

# Public Document Pack



## Law and Governance

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To all Members of the Cabinet

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2<sup>nd</sup> March 2021  
Our ref: C/MAS

Dear Councillor,

### **Supplementary Agenda – Meeting of the Cabinet - Tuesday, 9th March 2021**

You should hopefully by now have received the agenda and documentation for the above meeting. The purpose of this letter is to advise you of additional items for consideration at that meeting.

With the agreement of the Chair, Councillor Duggins, the following reports are to be considered as urgent business at the meeting of the Cabinet on 9<sup>th</sup> March 2021, the reason for urgency being that revised financing arrangements need to be in place before the end of March 2021.

#### **Public Business**

**13a Birmingham Airport** (Pages 3 - 10)

Report of the Director of Finance

#### **Private Business**

**18 Birmingham Airport** (Pages 11 - 24)

Report of the Director of Finance

(Listing Officer: Michael Rennie, Tel: 024 7697 2628)

If you have any queries, please do not hesitate to contact me on the telephone number shown above.

Yours sincerely

Michelle Salmon  
**Governance Services Officer**

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**Public report**  
Cabinet

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**A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it contains information relating to the financial and business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.**

Cabinet  
Council

9<sup>th</sup> March 2021  
16<sup>th</sup> March 2021

**Name of Cabinet Member:**

Cabinet Member for Strategic Finance and Resources – Councillor R Brown

**Director(s) Approving Submission of the report:**

Director of Finance

**Ward(s) affected:**

All

**Title:**

Birmingham Airport

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**Is this a key decision?**

Yes – the Decision will result in expenditure of over £1m

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**Executive Summary:**

Birmingham Airport makes a very significant contribution to the regional economy, with a direct and indirect contribution to growth and employment. In recent years, the Council has received a significant return from its investment in Birmingham Airport Holdings Limited (“BAHL”).

2020/21 has been a challenging year due to the uncertainty created by the Covid-19 pandemic for both BAHL and the Airline sector across the UK and globally and has led to the worst decline in traffic and income in BAHL’s history. For BAHL the priority has been to maintain sufficient liquidity levels to support the airport into the future as a key strategic regeneration catalyst, whilst ensuring that it is ready to return to full capacity as soon as travel restrictions are lifted.

The purpose of this report is to seek approval for the Council to provide Shareholder support of up to £5.7m in loans if required.

**Recommendations:**

Cabinet is requested to recommend that Council:

- 1) Approve a loan facility to BAML on commercial market terms up to the value of £5.7m.
- 2) Delegate authority to the Director of Finance (S151 Officer) and the Director of Law and Governance, following consultation with the Cabinet Member for Strategic Finance and Resources, to finalise and agree the detailed terms of the transaction with BAML. The authority under this delegation shall also include:
  - the power to enter into the relevant legal agreements and associated documents necessary to complete the transaction with BAML; and
  - (in relation to the management of the loan facility) the power to negotiate and agree variations to the terms of the loan facility.

Council is recommended to:

- 1) Approve a loan facility to BAML on commercial market terms up to the value of £5.7m.
- 2) Delegate authority to the Director of Finance (S151 Officer) and the Director of Law and Governance, following consultation with the Cabinet Member for Strategic Finance and Resources, to finalise and agree the detailed terms of the transaction with BAML. The authority under this delegation shall also include:
  - the power to enter into the relevant legal agreements and associated documents necessary to complete the transaction with BAML; and
  - (in relation to the management of the loan facility) the power to negotiate and agree variations to the terms of the loan facility.

