

REQUEST FOR MAYORAL DECISION – MD2048

Title: Direction to Transport for London to analyse proposals for a third runway at Heathrow.

Executive Summary:

On 25 October 2016, the Secretary of State for Transport announced that the Government accepted the recommendation of the Airports Commission that increased airport capacity in the UK should be achieved by building a third runway at Heathrow airport. The Mayor does not support the Government's decision on the grounds that the construction of a third runway at Heathrow will have significant detrimental environmental impacts and cost more and take longer to deliver than the alternative option of building a second runway at Gatwick. The Mayor is, by this MD, directing that Transport for London ('TfL') assess the proposal, engage further with Government in its development of a National Planning Statement and provide technical advice and assistance to affected borough councils, environmental groups and any other relevant party who is or is contemplating challenging the decision. This may include analysing the case for an alternative option of building a second runway at Gatwick. He is also directing TfL to join in any such legal action if he deems it appropriate for TfL to do so.

Decision:

The Mayor:

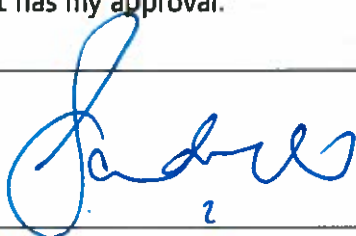
1. Directs TfL under s 155(1)(c) of the Greater London Authority Act 1999 ('GLA Act') in the terms of the attached Direction (Appendix 1).
2. Authorises TfL under s 38(1) of the GLA Act to exercise the Mayor's powers under sections 30 and 34 of the GLA Act to undertake the activities required by the attached Direction in accordance with the terms of the attached delegation (Appendix 2).

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

16/11/16

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 The issue of airport capacity is one of national significance but is of particular importance to Greater London not only because of the relationship between aviation and London's prosperity but because Heathrow, the UK's main airport, is situated in Greater London. Residents of Greater London stand to gain from expanded airport capacity but will suffer the greatest impact if that additional capacity is realised through expansion of Heathrow.
- 1.2 The Airports Commission recommended in its final report of 1 July 2015 that a third runway be constructed at Heathrow Airport in preference to two other shortlisted options (extension of an existing Heathrow runway and a second runway at Gatwick). The Government adopted this recommendation on 25 October 2016 ('the Government's Decision'). The Secretary of State for Transport has said that a National Policy Statement will be published in the New Year which will set out in more detail the basis for its decision and the conditions, including the supporting measures, that the development will be subject to.
- 1.3 The Mayor does not support the Government's Decision on the grounds that the construction of a third runway at Heathrow will have significant detrimental environmental impacts (air quality and noise) and cost more and take longer to deliver. The Mayor's preference is for a second runway at Gatwick.
- 1.4 The Mayor has requested that TfL fully engage with the Government process of drawing up a National Policy Statement and hold the Government to account in demonstrating how Londoners will not suffer worsening noise and air pollution as a consequence of construction of the third runway at Heathrow, and how the surface access networks will be able to accommodate the extra demand alongside background growth. This will entail TfL continuing the work it has already undertaken at the policy development stage and further to the Airports Commission's final report.
- 1.5 The Mayor has also indicated that he wishes to be involved in a legal challenge to the Government's Decision, whether directly or through TfL. Previous challenges to the Government's airport policy have been brought by affected London borough councils and environmental groups with TfL joined as an interested party. It is likely that any challenge to the Government's Decision will be challenged by these same or similar parties.
- 1.6 TfL has acquired considerable technical expertise and experience on aviation matters as a consequence of engaging with the Airports Commission, Government and other parties on the development of recent aviation policy including assessing the Airports Commission's recommended option for a third runway at Heathrow and the alternatives. Such expertise and experience includes but is not limited to purely transport related issues, for example, surface access, as TfL considered other matters including engineering feasibility, environmental impacts, socio-economic impacts, airspace impacts, commercial viability and legal and regulatory issues. In addition to being a party itself, it is appropriate that TfL uses its expertise and experience to provide technical advice and assistance to appropriate parties who are seeking to challenge the Government's Decision. It is expected that such advice and assistance will be given to borough councils and environmental groups who are likely to have a direct role in the legal challenge. The advice and assistance will be given primarily for the purpose of those parties pursuing the legal challenge of the Government's Decision including analysing the case for the alternative option of building a second runway at Gatwick.

- 1.7 Where such advice and assistance is to be given in respect of matters which are not within TfL's transport remit, it is necessary for the Mayor to delegate to TfL additional powers and direct that such powers be exercised.
- 1.8 It is anticipated that the financial implications for TfL of it undertaking the work required by the direction will not exceed £1 million. If it does then further authority will need to be sought from the Mayor in order to continue with the activity required by the direction.

