

Agenda Item No. 6

WEST MIDLANDS REGIONAL ASSEMBLY

Board of Directors - Friday 6th October 2006

Policy Issues

Report of the Director of Policy (WMRA)

1. Forward Planning Executive

Purpose

- 1.1. To receive a progress report on the establishment of the Forward Planning Executive.

Recommendation

- 1.2. To consider and endorse the terms of reference for the newly established Forward Planning Executive.

Background

- 1.3. Advice on Regional Funding Allocations from the Assembly and AWM with support from Government Office was submitted to Government by 31 January 2006. In our submission we set out proposals to establish a Forward Planning Executive as a mechanism to facilitate and co-ordinate the development of regional advice to Government in respect to funding and investment matters.
- 1.4. The Forward Planning Executive (FPE) met on 12 July. There were two outputs from the meeting. Firstly that it should be chaired by the chairman of the Assembly and broad terms of reference were discussed; these have now been firmed up and are included as appendix one for the Board's consideration and endorsement. And secondly that the FPE's first task should be to oversee this region's submission to Government on the Comprehensive Spending Review 2007 (CSR07). The second meeting took place on 22 September. The meeting discussed the draft submission to CSR07- see below.

2. Comprehensive Spending Review 2007

Purpose

- 2.1 To note the joint submission made by the Assembly and AWM to the Comprehensive Spending Review 2007.

Recommendation

- 2.2 To note the joint submission made by the Assembly and AWM to the Comprehensive Spending Review 2007.

- 2.3 As part of the Comprehensive Spending Review 2007 (CSR07), HM Treasury has invited Advantage West Midlands and the West Midlands Regional Assembly to "submit joint advice on how we better utilise existing levels of public expenditure to achieve the Government's regional economic performance and regeneration targets". The submission was required to particularly focus on the five drivers of productivity and employment, be no more than 20 pages and be submitted by 30 September. HMT further advised that "Aspects of advice which concentrate on bidding for additional resources, rather than how the existing level of resources can be more effectively deployed, will be disregarded".
- 2.4 Officers from the Assembly and AWM developed a draft for consideration by the Forward Planning Executive (FPE) on 22 September. Following discussion this was amended and submitted to Government on 29 September. A copy of the submission has previously been forwarded to the Board and is now lodged on the Assembly website.
- 2.5 The submission builds on the Regional Funding Advice (RFA) we submitted in January 2006 and develops our strengths and challenges as a region around the following themes/drivers of productivity:- **Skills, Enterprise, Innovation, Competition, Investment, including** Transport, Planning, Housing and **Employment**
- 2.6 Whilst our recommendations meet the requirement to remain within current levels of public expenditure, we have sought more influence over public expenditure currently administered by central Government departments. EG develop the RFA process for future years, specifically to include regional rail investment.

3. Coventry Airport S78 Inquiry – Cost Application

Purpose

- 3.1 To advise the Board that a costs application has been made against the Assembly following the Assembly's involvement in the above inquiry.

Recommendation

- 3.2 To endorse the steps taken by the Secretariat in consultation with Assembly Board members, as detailed below.

Background

- 3.3 At its meeting on 3 March 2006, the Assembly Board received a report (in confidence) from the CEO on the above matter.

The Board noted the threatened cost application, and expressed the view that the Assembly needed to be robust in the face of challenge.

- 3.4 The S78 Inquiry closed on 31st July and, in his closing statement, Mr Peter Village QC counsel for Coventry Airport (WMIAL – West Midlands International Airport Ltd) confirmed that he would be applying for costs against a number of parties, including the Regional Assembly. The Inspector for the Inquiry agreed that any applications for costs should be made on or before 15th September with the deadline for responses by the parties so challenged to be submitted to him by 25th September 2006.
- 3.5 In line with the report to the Board referred to above, the Secretariat has retained Counsel (Ms Nadia Sharif of No 5 Chambers, Birmingham) in order to respond to and challenge the costs application.
- 3.6 On 18 September, Members of the Board were forwarded the details of the Costs Application that had been received by the Assembly by the given deadline. Subsequently, on 22nd September, a meeting of the Chair and Vice Chairs was held in order to consider the details of the cost application and the advice received from Counsel (i.e. responding to the application). At the meeting, Members authorised the immediate submission of the response to the Inspectorate in order to meet the deadline of 25 September.
- 3.7 A note of that meeting, along with a copy of the response submitted to the Inspectorate, is appended herewith and the Board is now asked to note and endorse the above action.

