

DURHAM TEES VALLEY AIRPORT

**Responsible Cabinet Member - Councillor Stephen Harker
Efficiency and Resources Portfolio**

Responsible Director - Paul Wildsmith, Managing Director

SUMMARY REPORT

Purpose of the Report

1. Cabinet is asked to agree to waive the pre-emption rights the Council has as a shareholder in Durham Tees Valley Airport Limited, in order to facilitate a transfer of shares controlled by Peel Holdings Limited to a company established by the Tees Valley Combined Authority.
2. In addition it is recommended that the Council maintain its existing minority shareholder protections under the current shareholders agreement with some minor modifications and clarifications.

Summary

3. Peel Holdings Limited has the majority shareholding (89.09%) in Durham Tees Valley Airport Limited. The Council with the 4 other Tees Valley councils and Durham Council have the remainder of the shares.
4. The Council and the other minority shareholders have pre-emption rights which gives us the first opportunity to buy any shares being disposed by Peel Holdings Limited before they are offered for sale to another person or entity.
5. None of the minority shareholders intend to exercise their pre-emption rights, but are supportive of the proposals of the Tees Valley Combined Authority for the Durham Tees Valley Airport.
6. Before Peel Holdings Limited can dispose of their shareholding the Council and the other minority shareholders must give a waiver to indicate that they do not intend to exercise their pre-emption rights.
7. The rights that exist between the respective shareholders are set out in the Articles of Association and Subscription and Shareholder Agreement. A Deed of Adherence must be entered into in order for these to bind any new shareholder.

8. This report addresses what needs to be done to give effect to disposal by Peel Holdings Limited to a company established by the Tees Valley Combined Authority. Further detail is set out in the main body of the report.

Recommendations

9. Members are recommended: -
 - (a) To agree to waive to the Council's rights of first refusal (pre-emption rights) relating to the proposed transfer of the shares by Peel Holdings Limited;
 - (b) To agree to the continuance of the shareholder protections for the minority shareholders, subject to the modifications set out in this report.
 - (c) To authorise to the Managing Director to implement the decision set out at paragraph 9 (a) and (b) with authority to make any minor changes that may be required to give effect to this decision (in consultation with the Leader);
 - (d) To authorise the Assistant Director Law and Governance to complete and sign the required documents and agreements.

Reason

10. The recommendation is supported by the following reason: -
 - (a) To enable the transfer of the shares held by Peel Holdings Limited to be implemented.
 - (b) To support the proposals of the Tees Valley Combined Authority to invest in the future of Durham Tees Valley Airport

Paul Wildsmith
Managing Director

Background Papers

Luke Swinhoe Ext 5490

S17 Crime and Disorder	Not applicable.
Health and Well Being	Not applicable
Carbon Impact	There is no direct impact as a result of this report.
Diversity	Not applicable
Wards Affected	All wards
Groups Affected	All groups
Budget and Policy Framework	No impact on the Budget or Policy Framework.
Key Decision	No
Urgent Decision	Yes
One Darlington: Perfectly Placed	Transport connectivity is an important part of the Perfectly Placed agenda.
Efficiency	There is no impact on the Council's Efficiency agenda as a result of this report.
Impact on Looked After Children and Care Leavers	There is no impact on Looked After Children and Care Leavers as a result of this report.

MAIN REPORT

Background

11. On 24 January the Tees Valley Combined Authority ("TVCA") agreed to acquire the shareholding of Peel Holdings Limited ("Peel") in Durham Tees Valley Airport Limited ("DTVAL") for a consideration of £40 million ("the Acquisition");
12. The current shareholding position for DTVA Ltd is as follows: -

Peel Investments (DTVA)	89.09%
Ltd	
Darlington	2.91%
Stockton	2.08%
Durham	1.45%
Redcar & Cleveland	1.70%
Hartlepool	1.08%
Middlesbrough	1.69%
13. The relationship between Peel and the Council Shareholders is regulated by the Articles of association of DTVAL ("the Articles") and by a Subscription and Shareholder Agreement entered into between Peel Airports Limited, Peel Holdings Plc and the Council Shareholders on 1 April 2003 (as amended) ("the SSA").
14. The SSA provides the minority shareholders some additional protection over and above their rights as shareholders. In summary these are rights of veto over:
 - (a) the operation of any activity which is outside the ordinary course of the business of the operation of the Airport;
 - (b) selling a material part of the business or assets of the Airport;
 - (c) changing the name of the Airport;

