
DURHAM TEES VALLEY AIRPORT - SOUTHSIDE DEVELOPMENT AGREEMENT

Responsible Cabinet Member(s) - Councillor John Williams, Leader

Responsible Director(s) – Ada Burns, Chief Executive

Purpose of Report

1. To seek Members approval, in response to a request from Peel Airports Limited, to an extension of time to enter into a Southside Development Agreement at Durham Tees Valley Airport under the Subscription and Shareholders Agreement.

Information and Analysis

2. A request has been received from Peel Airports Limited (PAL) for an extension of time by which PAL should have used all reasonable endeavours to procure that the Airport company ('DTVA') enters into a Southside Development Agreement under the Subscription and Shareholders Agreement ('SSA').
3. Members will recall that previous reports dated 4th April and 28th September 2006 were presented to Cabinet requesting extensions. A similar request has been received.
4. Under the SSA as it presently stands, DTVA has to have entered into a Southside Development Agreement on or before 31st March 2007 or to have delivered a Southside Councils Agreement with an undertaking to enter into it.
5. I am advised by Stockton Borough Council that PAL has made it clear that it remains committed to the development of the Southside land and that it anticipates that a final approval decision to enter into the agreement will be made on 20th March. However the agreement would then need to be formally entered into and there are four parties to the Development Agreement based in Manchester, London, Newcastle and Stockton and only eight working days between the last approval and the deadline. An extension of the deadline until 31st May, 2007 has therefore been requested to ensure that the agreement can be completed by all parties before the deadline.
6. Agreement to the extension will represent a variation to the SSA, which under the terms of the SSA requires the express agreement in writing of a duly authorised officer of each of the parties to the SSA (including therefore each of the local authority shareholders).
7. In the event that an extension of time is not agreed, and if on or before 31st March, 2007 DTVA has not entered into a Development Agreement or delivered a Southside Councils Agreement, together with written confirmation that it is willing to enter into such an Agreement, the SSA provides that the Local Authorities can take management control and direction of the programme for the development of the Southside, subject to reimbursing

DTVA's and PAL's costs and expenses incurred in connection with the proposed development, and subject to the proviso that a 'step in' will not be permissible if PAL demonstrates that DTVA's failure to enter into an Agreement or provide a Southside Councils Agreement with an undertaking to enter into that Agreement, was attributable to circumstances falling outside of DTVA's or PAL's control.

8. A referral to arbitration is allowed for in the event of a dispute but it is considered that the request is a reasonable one in the circumstances.
9. The authority is also sought from Members to authorize the Chief Executive of Stockton Borough Council to sign an extension agreement on behalf of Darlington Borough Council. This approach will enable the agreement to be finalized prior to the deadline on 31st March 2007.
10. The matter is urgent because PAL need early confirmation of the agreement of the Borough Council. A similar request has been submitted to each of the Local Authority shareholders who are parties to the SSA.

Legal Implications

11. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

12. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

13. The issues contained within this report do not represent change to Council policy or the Council's policy framework

Decision Deadline

14. For the purpose of the 'call-in' procedure this is an urgent matter. PAL need early confirmation of the approval of all parties to the SSA, including the Local Authority shareholders.

Recommendation

15. It is recommended that Members agree to an extension of time until 31st May, 2007 by which time PAL should have used all reasonable endeavours to procure that DTVA enters into a Southside Development Agreement under the Subscription and Shareholders Agreement and that the appropriate officer of Stockton Borough Council be authorised to

sign an appropriate agreement to that effect on behalf of Darlington Borough Council.

Reasons

16. The decision to agree a limited relaxation of the originally agreed timetable will enable DTVA to enter into an appropriate agreement and PAL to comply with their obligations under the SSA, without the need for any of the action set out in paragraph 6 and 7 of the report.

Ada Burns
Chief Executive

Background Papers

- (i) Cabinet report dated 4th April, and 28th September, 2006.
- (ii) Request from Peel Airports Ltd via Stockton Borough Council, 12th March 2007.

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