4. Regional Skills 'Conversation' 2.00pm 25 October

Purpose

- 4.1 To seek support to an Assembly discussion on 25 October after the Full Assembly meeting with members Regional Skills Partnership.

Recommendation

- 4.2 To confirm arrangements for an Assembly discussion or 'conversation' on the skills agenda.

Background

- 4.3 Whilst the Assembly does not have a specific role or remit in respect to our regional skills agenda it has always been recognized that improving the region's skills levels is one of our key strategic priorities. The best performing

organisations and European regions are using the skills and talents of their people to produce high quality, world-class products and services. We all agree that we need more people in the region developing their skills, to drive our economy and enable individuals and employers to reach their full potential.

- 4.4 To this end the Assembly Secretariat have been working with the Regional Skills Partnership (RSP) Secretariat to develop an opportunity to enable the RSP to share their work with the Assembly and for Assembly members to offer input into the development of a better understanding of the skill needs of the region.
- 4.5 Assembly members, with their diverse backgrounds and different interests, together with their involvement in the various Assembly Partnerships will be able to offer insight and views on the region's skills agenda from their own perspective. For example, the implications for the skills agenda of the implementation of the Regional Spatial Strategy – construction skills, environmental and waste technologies etc.
- 4.6 The 'conversation' will take place on Wednesday 25 October 2006 at 2 p.m. following the (full) Regional Assembly meeting.

5. 2012 Olympic Games and Paralympic Games – Update

Purpose

- 5.1 To provide an update on matters relating to the preparation of the region's response to the 2012 Olympic and Paralympic Games.

Recommendation

- 5.2 To note the updates.

Updates

- 5.3 **2012 Regional Coordinator** - We can report that all funding is now in place, subject to paperwork, to enable us to proceed with a three year appointment for a Project and Communications Executive to coordinate the region's response to the opportunities presented by the 2012 Games. The position has been advertised with a closing date of 11th October. Interviews are scheduled for early November.
- 5.4 **Regional Collaboration** - The first meeting of a 2012 Executive Advisory Group takes place on Monday 25th September with the intention of providing more focused support to the Leadership Group and developing a robust

action plan and communication strategy around which the whole region can engage. The group is chaired by Trudi Elliott, Regional Director at GOWM and includes a representative from each of the sub regional partnerships and the regional agencies leading on the four key work streams - Sport, Business Opportunities, Culture and Tourism

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FORWARD PLANNING EXECUTIVE

Purpose

1. To facilitate and co-ordinate the development of regional advice to Government in respect to funding and investment matters at the behest of and subsequent endorsement by the West Midlands Regional Assembly working in partnership with Advantage WM.
2. To secure an integrated and sequential approach to regional funding for housing, transport, economic development and skills.

Tasks

1. Prepare a response to Government on the Comprehensive Spending Review 2007 for 30 September 2006.
2. On an on-going basis ensure appropriate monitoring and review processes are in place to secure a management framework for the housing, transport and economic development funding streams set out in Regional Funding Advice January 2006.
3. Provide advice on action required by regional organisations to secure a fully integrated and sequential approach to forward planning and securing regional funding for housing, transport and economic development.
4. Identify and develop opportunities to draw in other significant regional funding streams to secure a more integrated approach to planning regional investment, for example skills via Regional LSC and land reclamation/restoration via English Partnerships.
5. Review the terms of reference and membership on a regular basis to ensure the Forward Planning Executive is fit for purpose.

Modus Operandi

1. To secure advice and regional ownership of that advice, the Forward Planning Executive will work through the Assembly's Transport Partnership and Housing Partnership and AWM's Board and their officer support arrangements.
2. The Forward Planning Executive will seek to develop a consensus should the advice from the above groupings or others be in conflict and/or inconsistent. The final arbiter will be West Midlands Regional Assembly.
3. The Forward Planning Executive will present its recommendations to the West Midlands Regional Assembly for endorsement prior to it being submitted to Government or its agencies.

