

From: Ainslie McLaughlin
Director: MTRIPS
Transport Scotland
23 February 2012

Cabinet Secretary for Infrastructure and Investment
Minister for Housing and Transport

EDINBURGH TRAM – EDINBURGH GATEWAY ADVANCE WORKS

Purpose

1. To offer Ministers advice on the outcome of negotiations with Bilfinger Berger (BB) on the inclusion of the planned advance preparatory works for the proposed Edinburgh Gateway station at Gogar; and in order to protect Ministers' interests to recommend that we do not proceed with this variation to the tram contract.

Priority

2. **Urgent.** The contractor has advised us that this variation is programme critical and that therefore if we wish to proceed with the variation, they require an instruction by 29 February in order to avoid knock on consequences to the construction programme.

Background

3. Proposals for the new Edinburgh Gateway station at Gogar as a key component of EGIP emerged in September 2007 following the withdrawal of Scottish Government support for the Edinburgh Airport Rail Link (EARL). It was identified early on that the planned layout of the Gogar station would require some advance works to be incorporated into the tram contract. As this decision was made after the tram contract was awarded, the costs and risks of any variation to the original tram contract to accommodate the proposed new station at Gogar therefore fall to Scottish Ministers.

4. A provision of £15m has been allowed for in Transport Scotland's capital budget to meet the costs of the variation to the tram contract. This is over and above the £500m cap set by Ministers by way of contribution to the Tram project. To date approximately £1.2m has been spent on scoping and design work for the Gateway

5. In his statement to Parliament on 10 December 2008 Stewart Stevenson MSP, the then Minister, stated that the new Gateway station at Gogar was planned for completion "*in time for the opening of the Edinburgh Tram Network in 2011*". Contractual difficulties with the tram project have clearly meant that this has not been achieved, but it also stopped progress on the design and pricing of the proposed works which BB have only just completed in the last week.

Planned Gateway advance preparatory works

6. Following almost a year of negotiation since the mediation in March, BB have now submitted their offer for provision of advance works for the Gateway together with proposed terms and conditions. The cost is estimated at £9.6m. However, this is not a guaranteed maximum price and BB have attached a number of conditions and qualifications to their offer which leave significant risk for cost and programme overruns with the Scottish Ministers.

7. BB are not prepared to accept any risk for consequential delays to the tram programme and they would seek recovery of all additional costs incurred as a result of the actions of third parties such as Network Rail and Scottish Water. This is not an unexpected contractual position for them to take and as this is a variation we are not in a position to impose responsibility for these risks onto the contractor.

8. The sequencing of the construction of the advance works also requires that BB commence construction and then stop to hand the site over to allow Network Rail's contractor unrestricted access for a 12 week period to allow them to complete their activities around the new tram stop. Network Rail have yet to appoint a contractor and have also indicated that they consider the 12 week handover period is too short and that they will need at least an additional 4 weeks. Scottish Water are also required to divert a major sewer during this 12 week window.

9. We would normally seek to avoid having several contractors requiring exclusive possession of the site under separate contractual arrangements as this is simply a recipe for each to claim that their works have been frustrated by the other. Although this variation on the face of it provides the best opportunity of fulfilling Ministers' original desire to see the tram and station open at the same time, there is no guarantee that it could be delivered as no single party would be responsible contractually for that outcome.

10. These risks are not in Transport Scotland's direct control and the scope for delays and additional costs are, in our judgement, almost inevitable. We believe that if realised, such delays could easily add as much as another £10m to cost taking the total to over £20m. BB's overhead costs alone amount to between £400k to £500k for each week they are delayed. More significantly, the delays would impact on the overall delivery of the Tram project. We could also face claims from Network Rail's and Scottish Water's contractors.

11. Although the advance works are not on the programme critical path for the tram project as a whole at the moment, there is a high risk that it could delay the completion date for the section of track between Gogar and Haymarket. While it is too early to be certain there is a possibility, given current progress, of early delivery of the tram ahead of summer 2014. If, as a result of the Gateway advance works, that was not achieved then Scottish Ministers could be open to accusation that their actions had delayed the project. A delay to the trams coming into service would leave the Council facing loss of potential revenue of around £230k per week.

Alternative Proposal

12. As TIE issued an instruction to vary the track design at Gogar in anticipation of the advance works for the new Gateway the contractor has already ordered the track. We are therefore not in a position to simply revert to the original contract as it would take some 9 months to design the original alignment and order the required materials. We therefore still require to issue BB with a variation to accommodate the revised track alignment but which will reduce the complexity of the advance works required for the new station.

13. The proposed alternative would avoid the logistical difficulties of coordinating 3 contractors on the one site and considerably reduce the risks to the programme. We estimate the cost to be in the region of £5m. However this alternative would require modifications to the proposed design of Gogar station, by either altering the layout of the station or getting Network Rail and Scottish Water to agree to diverting the existing sewer under the railway. This may require a revision to the planning approval already granted.

14. We have not discussed this alternative proposal in detail with Network Rail. However, given the risks to the tram programme of proceeding with the planned variation Edinburgh Council are fully supportive of our alternative proposal. While it is unlikely that this alternative would deliver the tram and station at the same time we would seek to minimise any delay between the two coming into operation. Network Rail have advised us that the construction of Gogar station is likely to take around fifteen months. We would expect Network Rail to be able to get access to the site before the tram contract is due to complete in Summer 2014. While at this stage we cannot be certain about the precise programmes and sequencing, we would expect that the gap between the opening of the tram and the opening of Gogar station would be a matter of months.

Recommendation

15. For the reasons outlined in this submission we would recommend that the planned variation is not taken forward and that we:

- i) instruct BB to complete the alternative proposal for the Edinburgh Gateway advance works; and
- ii) review the current plans and design of the main Edinburgh Gateway Interchange with Network Rail and Scottish Water to deliver the same functionality with the minimum disruption to the delivery of the new station following the opening of the tram.

16. I would be grateful to know if Ministers are content to proceed on this basis.

Ainslie McLaughlin

Director: MTRIPS



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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Infrastructure and Investment Minister for Housing and Transport	X X				

Cabinet Secretary for Finance, Employment and Sustainable Growth
Permanent Secretary
DG Enterprise, Environment and Digital
PS/Transport Scotland
David Middleton
Sharon Fairweather
Aidan Grisewood
Martin McKinlay
Graham Porteous
Scott Noble
Dominic Murphy
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