

# GREATER **LONDON** AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD1536

**Title: London City Airport Public Inquiry costs**

### **Executive Summary**

This Mayoral decision asks that the Mayor approves expenditure to defend his planning decision to direct Newham Council to refuse a planning application by London City Airport (LCA) for new airport and passenger infrastructure.

### **Decision:**

The Mayor approves allocation and expenditure of up to £525,000 from the Greater London Authority's planning smoothing reserve to commission specialist external consultants (including legal) to support the preparation and presentation of the Mayor's appeal case at the forthcoming Public Inquiry into the appeal by LCA against Newham Council's refusal of its planning application for new airport and passenger infrastructure, the refusal being pursuant to the Mayor's Direction to Newham Council.

### **Mayor of London**

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

The above request has my approval.

**Signature:**



**Date:**

11.8.2015

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

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1 On 26 March 2015 the Mayor formally directed Newham Council to refuse a planning application made by LCA. This application would have allowed the airport to construct new airport and passenger infrastructure which in turn would have allowed it to operate larger aircraft and to increase the number of flight movements 120,000 per annum. The stated reason for the Direction was:

“Application 13/01228/FUL is contrary to London Plan policies 6.6 (Aviation) and 7.15 (Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes) as it does not adequately mitigate and manage its adverse noise impacts”

- 1.2 On 15 May 2015 LCA lodged an appeal against Newham Council’s refusal. The Planning Inspectorate (PINS) has set a date for the Public Inquiry which will open on 15 March 2016 and is scheduled to run for 20 days. The Mayor has sought and been granted Rule 6’ status by PINS which will enable him to participate fully in the Inquiry.
- 1.3 To support his case, the Mayor will need to prepare and present detailed technical and other evidence. The GLA team will require specialist external support for this exercise in order to present a robust case. Both LCA and Newham Council are supported by external consultants and experienced planning Counsel in relation to the appeal.
- 1.3 These external costs are difficult to quantify at this stage and no current budget allocation exists within the GLA. It is therefore proposed that the Mayor allocates and authorises expenditure on the basis of the estimated figures set out below (exclusive of any VAT) which have regard to comparable costs incurred in relation to the presentation of the Mayor’s case at the recent Heathrow Northern Runway Planning Inquiry.

Planning consultant	£100,000
Noise consultant	£100,000
Other consultants (potential)	£50,000
Legal support (QC + junior)	£275,000
<b>Total</b>	<b><u>£525,000</u></b>

#### **2. Objectives and expected outcomes**

- 2.1 To enable preparation for and presentation of a robust Mayoral case at the forthcoming Public Inquiry.

#### **3. Equality comments**

- 3.1 Under section 149 of the Equality Act 2010, in making these decisions “due regard” must be had to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not. Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender, sexual orientation (and marriage or civil partnership status for the purpose of the duty to eliminate unlawful discrimination only). This duty has been taken into account, but no additional equality impact assessments are required beyond those considered in the relevant planning documentation for the Mayor to make these decisions.

#### **4. Other considerations**

- 4.1 This decision seeks to enable the Mayor to robustly defend his decision to direct Newham Council to refuse LCA's planning application. There is a real risk that, if the Mayor does not participate fully at the appeal, London's strategic planning interests would not be properly taken into account by the Inspector hearing the appeal, potentially undermining the London Plan and impacting the Mayor's ability to carry out his statutory duties. Moreover, as a principal party at the appeal, the Mayor may be liable for an award of costs should he be found to have behaved unreasonably or has an award of costs made to him (see additional legal comments below).

#### **5. Financial comments**

- 5.1 Approval is being sought for expenditure of £525,000 for external consultants and legal costs as follows;
- £250,000 to appoint specialist external consultants to expand and present the Mayor's planning case at the forthcoming Public Inquiry into Newham Council's refusal of a planning application by London City Airport for new airport and passenger infrastructure.
  - £275,000 for legal support comprising a QC and junior at the Inquiry.
- 5.2 The cost of £525,000 will be funded from Planning Smoothing reserve. Consultant's costs for the Public Inquiry into London City Airport planning application will be approximately £150,000 in 2015-16 and £100,000 in 2016-17. Legal costs will be similarly apportioned. If there is any slippage in work in 2015-16 then a budget carry forward request will be sought subject to year-end carry forward approval.
- 5.3 As this work involves contracts with consultants, officers will ensure that the requirements of the Authority's Contracts & Funding Code are adhered to.
- 5.4 Any changes to the proposal, including budgetary implications will be subject to further approval via the Authority's decision making process. All appropriate budget adjustments will be made.
- 5.5 The Planning Unit within the Development, Enterprise & Environment Directorate will be responsible for managing the contracts with consultants and work on both the Public Inquiries.

#### **6. Legal comments**

- 6.1 Section 322B of the Town and Country Planning Act 1990 applies, as in the present case, where a London borough planning authority refuses a planning application in compliance with a direction made by the Mayor in accordance with provision made in a development order by virtue of section 74(1B)(a) and an appeal against the refusal is made to the Secretary of State under section 78. In those circumstances, section 322B(2) provides that, where the Secretary of State causes a local inquiry to be held under section 320(1) to determine the appeal (as applies here):
- (a) the costs incurred by the Secretary of State in relation to the inquiry, or such portion of those costs as he may direct, may be paid (i) by the Mayor if he is not a party to the inquiry and if the Secretary of State decides that the Mayor acted unreasonably in making the direction or (ii) if the Mayor is a party or if the Secretary of State does not so decide, by such local authority or party to the inquiry as he may direct;

- (b) the Secretary of State may make orders as to the costs of the parties to the inquiry and as to the parties by whom those costs are to be paid which may include the Mayor of London if he is not a party to the inquiry and if the Secretary of State decides that the Mayor acted unreasonably in making the direction.

6.2 National Planning Practice Guidance (NPPG) also provides that, where the Mayor exercises a power to direct a planning authority to refuse planning permission, he will be treated as a principal party at the appeal, and may be liable for an award of costs if he behaves unreasonably or has an award of costs made to him. Unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive i.e. relating to the issues arising from the merits of the appeal.

## **7. Investment & Performance Board**

7.1 This matter was considered by the Investment and Performance board in July 2015 as an urgent item and approved in principle.

## **8. Planned delivery approach and next steps**

<b>Activity</b>	<b>Timeline</b>
Preparation of case and evidence	July 2015 onwards
Procurement of consultancy support	August 2015
Public Inquiry	March - April 2016

## **Appendices and supporting papers:**

1. Mayor of London's Direction to Newham Council dated the 26 March 2015.

**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? NO**

**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:**

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

✓

**Assistant Director/Head of Service:**

Stewart Murray has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

**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:**

Sir Edward Lister has been not been consulted about the proposal given the GLA's land interests in the application site.

NA

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**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**

*10.8.15*