Members

The Forward Planning Executive shall be chaired by the chairman of the West Midlands Regional Assembly or his/her nominee.

Membership will be kept under review, but in the first instance will include:-

- West Midlands Regional Assembly – Chairman and vice chairs for Local government, business and other stakeholders group or their nominees.
- Transport Partnership - Chairman
- Housing Partnership - Chairman
- Advantage WM – Chairman and vice chair
- Regional Learning & Skills – Regional Director
- English Partnerships – Regional Director

(The Membership will eventually seek to cover the Governments five drivers of productivity - enterprise, skills, innovation, competition and investment, thus additional members will be sought).

The above will be supported by Government Office – Regional Director, together with senior officers from West Midlands Regional Assembly and Advantage WM.

RP July 2006 draft version2

Coventry Airport Inquiry

WMRA's response to Application for Costs

Note of Meeting – 22nd September 2006

Present :

Cllr David Smith (Chair – WMRA Board)
Sarindar Singh Sahota (Vice Chair Business Sector – WMRA Board)
Cllr Bob Badham (Vice Chair - Regional Planning Partnership)
David Thew (Head of Planning - WMRA)

- David Thew explained the background to the meeting:
 - a. an application for costs had been made against the Regional Assembly by West Midlands International Airport Ltd. Copies of the application had already been forwarded to all Board Members for information;
 - b. the Assembly's Legal Counsel had prepared a response to the application; authority was now being sought from Members to submit this response to the Inspectorate by the given deadline of 25th September, 2006.
- David Thew circulated the response for Members consideration. Key elements of the response were highlighted and discussed. He advised that the document should be supported and submitted to the Inspectorate.
- Accordingly, Members agreed that :
 - a. authority be given for the response to be submitted to the Inspectorate forthwith in order to meet the agreed deadline;
 - b. the next meeting of the Board be asked to note and endorse this action.

DST
25.9.06

Submitted response attached herewith

**TOWN & COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004
TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

APPEAL BY WEST MIDLANDS INTERNATIONAL AIRPORT LIMITED

CONSTRUCTION OF PASSENGER TERMINAL (10,250m²), ASSOCIATED CAR PARKING SPACES (3,825), AN EASTERN EXPANSION OF THE EXISTING APRON FOR THE PARKING OF AIRCRAFT (15,875 m²) AND THE CONSTRUCTION OF NEW AND IMPROVED ACCESS ARRANGEMENTS TO THE AIRPORT SOUTH AREA FROM SISKIN PARKWAY WEST, COVENTRY AIRPORT

RESPONSE OF WEST MIDLANDS REGIONAL ASSEMBLY TO THE APPELLANT'S APPLICATION FOR COSTS

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INTRODUCTION

1. The West Midlands Regional Assembly (WMRA) strongly opposes the costs application made by the Appellant, WMIAL, and rejects the scope and each basis relied on as being entirely misconceived and totally without foundation.

2. As accepted by the Appellant (Paragraph 3 Application for Costs), an award of costs against third parties will only be made in exceptional circumstances. No such exceptional circumstances are disclosed by any of the matters relied on by the Appellant either individually or taken together.

3. Further, the matters relied on by the Appellant and set out at paragraph 4 of the application are rejected by WMRA and do not amount to unreasonable behaviour on its part resulting from its appearance at the Inquiry or from its conduct of its case. Nor do any of the matters relied on demonstrate that the WMRA's conduct or involvement necessitated delay to or an adjournment of the Inquiry, thereby causing the Appellant to incur additional expense. Accordingly, the Appellant did not incur any costs unnecessarily as a result of WMRA's appearance or conduct at the Inquiry.

4. In addition, if it should be considered relevant, none of the actions of the WMRA during the Inquiry have been demonstrated to have prevented, inhibited or delayed development which could reasonably be permitted since the determination of the appeal is now a matter for the Secretary of State and other parties objected to the current proposal in any event.