2. Objectives and expected outcomes

- 2.1 The objective of directing TfL is to ensure the interests of Londoners are fully and fairly represented. Given the considerable expertise already developed by TfL in these matters, it has an important role to play, on behalf of the Mayor, in ensuring the surface access, noise and air quality implications of expansion at Heathrow are properly understood and correctly inform the ensuing legal processes, whether the taking forward of the National Planning Statement or the likely legal challenge by boroughs and environmental groups.

3. Equality comments

- 3.1 Under s 149 of the Equality Act 2010 ('the Equality Act'), as public authorities, the Mayor and TfL must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. Protected characteristics under the Equality Act are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership status (the duty in respect of this last characteristic is to eliminate unlawful discrimination only).
- 3.2 The detrimental impact on air quality that will result from an additional runway at Heathrow will be of particular concern to people who suffer respiratory and other illnesses associated with poor air quality now and in the future and who may, as a consequence, be classed as disabled. A recent report commissioned by the GLA¹ also found that people living in places with high proportions of black, mixed or "other" ethnic groups are more likely to be exposed to above EU NO₂ limit value concentrations than those in areas with a high proportion of white people, although the association was deemed not to be strong. Facilitating and participating in the challenge to the Government's Decision may, if successful, have a positive impact on all those who work, live or visit Greater London which may be of particular significance to people disabled by air quality associated illnesses and conditions and black, mixed or "other" ethnic groups who live in the worst affected areas for air quality. No other particular effects of this proposed decision, negative or positive, are foreseen on persons with protected characteristics under the Equality Act.

4. Other considerations

a) Key risks and issues

- 4.1 If TfL does not provide technical assistance and advice to parties who are seeking to challenge the Government's Decision and is not a party to the action then the risk is that parties to the challenge will not be properly equipped to bring their challenge and the issues will not be fully considered by the courts. The ultimate risk is that the action will not succeed and the third runway at Heathrow will be able to be built.

b) Links to Mayoral strategies and priorities

- 4.2 On 24 October 2016 the Mayor published his City for all Londoners document for consultation. This is the first step towards the creation of a new 'London Plan' and the Mayor states:

¹ Aether, Updated Analysis of Air Pollution Exposure in London – Interim Report, October 2016

In line with calls from businesses, I want to see the aviation question resolved once and for all. I believe the answer is additional runway capacity at Gatwick, which can be built quicker, cheaper and without the years of legal and political battles that Heathrow clearly faces.

The London Plan

- 4.3 The London Plan, published in July 2011 makes reference to aviation capacity. Policy 6.6A states:

Adequate airport capacity serving a wide range of destinations is critical to the competitive position of London in a global economy. Airport capacity serving the capital and wider south east of England must be sufficient to sustain London's competitive position.

Mayor's Transport Strategy

- 4.4 The Mayor's Transport Strategy published in May 2010 makes reference to airport capacity and surface access to airports. Proposal 48 states:

The Mayor recognises that the provision of adequate airport capacity serving the South East is critical to the competitive position of London in a global economy, but will oppose any further increases in runway capacity at Heathrow.

Economic Development Strategy

- 4.5 The Mayor's Economic Development Strategy, published in May 2010 recognises the role airport capacity plays in supporting London's global economic success. Paragraph 5.42 states:

The Mayor recognises that some additional runway capacity will be needed in the wider South East. He will resist the provision of further capacity at Heathrow because of its unacceptable environmental and community impacts and will support the evaluation of alternatives.

Mayor's Air Quality Strategy

- 4.6 The Mayor's Air Quality Strategy published in December 2010, acknowledges the role of aviation in generating key air pollutants. One of the principal reasons why the Mayor is opposed to the expansion of Heathrow is because of its potential to worsen local air quality, and breach permitted limits.

Mayor's Climate Change Mitigation and Energy Strategy

- 4.7 The Mayor's Climate Change Mitigation and Energy Strategy, published in October 2010, supports a number of actions and activities that will help to reduce the harmful impacts of aviation. This is being revised to take account of the new Mayor's priorities and the recent Paris Agreement. Expanding Heathrow will make it much more difficult for London to achieve its current 80% reduction by 2050, let alone the Mayor's target of a zero carbon city by 2050 as it will mean that all other sectors will need to move aggressively to decarbonise as well as a reliance on negative emissions approaches and offsets.

Mayor's Ambient Noise Strategy

- 4.8 The Mayor's Ambient Noise Strategy, published in 2004, encompasses noise and vibration from aircraft and includes various policies on noise abatement operational procedures, night flights and incentivising deployment of the quietest aircraft. The Mayor is a statutory consultee on potential changes or additions to routes regularly used by civil aircraft in Greater London.

