

REVIEW OF TRAMS RISK REGISTER DATED 25 JANUARY 2005

This is a review of the most up to date Tram Schemes Risk Register, as updated by Mark Bourke on 25 January 2005. The comments though are in relation to the specific risks set out in the Register. Unfortunately the unique reference number pertaining to each risk is not listed in order within the Register therefore the page on which the risk appears as well as the line on which it appears is specified.

PAGE 1

Ref. 4, Line 4 *Cost increases or programme delays due to planning permission requirement in complying with the design requirements of CEC Planning.*

DLA should be noted as a Secondary Support for Mitigation. If changes to design requirements are required then DLA's assistance may be required particularly if the design has to be squared off with other parties from whom approvals may be required.

Ref. 12, Line 10 *Bill authorisation prevented due to loss of political will due to negative PR e.g. funding gap, influence of Holyrood, performance from other UK Tram Sector projects and Bill Objections.*

The mitigation strategy for this particular risk focuses on prioritising and developing further avenues of funding. The strategy does not cover factors which could result in negative PR.

Ref. 166, Line 13 *Land acquisition is postponed to post-Royal Ascent lead responsibility for mitigation of this risk falls to **tie** (FD).*

There is no secondary support for mitigation and I wonder if legal assistance will be required.

Ref. 174, Line 14 *Poor management of Objections results in delay to Parliamentary process and damage to **tie**'s credibility.*

The mitigation strategy for this risk includes **tie** acting as agent for CEC in negotiations to ensure that third party agreements to cover off any objections are not subsequently challenged by CEC legal or

property departments. Again, legal assistance is not identified as secondary support for mitigation and perhaps it should be.

Ref. 207, Line 16

If they service integration progress is sporadic/slow then this will affect project credibility.

DLA is identified as secondary support for mitigation. The mitigation strategy is simply "TEL to play energetic and effective role". DLA's role is not apparent.

PAGE 2

Ref. 21, Line 7

"Line 2 - Construction cost over-run"

The mitigation strategy states that clarity and precision must be ensured in contract and design manual. DLA is not specified as secondary support for mitigation and perhaps it should be for the purpose of contract drafting to minimise this risk.

Ref. 25, Line 11

There are programme delays due to extended utility diversion works

The mitigation strategy refers to the development of side agreements although DLA is not included as Secondary Support for Mitigation. I am not clear on exactly what the side agreements are to cover and in any event the "action by" date of December 04 would not have been achievable.

Ref. 26, Line 12

Line 1 - Initial PU information is found to be unreliable, resulting in increased costs.

The mitigation strategy for this risk involves the potential to transfer the risk to Infra Co or undertake "advance" separate works to de-risk the main contract. Discussions with DLA may be required in achieving this especially if any contract variations are materially different from the original contract.

Ref. 27, Line 13

Adverse affect on design at LRT/Heavy Rail Interchange on in running adjacent to Network Rail.

The mitigation strategy for this particular risk involves discussions, meetings and agreements with Network Rail. DLA is not referred to as a secondary support for mitigation but perhaps this would be a

good idea as DLA's assistance may be required to negotiate the relevant interface agreements with Network Rail.

Ref. 79, Line 22

Bill authorisation delayed due to influence of objections

Again reference is made here to ensuring that side agreements can be entered into as soon as possible with third parties raising objections. DLA may be required as secondary support for mitigation for the purposes of drafting these agreements.

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Ref. 39, Line 3

Line 2 - Ground Conditions, contamination & other geo technical risks result in cost over-runs

Again, DLA should be inserted as secondary support for mitigation as the mitigation strategy includes novation and collateral warranties in the site investigation contractor agreement.

Ref. 40, Line 4

Line 1 - Ground Conditions, contamination & other geo technical risk result in cost over-runs

As above,

Ref. 41, Line 5

Bus Operators raise objections to scheme delaying approval progress

DLA is specified as secondary support for mitigation here. With regard to the mitigation strategy, however, I wonder if bus drivers might seek a subsidy from the Scottish Executive for any drop in revenue which results following a drop in a bus patronage once the tram is operational.

Ref. 208, Line 14

If the Infra Co - Operator interface proves difficult to define then there may be unworkable contractual interfaces

DLA is referred to as a secondary support for mitigation here. The mitigation strategy refers to "principles outlined in the [?????] A side letter". I am curious about the content of the side letter and, in particular, its relevance to the risks specified above.

Ref. 49, Line 25

Construction or operational impacts cause distress to surrounding buildings resulting in claims

The mitigation strategy involves the review of the need for detailed dilapidations surveys and undertaking adequate design consideration for input into the Infra Co. Perhaps consideration should be given to the risks being covered off in an Infra Co/design contract. If that is the case then DLA should be referred to as a secondary support for mitigation.

Ref. 191, Line 99

If the alignment at Haymarket is poorly developed then the service efficiency will be compromised

The mitigation strategy is to contribute to Haymarket development plan through working groups that have been set up to bring about interchange development. The impact or cost of this strategy has not been factored in the report. Are there specific Haymarket development plans running concurrently with the trams project.