5. With regard to paragraph 4 of the application, the WMRA rejects the Appellant's assertions. The appearance of the WMRA at the Inquiry was entirely reasonable and justified in the light of the matters relating to the RSS which the Secretary of State had raised as issues of significance, relevant to the determination of the appeal. The WMRA's appearance at the Inquiry did

not cause wasted expenditure by virtue of the Appellant dealing with the points raised. The time taken to deal with the WMRA case and expenditure incurred was as a result of the approach adopted in cross-examination and submission on behalf of the Appellant, against a third party who made it plain from its opening statement onwards that it was not partisan, not an objector but only present to help the Secretary of State with matters relating to the RSS.

6. The WMRA rejects the assertion of unreasonable conduct in paragraph 12.3 of the application. This appeal was not necessitated by the stance or conduct of the WMRA but for other reasons. Nothing in WMRA's conduct of its case extended inquiry time or caused wasted time or unnecessary or additional expense.
7. The WMRA did take into account relevant national policy guidance, reported judicial authority, appeal decisions, guidance in White Papers, Circulars and PPGs as necessary.
8. As to paragraphs 14 to 17 inclusive, the matters relied on by the Appellant are totally misconceived. The WMRA did not mount a lengthy or deliberate attempt to prevent planning permission being granted, nor did it pursue substantive "objections" against the proposal. To suggest, even by analogy, that the WMRA was to all intents and purposes the principal party of objection where the local planning authority is not objecting to the scheme, is patently wrong and discloses yet again a total failure on the part of the Appellant to understand the WMRA's position at the Inquiry, which was explained on

numerous occasions. The WMRA was not ever the principal or sole party of objection, nor did it ever purport to be. It made that clear in its Opening Statement, and again expressly during the course of the Inquiry on clear instructions and in Closing. It did not advance a positive case as an objector, a point which the Appellant plainly fails to understand.

9. The WMRA acted openly and transparently at all times. It has not been demonstrated to have concealed any relevant document from the Appellant before or during the Inquiry. It complied openly with all FOI requests received from the Appellant.

10. Matters set out at paragraphs 22.1 to 22.3 inclusive are rejected. The WMRA has not been demonstrated to have been in breach of any procedural rule relating to Inquiries and the position of third parties. It did not cause the Inquiry to be adjourned or unnecessarily prolonged by the unreasonably late submissions of its statement of case or by an amendment or addition to a statement of case or proof; nor did the WMRA cause any witness to attend unnecessarily; nor did it refuse to cooperate in settling facts or the supply of relevant information requested.

11. Paragraph 23 of the application repeats matters relevant to third parties acting as sole or principal objector to a development at an Inquiry. The WMRA emphasises that this is an irrelevant and erroneous consideration relied on by the Appellant. It is clear from the fact that this matter is repeated within the application, that the Appellant fails to understand that the WMRA has never

suggested or purported to be an objector, principal or otherwise, to the development. Nor did it advance a positive case as an objector, seeking to ensure permission would be withheld. The WMRA raised legitimate concerns relating to the RSS to assist the Secretary of State in the determination of the appeal. The WMRA was perfectly entitled to appear at the Inquiry and raise these concerns before the Inspector and engage in the debate on relevant issues. The principal objectors properly so called were in fact other parties to the appeal including BIAL and WMJC.

12. The Appellant's suggestion that the WMRA is "by parity" (paragraph 20 – Application) in the same position as a local planning authority is wholly misconceived and patently wrong. The duties of the Regional Assembly as a statutory authority is not akin to a planning authority as suggested in paragraph 18 of the application. There are fundamental differences in the role of the WMRA and local planning authority which the Appellants are deliberately ignoring to avail themselves of an artificial basis on which to seek an award of costs. The WMRA gives inter alia, conformity advice in relation to the RSS on regionally significant applications. It cannot and does not have powers to grant planning permission, unlike a planning authority. The WMRA's responsibility is to give advice to the LPA in relation to the RSS, which it did. The LPA in this case in its consideration of the application took into account the WMRA's advice, which did not influence its position or deter it from supporting the appeal proposal.

13. Accordingly, the conditions normally required to be met for an award of costs to be made as set out in paragraph 6 of Annex 1 of Circular 8/93, have not been demonstrated, and the application should be dismissed.