5. Impact assessments and Consultation

- 5.1 No impact assessments or consultations are required for the Mayor to make this decision.

6. Financial comments

- 6.1 There will be no financial implications for the GLA arising from this decision.

7. Legal comments

Direction to TfL

- 7.1 Under section 155(1) of the GLA Act the Mayor may issue general and specific directions to TfL as to the manner in which it is to exercise its functions.
- 7.2 Section 155(4) provides that any directions issued under section 155(1) must be issued in writing and notified to such officer of TfL as it may from time to time nominate to the Mayor for this purpose.
- 7.3 The proposed direction by the Mayor to TfL to undertake analysis, provide technical advice and assistance to parties who are seeking to challenge the Government's Decision and to become a party to that legal challenge may be made under section 155(1)(c) of the GLA Act. The direction must be in writing. It is attached at Appendix 1.

Delegation of Mayoral powers

- 7.4 The Mayor is being asked to delegate his powers under sections 30 and 34 of the GLA Act to TfL so that it has the necessary powers to be able to comply with the direction. Section 38 of the GLA Act provides that the Mayor may authorise TfL to exercise his functions.
- 7.5 Section 30 of the GLA Act gives the Mayor a general power to do anything which he considers will further one or more of the principal purposes of the GLA. The principal purposes, as set out in section 30(2), are:
- (a) promoting economic development and wealth creation in Greater London;
 - (b) promoting social development in Greater London; and
 - (c) promoting the improvement of the environment in Greater London.
- 7.6 Further, section 34 of the GLA Act allows the Mayor to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any of his functions (including his functions under section 30).
- 7.7 Section 38(7) of the GLA Act gives TfL the power to exercise any functions delegated to it by the Mayor pursuant to section 38, whether or not TfL would otherwise have had that power and irrespective of the nature of the function.
- 7.8 It is considered that in providing technical advice and assistance to parties seeking to challenge the Government's Decision and participating in any such action, TfL will be furthering one or more of the principal purposes in s 30.
- 7.9 The Mayor may impose conditions on any delegations under section 38(1). A number of conditions are set out in the delegation annexed to this report. These include requirements to provide progress reports to the Mayor and to the TfL Board, comply with any instructions or guidance issued by the Mayor and co-operate with the GLA Monitoring Officer (who has a duty under section 5(2) of the Local Government and Housing Act 1989 to monitor TfL's activities when it is exercising functions delegated by the Mayor).

- 7.10 Section 38(10) of the GLA Act requires the section 38 delegation to be in writing. The proposed delegation is attached at Appendix 2.

TfL's powers

- 7.11 TfL has its own powers which are relevant to its assessment of the proposal for a third runway at Heathrow and engagement with the Government on the planning process, its provision of technical advice and assistance to the other parties and its participation in the legal challenge of the Government's Decision. They include its power to provide or secure the provision of public passenger transport services to, from or within Greater London under section 173 of the GLA Act and its power to provide professional or technical advice or assistance, including research and other services as respects any matter in which TfL has skill, experience or expertise under paragraph 9 of Schedule 11 to the GLA Act.
- 7.12 In addition, section 154(3) states that TfL shall exercise its functions for the purposes of securing or facilitating the implementation of the Mayor's Transport Strategy.
- 7.13 The Mayor's delegation of wider powers will supplement these powers and ensure that TfL is able to deliver all the activity required by the direction.

8. Planned delivery approach and next steps

- 8.1 TfL will engage with the Government and with the airport operator to seek to influence the development of the National Policy Statement. TfL will engage with parties who are seeking to challenge the Government's Decision and influence the formulation of the claim including the grounds on which the decision is to be challenged. TfL will also appoint its own legal counsel to assist with the preparatory stages and who will represent it before the court. The challenge will inevitably take the form of a judicial review claim and will need to be commenced promptly and in any case, within three months from when the Government's Decision was made.

Appendices and supporting papers:

- Appendix 1** - Direction to TfL
Appendix 2 - Delegation to TfL

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? YES

If YES, for what reason:

Until after the Mayor has announced at Mayor's Question Time that TfL will continue to analyse the option of a third runway at Heathrow, that TfL will give advice and assistance to prospective claimants in a legal challenge to the Government's decision and that TfL will likely play the role of interested party in that challenge.

Until what date: 16 November 2016

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Tim Steer has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

Sponsoring Director:

Fiona Fletcher-Smith has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Val Shawcross has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on the 14 November 2016.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. D. Allen

Date

14.11.16

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

D. Bellamy

Date

14 / 11 / 2016

