

OFFICER DECISION RECORD 1 FORM

This form should be used to record Officer Decisions in Excess of £100k (but below the key decision threshold), or where required by Financial, Contract or other Procedure Rules or following formal delegation from Cabinet or a Cabinet Member or a Council Committee.

Decision Reference No: CR/685/03/24

BOX 1

DIRECTORATE: Corporate Resources DATE: 20/03/2024

Contact Name: Christian Foster Tel. No.: 01302 736614

Subject Matter: Approve Lease Agreement & Associated Documents for Doncaster Sheffield Airport

BOX 2**DECISION TAKEN**

Approval to sign the 125-year Lease Agreement & Associated Documents, with the current owner, for Doncaster Sheffield Airport covering former Airport site (DSAL) & DSA04.

BOX 3**REASON FOR THE DECISION**

In September 2023, Cabinet approved to delegate the decision to sign the head lease with the current owner of DSA, subject to funding being secured by CDC, to the Director of Corporate Resources in consultation with the Mayor.

Commercial discussions with the current landowners have progressed well, with significant discussions and negotiation taking place on the specific terms included in the legal agreements. The following documents form the substantive basis of the agreement, supplemented by other specific legal documents:

- Head Lease – which provides the terms under which CDC enjoys the use of former Airport site (DSAL) + DSA04
- Deed of Easement – which brings together the different ownership of land from many Peel companies and sets out the responsibility for the ongoing management of the Waste Water Treatment Works
- Collaboration Agreement which forms the basis on which CDC and Peel working together to develop and promote Gateway East.

This decision is required to confirm approval to sign the 125-year lease on 20th March 2024, to meet the timescales set by the current landowner. In doing so this provides an important step towards our goal of reopening the airport and provides the necessary legal basis (sublease) upon which the operators will have use of the Airport. This in turn provides the operators with the certainty upon which they can complete their business plans required as part of the procurement activities. There are risks associated with this approach however the bidders have indicated that a sublease is required to progress further with the procurement process. As such it is the recommended approach to achieve the overall outcome, including the significant benefits outlined in the outline business case, which have been fully documented in South Yorkshire Airport City – Outline Business Case, 6th December 2023, report.

In relation to the current procurement process, we are now down to the final phase where operators are required to complete their detailed business plans for DSA, we envisage this final phase will be assessed and completed by the Council in Spring 2024. There is a risk that we fail to award through the current process, however that does not necessarily mean that the search for an operator would cease but it would require CDC to reconsider its approach, reconsider options and potentially begin another procurement process. CDC has developed extensive knowledge, gained significant information and expertise during the past 12 months, and this would be built upon if a subsequent procurement process was required.

An urgent key decision has been approved, dated 20th March 2024, to allocate the funding for the remainder of 23/24 (from 20th March) and 24/25, to enable the lease to be signed and provide budget for immediate estimated costs identified over this period. The cost estimates are currently uncertain in some cases and so will continue to be developed, as more detailed information becomes available; further information will become known once the Council has full access to the site. This period will provide time to explore options in relation to procurement, other income generating activities and alternative funding.

Although it is deemed essential to provide certainty for the procurement process, there are significant risks associated with agreeing the lease, in advance of obtaining an operator. As detailed in the risk section, the terms agreed and set out in the lease agreement, may not be favourable to the current bidders and could result in a failed procurement, extending the amount of time the Council is required to hold the assets, with the considerable cost implications, which are outlined in the above report referenced and financial implications. Section 8, of the lease, (Option to Determine) contains a detailed section on break clauses and the factors which could trigger the Landlord to terminate the lease. CDC will need to actively manage the business arrangements associated with the Airport site to minimise these risks.

BOX 4**ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

An alternative option could be, to decide not to approve the lease. Although there are many uncertainties and unknowns, this option has been rejected, on the basis if the Council does not approve the lease now, we have been informed the lease option would no longer be available. This would add a significant delay and result in the benefits outlined in the Outline Business Case (OBC) no longer being achievable.

The risks associated with taking this decision now, prior to an operator being obtained, have been weighted against the anticipated benefits identified. Considering the strategic importance of DSA and the major economic development potential associated with the airport. Prior to its closure DSA made a very significant direct and indirect contribution to the local economy and local communities. Successful delivery of SYAC programme has the potential to dramatically increase the economic impacts associated with DSA and secure catalytic economic change. The weight of public support for reopening the airport, the scale of the economic opportunity it presents.

BOX 5**LEGAL IMPLICATIONS**

Section 1 of the Localism Act 2011 provides the Council with a general power of competence, allowing the Council to do anything that individuals generally may do. Section 111 of the Local Government Act 1972 gives the Council the power to purchase goods and services.