GENERAL RESPONSE IN RESPECT OF APPLICATION FOR COSTS IN DEALING WITH WMRA'S CASE

14. Taking into account the entirety of the application for costs, it becomes increasingly evident, that the application is borne of little more than disappointment at failure to persuade or force an independent public body into supporting a partisan case. The latter endeavour was based simply on establishing what had been acknowledged from the outset by WMRA: that no planning objection in principle to the Coventry proposal would result from any affirmative case to be presented at the Inquiry by a witness for the WMRA.
15. Mr Village QC was able to get from Mr Davenport all those assertions on which he relies, namely the four issues identified by WMRA were met in his view and again in his view, permission should be granted (paragraphs 27.8 to 27.12 application). And he is therefore able to say he gained support for his case from the only witness provided by the WMRA. That therefore helped his case and the Appellants have suffered no loss, financial or otherwise from that. It is the consequence of the usual exercise of cross-examination and a party is not entitled to get costs for eliciting additional points on which it then relies.
16. Mr Village QC also used material in cross-examination in an attempt to discredit the WMRA. This was material properly obtained in preparation

before the Inquiry which would have been part of any conscientious preparation because a party is entitled to research the background and obtain material unused by any party in its evidence. On that he built an attack on (a) wrongful influence by Mr Carter; (b) conspiracy to conceal what Mr Cowan had said; (c) ignorance of protocol and (d) Counsel speaking without instruction.

17. As to these points the WMRA has to consider advice from the RCA Mr Cowan. It did so, without being under any obligation from its protocol or statute to adopt that advice. Advice means what it says.
18. Similarly, the WMRA may consider views from numerous sources, again having discretion to accept or reject it, including advice from Mr Carter.
19. The WMRA emphatically rejects any assertion that it formed any view as a result of intrigue, lobbying or influence from Mr Carter or anyone else and profoundly resents any suggestion to the contrary.
20. Nor has the WMRA itself intrigued or conspired against Mr Cowan or anyone else or deliberately concealed information on any matter before or during the Inquiry. The suggestion that the Appellant was forced to “unearth” documents is plainly wrong. The WMRA provided all documents requested.
21. Whether or not there was strict adherence to protocol (again not statutory or mandatory) is not an issue to be resolved by the Inquiry. At paragraph 33 the

Applicant seeks costs on the basis of alleged breaches of protocol. This is misconceived. No costs implications can possibly be said to arise from the alleged infringement of the protocol. As the pre-amble to the protocol states, it “*defines the working relationship between all the authorities of the West Midlands region...in securing the general conformity of development plans...*”

The WMRA seeks to work within the protocol arrangements and believes it did in this case. The stance it adopted at the Inquiry did not contravene the protocol.

22. What matters is that the position of the WMRA was made transparently clear to the Appellant before the Inquiry commenced and to the Inquiry by Counsel upon express instruction throughout; so that the Inspector understood accurately what the position of the WMRA was and with respect at various points in the Inquiry the Inspector made it quite clear that he understood the WMRA’s stance even if Mr Village QC did not and still does not.

23. Mr Village QC demanded Counsel for WMRA to take instructions during the course of the Inquiry, which was done at the first opportunity, and reported to the Inquiry. It was made clear expressly that notwithstanding Mr Davenport’s views in cross-examination, the WMRA’s stance in respect of its concerns remained. Its position was repeated on the first page of the WMRA Closing Submissions, with particular emphasis on the fact that the WMRA was not an objector.

24. What Mr Village QC is seeking to say is that the WMRA should have supported his case. But he bases this on the premise that the WMRA opposed the proposal; and suggests they adopted the case of objectors when the WMRA did no such thing (see page 2 WMRA Closing Submission – second paragraph – WMRA not adopting other party’s case).
25. Mr Village QC is apparently suggesting that the WMRA should have told the Inquiry that permission should be granted and all their concerns were satisfied. It is not the function of the WMRA to do that. Despite the erroneous suggestions of the costs application seeking to put the WMRA in the position of a local planning authority (paragraphs 13 to 20 Application), it is not the planning authority with the power of the decision maker on specific applications.
26. The WMRA is a consultee with specific responsibility in respect of the RSS. If a proposal is in its view clearly in line with and supportive of the RSS now and more importantly in the future, it would no doubt be expected to say so. But there is no requirement for the WMRA to be partisan for or against specific proposals. If all serious concerns about the material considerations in this case are clearly resolved and settled, everyone has been wasting time at the Inquiry. There are issues, seriously debated, between those parties that have a clear interest to protect or to advance. They remain and will only be resolved by the final decision in this appeal. The WMRA would fail in its public duty if it purported to decide those issues and told the Secretary of State what to do.

