

From: John Ramsay
Rail Delivery,
Transport Scotland
3 August 2009

Minister for Transport, Infrastructure and Climate Change

EDINBURGH TRAM:- MEETING WITH RICHARD JEFFREY, CHIEF EXECUTIVE OF TIE. LTD 5 August 2009

Purpose

1. To provide a briefing for the Minister ahead of his meeting with Richard Jeffrey,

Priority

Routine: You have agreed to meet Richard Jeffrey at 14:00 PM in Room 8W03 Buchanan House, Glasgow on Wednesday 5 August 2009

Timing

2. Immediate.

Background:

3. The Minister will recall from previous briefings that Tie has been engaged in sustained intensive negotiations with BSC consortium (most notably the "civils" contractor Bilfinger Berger) to mitigate delays and cost increases arising since the main infrastructure contracts were signed in May 2008.

Issue:

4. The Minister and The Cabinet Secretary met with Richard Jeffrey (the Chief Executive of Tie.Ltd) earlier this year (8 May). Ministers were advised by Richard Jeffrey that due to the failure to settle the contractual disagreements with BSC, the project could no longer be delivered for £512m and nor would it be opened in summer 2011 as had been previously announced. It would require the summer to conclude the intensive negotiations then underway before full commercial settlement could be agreed. Only then, could he provide Ministers with greater certainty on both cost and time. He also advised that it was the intention to return to full Council on 20 August for their approval to any agreement involving increased project cost and delayed opening.

5. Since then, although working relationships with the BSC consortium, particularly Bilfinger Berger, have continuing to improve and work at some key sites, notably Princes Street is progressing well, intensive negotiations and mediation towards a comprehensive agreement on the key issues have proved unsuccessful: BSC continue to resist the key arguments presented so far by tie and have sustained their demand for an additional sum – up to £100m, to conclude all issues.

Way Forward:

6. Although the recent intensive contract mediation sessions have not produced any agreement from BSC, it is clear that tie has learnt much from the process and

the Tram Project Board on 29 July, approved a revised commercial approach to management of the infrastructure contract with BSC. The commercial approach entails full use of the Dispute Resolution Procedure, and selective instruction of individual work packages which will require the consortium to deliver work or risk breach of contract. This is to be reported to full Council at its meeting on 20 August to secure their necessary endorsement. Papers for this will be issued on 13 August, and it is to be anticipated that press interest will follow. Transport Scotland understands that some briefing of selected individuals has already taken place and it is noteworthy that recent press articles in the Scotsman and Sunday Herald have contained unendorsed references to revised cost forecasts and slippage of project completion to July 2012.

7. A revised risk profile has been developed indicating that the previous affordability limit of £545m is no longer safe and now requires an increased range of project cost scenarios - between £561m, through £582m to an upper figure of £601m. These numbers are commercially confidential and will not necessarily be reported to full Council as these are all above the total affordability over which CEC must finance all cost increases. Accordingly, the Council discussions will have to consider the possibility of raising additional finance on a contingency basis. Currently, Transport Scotland is advised that this will feature both prudential borrowing mechanisms (essentially relying on TEL incomes) and leasing agreements (the rolling stock). Plans to achieve the integration of tram and Lothian Bus operations are therefore being progressed together with business plan development for the combined operation which will be an important part of the financial forecasts.

8. Transport Scotland is closely monitoring developments and being kept fully apprised and will provide further advice to Ministers once CEC has agreed the intended course of action.

Recommendations:

10. Ministers are invited to note that;

- Over the course of the last few months, tie's strategy based on intensive negotiations and mediation has not proved successful and that BSC are sustaining their demand for an additional sum – up to £100m;
- The Tram Project Board on 29 July agreed a revised commercial approach entailing full use of Dispute Resolution Procedures and selective instruction of individual work packages requiring BSC to deliver work or risk breach of contract.
- That a revised risk profile has been developed indicating an increased range of project cost scenarios - between £561m, through £582m to an upper figure of £601m.
- That this approach will be recommended to full meeting of Edinburgh City Council on 20 August for their endorsement.
- Transport Scotland is continuing to closely monitor progress and developments and will advise Ministers, as soon as possible of key developments. .

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Ext: [REDACTED]

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister, for Transport, Infrastructure and Climate Change			X		
Cabinet Secretary for Finance and Sustainable Growth					X

Comment [A1]: Annex D of the Guidance on Preparation of Minutes to Ministers provides advice on the construction of copy lists – including a flow chart which provides an easy-to-use mechanism for applying the guidance. For Ministers, mark the relevant box (or boxes) with an ‘X’ to indicate why the Minister is being copied in. Where a paper contains details of Financial Implications, the Minister for Finance and Public Services must be included on the copy list – and the Portfolio Interest box should be marked with an ‘X’. Delete any unused rows or insert additional rows if required. For officials, include details of their Department and Division. Only use group names in copy lists if there is a relevant e-mail distribution list.

DG Economy Cabinet Secretariat PS/Transport Scotland Bill Reeve Frances Duffy Richard Scott Jerry Morrissey Damian Briody Anne Martin Clare Keggie Communications Finance & Sustainable Growth Press Transport Scotland Stephen Noon Kevin Pringle

Comment [A2]: Click in the field below and then click on Option(s) from the toolbar to select a pre-set copy list. Note that you may choose any combination of Options. However, since Options 2 and 3 are subsets of Option 1 you should NOT select Options 2 or 3 if you have already selected Option 1. **OPTION 1: Ministers:** Select this option if the minute relates to a matter which is, or may become, the subject of significant media interest. **OPTION 2: Ministers:** Select this option if the minute conveys advice on a significant or sensitive policy issue and you have not already selected Option 1. **OPTION 3:** Select this option if there are significant or sensitive presentational issues and you have not already selected Option 1. **OPTION 4:** Select this option if there are significant financial implications. Once you have selected the relevant options, you will need to complete any variable fields within the pre-set lists (eg ‘Relevant Press Office Desk’). If you select more than one option, please re-order the names appropriately and check for duplicates. Remember that ALL minutes to Ministers should ALSO be copied to other Ministers with an interest, PS/Relevant Departments, Relevant Group Heads, Relevant officials in other areas and relevant Special Advisers. More detailed guidance on the construction of copy lists is set out in Section 5 of the Guidance on Preparation of Minutes to Ministers.