The Council has the power to acquire assets including land under section 120 of the Local Government Act 1972 but should exercise these powers under the principles of achieving best value. The lease terms agreed with Peel have been subject to significant negotiations and detailed legal advice has been provided to the Council by its external legal advisors both in relation to the lease and accompanying documentation, the leasehold title, the procurement process being undertaken and the proposed sub-lease to any appointed operator.

The Council is entering into the lease arrangement with Peel before it has secured an airport operator. As a result, as outlined within the financial implications and the body of the report until such time as an operator is secured the financial cost of the lease will be met by the Council. This is a significant financial consideration which the decision maker should consider and balance against the economic benefits derived from reopening the airport.

At the point that an airport operator is identified they will sign a lease with the Council in respect of the airport site and will be expected to make rental payments to the Council at an agreed rate. They will also pick up the day to day expenditure associated with managing the site.

The appointment of the airport operator will be subject to the completion of a formal procurement process and further Council decision making.

At the point that the Council takes operational control of the site it must ensure that it has various contracts also in place to ensure that the site remains safe, for example a security contract. Such contracts must be awarded in accordance with the Council's Contract Procedure Rules.

Name: S. R. Fawcus

Date: 18.03.24

Name of Assistant Director of Legal and Democratic Services (or representative)

BOX 6

FINANCIAL IMPLICATIONS:

The 20th September Cabinet report delegated the decision to sign the head lease with the current owner of DSA, subject to funding being secured by CDC, to the Director of Corporate Resources in consultation with the Mayor.

Interim holding costs are expected to be significant, and the length of time CDC will need to fund these is uncertain, although limited by the 7 (2+5) break clause. The estimated costs include the lease payment, SDLT, business rates, security, insurance, dedicated staff, utilities, and other maintenance/operational costs. The cost estimates are currently uncertain in some cases and so will continue to be developed, as more detailed information becomes available; further information will become known once the Council has full access to the site.

In addition, there is income currently received for the rental of the hangars, which offsets some costs, and further income generating opportunities from the vacant hangars, office space and potential land development. CDC has already received interest in taking up these prime locations. The overall net financial cost must be balanced against the anticipated economic benefits derived from reopening the airport. Further details of the estimated costs and income are provided in the Appendix A.

It is the overall intention that the operational costs will transfer to an appointed operator. An OBC to access Doncaster gainshare funding has been submitted to SYMCA and approved as a contingency to de-risk the project. The Council's uncommitted gainshare allocations are £83m capital (£3.2m per year) and £55m revenue (£2.1m per year). There are currently no commitments against this funding but allocating a significant sum to the SYAC project means it will not be available for other Doncaster projects.

All funding from SYMCA is subject to a funding agreement which will include terms and conditions that the Council will need to comply with to avoid clawback. These will need to be reviewed and understood before the funding agreement is signed.

The FBC cannot be finalised until after the procurement of an operator has taken place. As it is required that the Council enters into a lease agreement prior to the outcome of the FBC, a key decision was made on 20 March 2024 to allocate funding to meet costs for the remainder of 23/24 (from 20th March), and for the 24/25 financial year. Detailed cost estimates are provided in the confidential Annex. A further decision on the funding, based on the latest information including updated estimated costs/income, will be required in the 24/25 financial year. Signing the lease therefore represents a significant commitment against the Council's budget and will mean difficult decisions need to be made around the prioritisation of the Council's finite resources.

Site reinstatement costs are not included in this report and would be subject to a further decision.

Insurance cover must be in place prior to the completion of the lease agreement and associated documents, otherwise CDC would be at risk for the significant replacement costs.

Name: Matthew Smith_____

Date: 20/03/2024_____

Name of Chief Financial Officer and Assistant Director of Finance (or representative)

BOX 7

OTHER RELEVANT IMPLICATIONS

HR Implications

There are no HR implications specific to the lease agreement. It is acknowledged there may be a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended in 2014) (TUPE) and CDC have commercially agreed to treat the two staff currently working at DSA as being subject to the transfer regulations and will comply with the regulations as if they apply. Continued HR engagement is required to ensure there is compliance with the regulations as set out in the transfer agreement.

Name: Angela Cotton

Date: 19/03/24

Name of Assistant Director (or representative)

ANY IMPLICATIONS SENT TO DEPARTMENTS SHOULD GENERALLY BE SUBMITTED AT LEAST 5 WORKING DAYS IN ADVANCE TO ENSURE THESE CAN BE GIVEN THE RELEVANT CONSIDERATION.

BOX 8

EQUALITY IMPLICATIONS: (To be completed by the author).

