to:
- (a) Grant a lease or leases to an airport operator, which allows the council to take back land freed up by the closure of runway 16/34. A longer lease of the Airport, will allow the private sector and the operator together with the council to invest in the site to improve its facilities, public access and the heritage offer available.
  - (b) Vary/release covenants on adjacent land and enter into agreements with adjoining landowners on the best terms reasonably obtainable, in order to bring forward land for disposal/development.
- 8.2 That Cabinet agrees to receive a further report next summer requesting it to recommend to Full Council that:
- (a) A capital contribution (to be defined following the marketing of the leasehold opportunity) is made towards the cost of the new airport facilities.
  - (b) It delegates authority to the Assistant Director of Legal & Corporate Services in consultation with the Finance Portfolio Holder to dispose of the land freed up as a result of the closure of runway 16/34 so that it can be developed.

## **9 Suggested reasons for decision(s)**

- 9.1 To safeguard the long-term future sustainability of the airport, to secure the improvement of the airport to provide a modern facility with improved public access and heritage offer and to release additional employment land, whilst meeting the Council's legal and fiduciary duties.

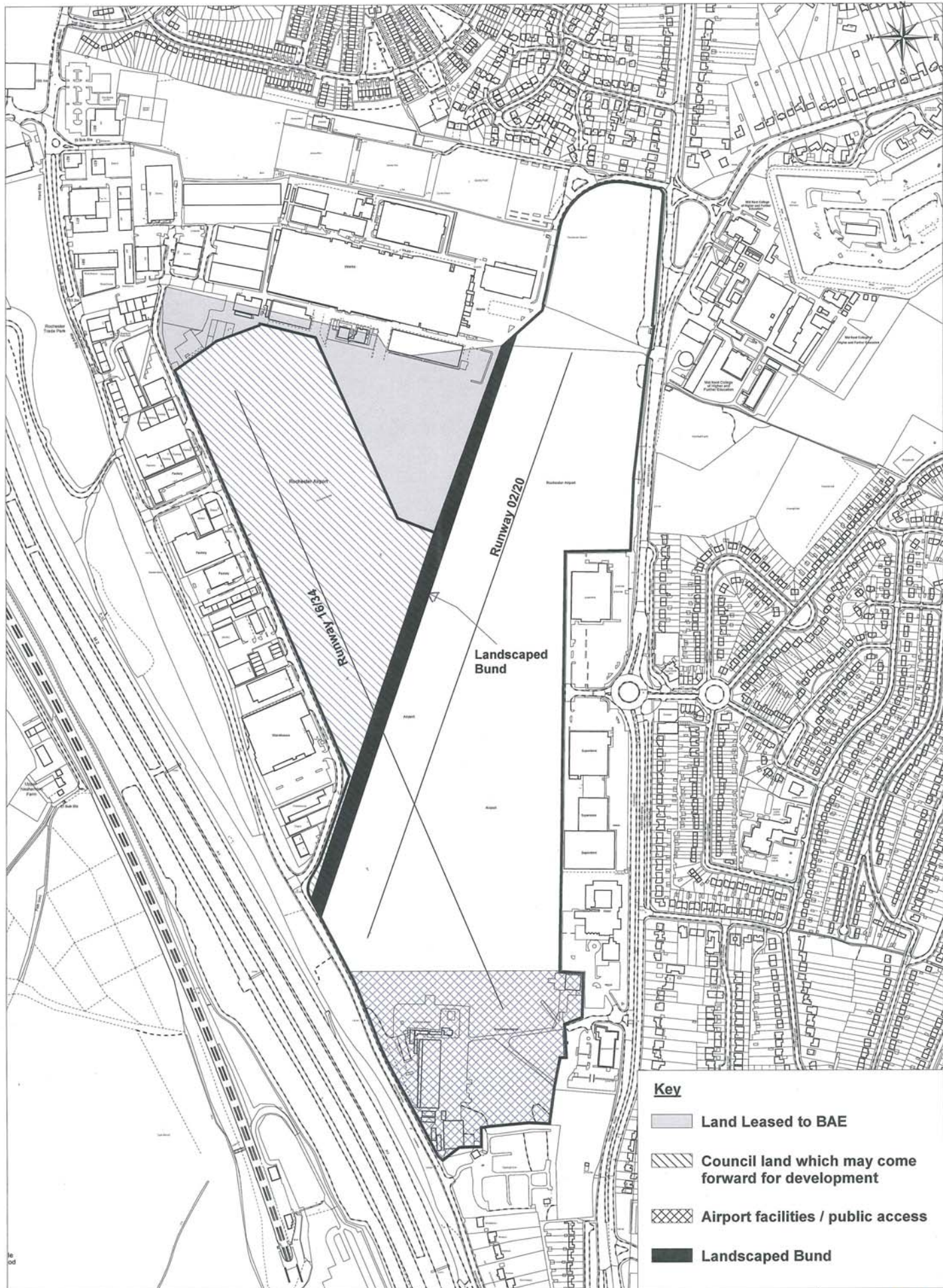
### **Lead officer contact**

Noel Filmer Valuation & Asset Management 01634 332415,  
noel.filmer.medway.gov.uk

**Background Papers:** None.







**Rochester Airport  
PLAN A**