27. If the calling of Mr Davenport did in fact help the Appellant, that is their gain, not their loss. If they demonstrated any failure of the WMRA to consider any material factor, and we say they did no such thing, then that might be a matter again, which would help rather than hinder the Appellant.

28. So far as its one witness was concerned, the WMRA openly acknowledged that he advanced no hostile case and gave Mr Village QC all the answers he wanted (see WMRA Closing Submissions). His proof was short. He was tendered on transportation issues and could easily have been cross-examined with vastly greater brevity on those matters which Mr Village QC thought could help him, issues which were not dealt with in detail in the Appellant's evidence and accordingly not cross-examined to by WMRA.

29. The division of evidence on planning and transport to separate days was a general inquiry decision, and no time was lost or wasted by virtue of that. That approach was adopted by agreement by all parties at the outset of the Inquiry and not at the insistence of WMRA's Counsel. In any event it was a process that the Inspector, with respect, accepted should be adopted as far as Mr Davenport's evidence was concerned. Counsel for WMRA did not prevent continuation of the cross-examination of Mr Davenport on the first day as alleged in paragraph 36 of the application. It was an agreed and accepted process relating to all witnesses.

30. With regard to paragraph 37 of the application, Mr Village QC chose to cross-examine Mr Davenport needlessly on the second occasion despite the Inspector's legitimate query as to whether such a course at length was in fact necessary. Mr Village QC was given a clear opportunity to curtail his questioning but failed to take it. The time spent on the second occasion in this exercise was accordingly as a result of Mr Village QC's decision and conduct and not the WMRA's responsibility.
31. And the criticisms of the WMRA's procedures gets the Inquiry no further forward beyond the clear point acknowledged from the beginning that the WMRA was not at the Inquiry to be added in to the balance as an objector.
32. The costs application comes down to a complete and wilful misinterpretation by Mr Village QC of the reason why the WMRA was present at the Inquiry at all. Repeatedly in the application he refers to the WMRA's "objection" (paragraph 3.2, 3.4, 17 – application) and seeks to draw parity between the position of a local planning authority and the WMRA, which is wrong. The WMRA has never advanced any objection, nor did it have any positive case to assert. It was never partisan. It sought to carry out its function of being responsible for the RSS and expressing any concerns which it – not Mr Carter, nor Mr Davenport – continued to share with the Secretaries of State and which will only be resolved by their decision.
33. Throughout the Inquiry Mr Village QC's conduct was assertive and unnecessarily abrasive. He sought to treat the WMRA as an opponent when it

was not. He pretended it was raising objections when it was not. He attempted to question Counsel's instructions when they were clear and it is hoped clearly expressed before the Inquiry. He could have made such points as helped his case very shortly in cross-examination or submissions. He did not. He constructed a row of Aunt Sallies at great length and then spent as long knocking them down. Now he seeks to translate his own hyperbole into exceptional circumstances and unreasonableness on the part of WMRA to obtain costs, when he alone was responsible for taking up inquiry time on matters, which ultimately you may decide, were of no help to you whatsoever.

34. The WMRA's Closing Submissions are relied on to justify an award of costs. Mr Village QC in the course of his conduct at the Inquiry has been liberal in his censure of opponents, and even more aspersive of one who was not an opponent at all, but the representative of a third party which had not taken sides. Unprofessional conduct, unreasonableness, impropriety, even heresy have been alleged. The Inquiry is unlikely to be assisted by this crude and objectionable approach which simply wasted Inquiry time.

SPECIFIC RESPONSE IN RELATION TO MATTERS RAISED IN THE APPLICATION FOR COSTS

35. With regard to paragraphs 3.1 to 3.5 of the application the WMRA responds as follows:

- (i) The WMRA did not fail to disclose to the Appellant at the Inquiry, the true position as to the advice given by the RCA. This information was

not concealed. Mr Cowan's views were in the public domain and his advice was provided to the Appellants prior to the commencement of the Inquiry. All of the issues that had been raised by the WMRA as points of concern had not in fact been satisfactorily resolved by the commencement of Inquiry as asserted, in particular airspace capacity issues.