PAGE 4

Ref. 69, Line 20

Line 1 - Delays obtaining information/costs of Network Rail amendments to scheme

DLA is not referred to as a secondary support for mitigation but perhaps it ought to be with regard to assistance with any Network Rail interface agreements. The same applies to risk 74, line 27 in relation to Line 2.

Ref. 199, Line 25

If the contractual matrix to support tie's preferred procurement strategy proves difficult to delivery then delays and additional costs could be incurred

Having kept up with discussions on the financial services contract, it seems that there is also a risk that the project manager does not follow the procurement strategy and chose not to use standard drafting.

Ref. 168, Line 36 *Operator does not want Agreements re-structured to deliver services to Infra Co in addition to tie*

The mitigation strategy includes drafting proposed amendments and gain operator comments. If contractual negotiations/amendments are going to be required then perhaps DLA should be included as a secondary support for mitigation.

Ref. 172, Line 37 *Work for detailed designers cannot be assigned to Infra Co*
See above comments on ref. 168.

PAGE 5

Ref. 95, Line 18 *Service integration proposals delayed due to Competition Law*

The mitigation strategy is to enter into dialogue with the OFT. Although DLA is not named as secondary support for mitigation, perhaps this would be useful for any assistance that DLA may be able to provide in this regard.

Ref. 106, Line 32 *Inadequacy of the Compensation Code leads to increased compensation due to objectors*

The mitigation strategy includes considering SP's authority to legislate on the code and review the previous private acts where this has been considered. Again, although not listed as a secondary support for mitigation, perhaps DLA could provide assistance here.

Ref. 165, Line 36 *If the System Integrator Company refuses to our preferred procurement strategy to not enter in inclusive agreements with individual Infra Co then we may obtain a compromised service in a restricted market*

The mitigation strategy for this particular risk is to test the ability to accept non-exclusivity agreements within the market and to include this as a requirement of the contract from the outset in the [OJEU] notice and beyond. Again, although DLA is not listed as the secondary support for mitigation, DLA's assistance will be required in relation to the drafting of the relevant [OJUE] Notice and contract.

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Ref. 111, Line 3

*Line 2 - Design is unacceptable to **tie** & stakeholders resulting in delay to programme*

The mitigation strategy refers to early consultation with key stakeholders. Perhaps reference should also be made to holding regular meetings with the design team too.

Ref. 114, Line 6

*Line 1 - Design is unacceptable to **tie** & stakeholders resulting in delay to programme*

See points made above in relation to ref. 111.

Ref. 116, Line 8

Proposed procurement routes are not acceptable to CEC or SE leading to delay in programme

The mitigation strategy refers to regular meetings with PUK regarding procurement options and identifying preferred procurement routes. DLA is not referred to as a secondary support for mitigation but perhaps it ought to be in the provision of assistance on procurement.

Ref. 117, Line 9

Breach of contract by Promoter or Operator/Infra Co

The mitigation strategy includes developing clause for compensation in the event of breach of contract, [????] warning procedures, establishing conditions on which breach of contract will be evoked. That being the case, it may be useful having DLA as a secondary support for mitigation from point of view of contract drafting.

Ref. 126, Line 18

Effect of general or specific legislation changes on the contract

Ref. 142, Line 35

EC legislation delays or prevents progress

Risks with reference numbers 126 and 142 above, are very similar to risk with reference number 202 noted above on page 4 and I wonder if they need to be entered again. If the effect of the risks appearing in the table is that the Optimism Bias is increased unnecessarily, then perhaps the risks can be excluded.

Ref. 143, Line 36

Line 1 - complications with existing structures - additional remedial works, unforeseen structures

This is perhaps a risk that can be partly covered off in the Infra Co contract in which case DLA should be entered as a secondary support for mitigation.

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Ref. 147, Line 4

Bill authorisation delayed due to resolution of issues with roads authority

Although DLA is not referred to as a secondary support for mitigation, it does appear within the body of the mitigation strategy. In particular, the strategy makes reference to "review the translation into a legal agreement with DLA for Infra Co". I am not entirely clear on who DLA will actually be acting for in drafting this agreement. If the reference is to an obligation on Infra Co to maintain the road during construction, then this in itself does not reduce the risk on the long term maintenance of the road.

Ref. 149, Line 6

Industrial Action by various unions, causing project costs and programme delays

The mitigation strategy refers to the review of the scope of Force Majeure. This is perhaps not just a review of the scope of FM, it could be a risk which is legitimately siphoned off to Infra Co. DLA should be inserted as a secondary support for mitigation with a view to discussing this issue.

Ref. 156, Line 13

Unusually adverse weather conditions which delay progress during construction

The mitigation strategy here is to review the potential risk transfer to Infra Co. Perhaps in this context it would be more appropriate to review the Force Majeure clause. Again DLA should be referred to as a secondary support for mitigation with a view to discussing and exploring this issue further.

End of Review