Not applicable for this decision.

BOX 9

RISK IMPLICATIONS: (To be completed by the author)

The process to re-open DSA carries substantial risks which are being appropriately monitored and mitigated where possible. There is a structured approach to programme management, a small but dedicated project team, workstream leads, regular programme meetings which report into the SYAC governance board.

Given the current stage of project development and the level of uncertainty, risks are heightened. It is therefore of paramount importance that CDC engage in risk transfer strategies to ensure that risks are borne primarily by the private sector.

CDC has high level ambitions to secure a lease with the current owners of DSA and secure an operator that is willing and able to deliver a viable airport. In the context of historical losses this is a significant challenge. We have sought to secure aviation expertise to minimise the process risk, this decision seeks approval to agree the lease. There is a risk that the market may not view the conditions of the lease favourably. The ultimate deal with a bidder may be unaffordable or unpalatable given the other priorities of CDC.

There is a risk in relation to the procurement process that the contract opportunity does not attract interest and that the market fails to tender resulting in a failure to award. A failed procurement does not necessarily mean that the search for an operator would cease but it would require CDC to reconsider its approach, reconsider options and potentially begin another procurement process. CDC has developed extensive knowledge, gained significant information and expertise during the past 12 months, and this would be built upon if a subsequent procurement process was required.

All risks related to contracting with a third party to operate/develop the airport will be mitigated via robust contracting practices and terms.

There is a risk that there is insufficient funding identified to meet the estimated costs arising from the lease agreement, including following the procurement process. Further discussions will progress urgently to identify sufficient alternative funding for a range of scenarios to ensure the Council's core financial sustainability is not detrimentally affected by taking this decision.

There is a risk that the existing controlled airspace arrangements could be lost, which may have an impact on the ability to attract investors/operators.

There is a risk that should an Airspace Change Proposal (ACP) be required upon losing the current airspace arrangements, the lead in time to reopening the airport will be increased, as well as incurring additional costs and the possibility of the airspace not being granted in the previous form.

As outlined previously, Section 8, of the lease, (Option to Determine) contains a section on break clauses and the factors which could trigger the Landlord to terminate the lease. CDC will need to actively manage the business arrangement associated with the Airport site to minimise these risks.

BOX 10 CONSULTATION

Ongoing consultation has taken place with key stakeholders during the development of the lease agreement. The SYAC programme board considered all the information provided and confirmed approval to sign the lease agreement on 19th March 2024.

BOX 11 INFORMATION NOT FOR PUBLICATION

The information contained in Annexe 1 is not for publication as it contains details of commercial interests which are exempt under Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

Name: _____

Date: _____

Name of FOI Lead Officer for service area where ODR originates

BOX 12

BACKGROUND PAPERS

Please confirm if any Background Papers are included with this ODR YES

(If YES please list and submit these with this form)

- Rule 16 – Special Urgency Decision: South Yorkshire Airport City – Funding for the Lease Agreement, 20th March 2024
- South Yorkshire Airport City Update, report to Cabinet, 20th September 2023 (partially exempt)
- [South Yorkshire Renewal Fund Investment Strategy.pdf \(southyorkshire-ca.gov.uk\)](https://www.southyorkshire-ca.gov.uk), 3rd March 2022.
- South Yorkshire Airport City – Outline Business Case, 6th December 2023 (partially exempt)

**BOX 13
AUTHORISATION**

Name: Debbie Hogg Signature



Date: 20/03/2024

Director of Corporate Resources

Does this decision require authorisation by the Chief Financial Officer or other Officer

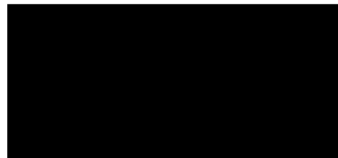
NO

If yes please authorise below:

Name: _____ Signature: _____ Date: _____

Chief Executive/Director/Assistant Director of _____

Consultation with Relevant Member(s)



Name: Ros Jones Signature: _____

Date: 20/03/2024

Designation: Mayor

(e.g. Mayor, Cabinet Member or Committee Chair/Vice-Chair)

Declaration of Interest YES/NO

If YES please give details below:

PLEASE NOTE THIS FORM WILL BE PUBLISHED ON THE COUNCIL'S WEBSITE IN FULL UNLESS IT CONTAINS EXEMPT OR CONFIDENTIAL INFORMATION.

Once completed a PDF copy of this form and any relevant background papers should be forwarded to Governance Services at Ladem@doncaster.gov.uk who will arrange publication.

It is the responsibility of the decision taker to clearly identify any information that is confidential or exempt and should be redacted before publication.