- (d) entering into any partnership or joint venture arrangement with the Airport's closest competitors, namely Newcastle, Leeds/Bradford or Manchester;
 - (e) entering into any partnership or joint venture arrangement if such partnership or arrangement is outside the ordinary course of business of the Airport; and
 - (f) subject to financial viability tests closing the Airport.
15. In 2016 agreement was been reached with Peel under which DTVAl would cease to be an admission body in the Teesside Pension Fund and Peel agreed that the airport would be maintained as an International Airport during an unconditional period of five years (“the Keep Open Commitment”). The Combined Authority has been advised by Peel that it intends to close the Airport as soon as it is able to under the terms of the existing Shareholders’ Agreement, in 2021.
16. There are restrictions contained within the Articles on disposal of shares including pre-emption provisions that provide for the shares in DTVAl to be first offered to the existing shareholders (i.e. the local authorities) before a disposal to a third party (including TVCA or a company controlled by TVCA) can be made.
17. In relation to the proposed share transfer, the decision that the local authorities have to make is to decide if they want to exercise their pre-emption rights. Both TVCA and Peel have requested confirmation from the minority shareholders that they do not intend to exercise the pre-emption rights and have requested the local authorities grant a waiver of those rights. The waiver would enable TVCA and Peel to complete the Acquisition without a delay of up to 40 days which could be caused by the pre-emption process.
18. There is no direct commercial benefit of the pre-emption waver for the local authorities except to enable the authorities’ to step-in ahead of TVCA and acquire a larger shareholding themselves. However unless the local authorities are minded to buy the Peel shares and potentially invest additional monies of their own in the airport to keep it open, then the pre-emption rights only serve to delay the Acquisition by TVCA.
19. If the local authorities decide not to exercise the pre-emption option and grant a waiver, then in order to maintain the status quo position in respect of the minority shareholder rights they will need to ensure that the new shareholder signs a deed of adherence to be bound by the terms of the existing SSA (as amended) in order to maintain the existing protections. The provisions to ensure that this happens are already contained in the SSA.

THE WAIVER AND RELEASE

20. With regard to the waiver, this has been drafted to ensure that it applies in the circumstances contemplated by the TVCA decision. It applies to a sale by Peel to Pacific Shelf 1860 Limited. Pacific Shelf 1860 Limited is the company that has been specifically established by TVCA to hold the shares for them (“the TVCA HoldCo”).
21. The waiver and release also releases Peel from any further obligation under the SSA once its shares have transferred to the TVCA HoldCo. This is provision takes effect as a consequence of the provisions contained in the SSA.

ACCESSION DEED OF ADHERENCE AND AMENDMENT

22. The Accession Deed of Adherence (“the Accession Deed”) makes provision that the TVCA HoldCo will adhere to the SSA in order to maintain the status quo for the minority local authority shareholders. The Accession Deed requires the TVCA HoldCo to accept all the obligations, liabilities and rights under the SSA in place of Peel. Importantly the local authorities existing position is protected in that the TVCA HoldCo will become be bound in place of Peel to the Keep Open commitment until 2021.
23. There are a number of outdated provisions that are no longer relevant in the SAA and it is proposed that these ae formally waived or amended.
- (a) Compulsory further funding by Peel Investor – This is no longer relevant given Peel have made the minimum investments required.
 - (b) Transfer of shares – There was a restriction preventing Peel transferring its shares before it had made an investment of at least £12,500,000, this is no longer relevant given Peel have made the minimum investments required.
 - (c) Use of Funds/No Leakage of the Deed of Amendment. The use of funds/no leakage commitment (being the undertaking by DTVAl to apply all development receipts for the proposed development of 350 dwellings on the airport site towards capital investment in the airport or operation of the airport and that there will be no unpermitted payments as set out in the agreement). This is no longer required as TVCA will not permit the development to progress.
 - (d) Provision of further funding for the Company – this provided Peel with the right to provide further funding (by way of qualifying loans) in return for the conversion of such loans for the issue of shares (so long as the Councils have a catch up right). The Clause is no longer relevant once Peel ceases to be the investor.
 - (e) Dividend Policy – no dividends payable until £20,000,000 investment by Peel has been made in full. Such clause to be suspended for such period that the use of funds/no leakage provisions are to apply. This is no longer relevant as Peel's investment obligations will not apply to TVCA. The dividend position will revert to the position under the Articles with the local authorities sharing in any future dividend in proportion to their shareholding.
24. TVCA have requested one relevant change to the SSA that falls outside the scope of outdated provisions which is an amendment to the non-competition requirements. The change would provide a clarification that a third party operator that is contracted by the TVCA HoldCo or DTVAl to act as operator of the Airport is not prevented from also providing airport services or other commercial services at any of Newcastle Airport or Leeds/Bradford Airport or Manchester Airport which are restricted airports under the SSA. External legal advice is that on a strict interpretation the drafting of the non-competition requirements would not be breached as they only apply to the TVCA HoldCo, and therefore accepting this change does not alter the existing position of the local authorities but does provide a degree of comfort to TVCA in respect of any future operator procurement.

URGENCY

25. DTVAL had secured planning permission for a housing development of around 350 housing units on the Northside of the airport site. Part of the TVCA acquisition decision is that construction of a residential development of 350 houses on the periphery of the airport could frustrate or delay the development of DTVA and its ancillary uses consequently if the acquisition proceeds then the development of the 350 housing units would not go ahead.
26. It is understood that agreement had been reached by DTVAL with a housebuilder to acquire the development land. Coupled with this, under the conditions of the existing planning consent a reserved matters application for the 350 housing units would need to be submitted by 22 February 2019.
27. Should the timescale to complete the acquisition not proceed on or before the date on which reserved matters application has to be made, then there is a risk that the acquisition may be impeded or delayed. As a result, both Peel and TVCA have expressed that it is in urgent that the acquisition proceeds within the stated timescale.

Consultation

28. The Chair of Efficiency and Resources Committee has been advised of the need to table this as an urgent report and supports the reasons for urgency.
29. Consultation has been taking place with the other Councils who are minority shareholders in DTVAL and the position set out in this report has been agreed in common.

Financial Implications

30. There are no direct financial implications as a result of the recommendations set out in this report.

Legal Implications

31. Subject to the agreement of Cabinet to the recommendations, the legal documents that support the decisions made will be formalised in conjunction with the other Councils as soon as it can be achieved after decisions have been taken.