**List of Appendices included:**

Appendix 1 - BAML Current Structure

**Other useful background papers:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

Yes – 16<sup>th</sup> March 2021

**Title:** Birmingham Airport

**1. Context (or background)**

- 1.1. Together, the 7 West Midland Authorities (“Authorities”) own 49% of BAML, and vote in one block at meetings. The Council overall owns 5.79% of BAML’s total ordinary shares and £1.8m of preference shares which pay a fixed dividend of 6.31%. Further detail of the current structure of BAML is set out in Appendix 1. In both 2018/19 and 2019/20, the Council received over £1.6m income from its investment.
- 1.2. Birmingham Airport plays a very significant role in the regional economy, providing the air connectivity vital for international trade, investment and employment, the growth of inbound tourism, and access to outbound leisure destinations. Prior to Covid-19, 7,000 people were directly employed by companies located within the Airport boundary and a further 9,900 people were employed indirectly to supply goods and services to the Airport. The Airport’s net economic impact including catalytic effects in the West Midlands region was estimated as £1.5billion GVA (Gross Value Added), and 30,900 jobs.
- 1.3. The Covid-19 pandemic has led to the worst decline in traffic and income in BAML’s history. In response, BAML has reduced costs where possible, without impacting the ability to resume normal operations when travel restrictions are lifted. This includes a two-phase restructure which has resulted in around 43% reduction in roles throughout the workforce.
- 1.4. In recent months various UK Airports have raised capital in response to Covid-19, including Heathrow with £1.4bn of debt in October 2020, and Manchester Airport Group raised £300m from its shareholders in July 2020.

**2. Matters for consideration**

- 2.1. BAML has external debt facilities in the form of a £105million corporate bond, £371million private placement loan notes, and a bank loan of £25 million. Debt covenants within the airport’s loan agreements require certain financial ratios to be maintained. If these ratios are not maintained, depending on the extent of failure, the agreements first restrict dividends (dividend lock-up) and then require equity cure (breach requiring a capital injection). Since the ratios are based on earnings before interest, taxes, depreciation and amortisation (EBITDA), given the current trading position, they cannot be met and so a waiver needs to be sought. A combination of a further waiver and shareholder support is therefore required to avoid a covenant breach.

**3. Options and recommended proposal**

- 3.1. Option 1. Do nothing and not agree to the loan facility. This is not the recommended option.
- 3.2. Option 2. Provide support if required pro rata to existing shareholding. This is not the recommended option.
- 3.3. Option 3- Provide support if required at a level that results in the Authorities’ total support being in proportion to their current collective investment in BAML. This is the recommended option.
- 3.4. Details of the financial implications and issues which are commercially confidential are included in the private part of the agenda.

#### **4. Results of consultation undertaken**

- 4.1.1. West Midlands Shareholders Airport Committee has received regular reports on the issues.
- 4.1.2. In the preparation of this report, independent aviation, accounting and corporate finance advice has been sought by partner authorities.

#### **5. Timetable for implementing this decision**

- 5.1.1. In the current environment, the precise amount and timing or any loan requirement is uncertain.

#### **6. Comments from the Director of Finance and the Director of Law and Governance**

##### **6.1. Financial implications**

- 6.1.1. The maximum support, if required, will be £5.7m. It is currently assessed that any support will be repaid within a short period and will not require any revenue resources.
- 6.1.2. The loan will be financed as part of the Council's treasury activity and it is not anticipated that the loan will be classified as capital expenditure.

##### **6.2. Legal implications**

- 6.2.1. Under Section 12 of the Local Government Act 2003, the Council has a specific power to invest (or provide a loan). The power states "a local authority may invest for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs". This provides the Council with a power to invest in BAML, for any purpose relevant to its functions (this function would have to be identified) or if the Council can show it is for the prudent management of its financial affairs. Under section 1 of the Localism Act 2011, the Council also has a power "to do anything that individuals generally may do" (the "General Power of Competence"). "Individual" means an individual with full capacity. The General Power of Competence gives the Council:

- Power to do a thing anywhere in the United Kingdom or elsewhere;
- Power to do it for a commercial purpose or otherwise for a charge, or without charge, and
- Power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

- 6.2.2. The Council will be compliant with the requirements of both the General Power of Competence and the Power to Invest. This report serves as the case for the proposal and the basis on which the investment powers can be utilised.

##### **Subsidy Control**

- 6.2.3. Following the withdrawal of the United Kingdom from the European Union which came to an end at 11pm on 31 December 2020. EU State aid law no longer applies to financial assistance provided by UK public authorities.