- (ii) The WMRA did not adopt the stance of quasi-objector at the Inquiry. The Appellant has completely failed to understand the stance adopted which was made clear and understood by the Inspector and other parties. The stance adopted by WMRA was in fact authorised by the Regional Assembly as the material now before the Inquiry relating to the 21st October 2005 meeting of Vice Chairs shows, endorsing the WMRA Rule 6 Statement.
- (iii) WMRA was not influenced improperly or otherwise by the views of Mr Carter in adopting its stance. It took his advice into account in addition to advice offered by the RCA.
- (iv) The WMRA proof did not omit relevant material. The proof was presented to identify the remaining concerns of the WMRA which it expressed at the Inquiry. The proof was not submitted to put forward an objection to the proposal.

- (v) The case in WMRA's Closing Submission was not outside the remit of the Rule 6 statement which had been authorised by the 21st October 2005 meeting (see above).
36. With regard to paragraphs 27.5 and 27.6 of the application the WMRA responds as follows:
- (1) The main points raised by Pam Brown were set out in the letter of the 15th December 2004 attached to Mr Davenport's proof of evidence and submitted to the Inquiry. These points were clear. There was no concealment of any relevant material or issue.
37. With regard to paragraph 27.13 of the application, the WMRA responds as follows:
- (1) WMRA did not call Mr Cowan. It was not obliged to. Nor did any other party seek to call him. He did not give evidence before the Inquiry, so his position or views have not been tested, a matter relevant to the weight to be attached to his views.
38. With regard to paragraph 27.14 of the application the WMRA disagrees that its Rule 6 statement contravened the protocol paragraph 4.8. The content of the Rule 6 was considered and endorsed at the 21st October 2005 meeting of Vice Chairs.

39. As to paragraph 27.15 of the application, airspace capacity was raised as an issue by the Secretary of State and it is entirely appropriate for the WMRA to consider and comment upon the issue in so far as it is a relevant matter in the context of the RSS.

40. With regard to paragraphs 42 to 45 of the application the WMRA responds as follows:

(1) Paragraph 42 represents a misconceived proposition. WMRA were not *“presenting a case against the development”*. The IPF decision related to a different proposal, determined on its merits. The appeal proposal considered at the Inquiry has to be considered on its merits. The WMRA did not oppose the appeal proposal “in principle” that was made clear at the Inquiry. The IPF decision has not resolved the issues identified by the Secretary of State as relevant material considerations in this appeal. Where those considerations bear upon the RSS, the WMRA is entitled to express its views and raise concerns.

41. In relation to paragraphs 46 to 47 of the application the WMRA responds as follows:

(1) The Appellant is not entitled to any costs arising from WMRA’s Counsel’s Closing Submissions. The suggestion that the Appellant expended further costs in dealing with these submissions in full founds a proper basis for costs is simplistic. WMRA’s Closing Submissions

were entirely proper and reasonable. The fact that the Closing Submissions did not support the Appellant's case or convenience is immaterial. The Closing Submissions properly advanced the WMRA's stance and considered the totality of the evidence before the Inquiry and the Secretaries of State, on matters of relevance and importance which have a bearing on the RSS.

42. Finally, in addition to being misconceived generally and without foundation, the application as submitted contains references to matters which illustrate it is advanced without proper care or consideration. At paragraph 1 of the application it is stated: *"this is an application by the Appellant, WMIAL against the West Midlands Joint Committee (WMJC) for a partial award of costs in respect of WMIAL's appeal under S.78..."* This point is repeated at paragraph 25 of the application where it is stated: *"...for the reasons give below, the exceptional circumstances justifying an award of costs against WMJC in favour of WMIAL are overwhelming in this case"*.

The application for costs should be dismissed on this basis in any event.

CONCLUSION

43. For the clear reasons set out herein and relied on by the WMRA, the scope and basis of the application for costs submitted by the Appellant for a partial or full award should be rejected in their entirety. The WMRA invites the Inspector to dismiss this misconceived and utterly unmeritorious application

on the basis that no exceptional circumstances have been demonstrated and that the WMRA did not act unreasonably.

Nadia Sharif

25th September 2006