- 6.2.4. However, under Chapter 3 of Title XI of Part 2 (the "**Subsidy Control Chapter**") of the Trade and Co-operation Agreement between the European Union and the United Kingdom (the "**TCA**"), both the EU and the UK have undertaken to implement an effective subsidy control regime in their respective territories.
- 6.2.5. It should be noted that the Subsidy Control Chapter is only relevant where a particular public intervention meets the definition of a "subsidy" in the TCA.
- 6.2.6. Market Economy Investor Principle ("MEIP") is a well-established exemption to the previous EU State Aid legislation. Such as exemption is still applicable to the Subsidy Control Regime (which replaces the previous EU State Aid Legislation). A Loan does not automatically constitute a subsidy if the Council carries out prior due diligence that demonstrates that investments are likely to generate sufficient returns that a private prudent investor would have made the same investment. i.e. the Council can invest in the proposal in return for an appropriate commercial return which would satisfy the expectations of a private prudent investor.
- 6.2.7. The risk of Subsidy is not dependent upon whether the financial return is actually ever achieved by the Council, as whether the Subsidy exists or not is assessed at the time of the funding advanced, but there must be a realistic prospect of the financial return being achieved by the Council.
- 6.2.8. The parties involved in the transaction have sought financial advice from external financial advisors to ascertain the interest which is to be applied. The authorities (collectively) and AGIL would be investing at the same interest rate, therefore as AGIL is a private investor who are willing lend on the same interest rate as the other authorities the investment by the authorities will be on terms on which a private sector operator would also invest, and therefore that investment by the authorities would not be conveying an economic advantage and also demonstrates the MEIP test.
- 6.2.9. In practice the Council would need to rely on the MEIP analysis as a justification for any subsidy in the event of a complaint, challenge or investigation.
- 6.2.10. The Council is complying with Subsidy Control Regime as the transaction is being undertaken upon arms' length terms and will comply with the MEIP principle, meaning that no benefit is conferred on the recipient and therefore there is no distortion to competition.

## **7. Other implications**

### **7.1. How will this contribute to achievement of the Council's Plan?**

- 7.1.1. A successful Birmingham airport is important both as a contributor to the regional economy and also in further developing Coventry as a globally connected city.

### **7.2. How is risk being managed?**

- 7.2.1. The risks associated with the proposed transactions and mitigation factors are set out in the body of report in the private part of the agenda.

### **7.3. What is the impact on the organisation?**

- 7.3.1. The impact to the organisation will be limited as the proposal concerns an investment in an existing asset, in order to support the airport as it manages the financial consequences of Covid-19.

#### **7.4. Equalities / EIA**

7.4.1. Section 149 of the Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and other form of conduct prohibited under the act; and,
- to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic (age, disability, gender re-assignment, pregnancy and maternity, race, religion and belief, sex, and sexual orientation) and persons who do not share it.

7.4.2. Having regard to the need to advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share it involves having due regard in particular, to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of the persons who share that characteristic that are different from the needs of persons who do not share it; and,
- encourage persons of the relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

7.4.3. The Equality Duty has been considered and it is felt that an Equalities Analysis is not required as the proposal concerns investment in an existing asset of regional importance in order to support the management of financial difficulties arising as a consequence of Covid-19.

#### **7.5. Implications for (or impact on) climate change and the environment**

7.5.1. The intention is that the loan will support the airport's return to previous passenger and traffic levels when we recover from the Covid pandemic.

#### **7.6. Implications for partner organisations?**

7.6.1. Coventry along with the other West Midlands authorities hold a majority interest in the airport.



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Barry Hastie	Director of Finance	-	5/2/21	9/2/21
Councillor R Brown	Cabinet Member for Strategic Finance and Resources	-	10/2/21	16/2/21

This report is published on the council's website: [www.coventry.gov.uk/meetings](http://www.coventry.gov.uk/meetings)

**Birmingham Airport Update Report**

**BAHL current structure**

**A Ordinary shares**

	<b>A Ordinary</b>	<b>% of A Ordinary</b>
Birmingham	60,535,200	19.2%
Coventry	18,757,100	6.0%
Dudley	18,089,000	5.7%
Sandwell	18,216,800	5.8%
Solihull	12,144,000	3.9%
Walsall	15,801,100	5.0%
Wolverhampton	15,213,100	4.8%
<b>Authorities Total</b>	<b>158,756,300</b>	<b>50.4%</b>
Airport Group Investments Limited ("AGIL")	156,326,600	49.6%
<b>TOTAL</b>	<b>315,082,900</b>	<b>100%</b>

In addition, the Council holds 19.2% of the 1,000 "C" ordinary shares.

The Trustees of BAHL's Employee Trust and ESOP hold all "B" ordinary shares.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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