**TRAM TRO(s)**
**BRIEFING NOTE ON DISPUTE CURRENTLY HOLDING UP PROGRESS WITH AGREED TRO STRATEGY**

## 1 Background

1.1 The TRO process is managed and co-ordinated through the TRO Working Group (TROWoG). The group is comprised of :-

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| Tie | - | Keith Rimmer/ Alasdair Sim |
| CEC (Tram Team) | - | Alan Bowen/ John Richmond |
| D & W | - | Ann Faulds |
| CEC (Legal) | - | Alan Squair |
| PB project manager (TRO's) – Richard Firth | | |

1.2 Between the Spring of 2007 and Summer 2008 the Roads Design/ TRO design completion and the end date for the statutory process slipped by over 1 year. Originally, the completion (made Order) was programmed for August 2008.

1.3 During the early summer of 2008 the TROWoG had become increasingly concerned at the continuing slippage of the SDS Roads Design/ TRO Programme. Accordingly the decision was taken on 22 July 2008 to implement a revised TRO Strategy to speed up the TRO process and try to reduce the potentially large "gap" period opening up between the commencement of INFRACO Works on-street and the SDS Programme date for the commencement of the statutory process.

1.4 The "gap" period is important because it is the TRO which gives permanent Regulatory effect to the measures actually being constructed by INFRACO (ahead of the TRO being promoted and made). The greater the gap period coupled with the extent to which street features have by then been permanently altered by the Tram construction raises issues with the public perception of the propriety of the process. In extremis a legal challenge might arise. Any effective TRO strategy for the Project must therefore seek to minimise this "gap" period.

## 2 Amended TRO Strategy

2.1 The amended strategy was approved by the TPB on 30 July 2008.

2.2 The basis of the strategy was to hold (non statutory) public design exhibitions of the on-street proposals (Haymarket to Newhaven) based on TRO Drawings that were approximately 90% complete (i.e. complete enough for meaningful public discussion and comment). This was intended to allow us to bring forward the commencement of the formal statutory process and to make up some of the undesirable time lag being created by the design programme slippages. Such a strategy should also be in the interests of PB by minimising design time.

2.3 These arrangements were agreed by the full TROWoG and PB undertook to supply the "90% Drawings" by 15 August 2008. There were 3 principal requirements for these drawings:-

- They were to be amended to show all of the amendments (mainly correction of errors) that tie and CEC had put forward to the Designers in response to the 1st Draft TRO Drawings of April 2008 (Note – this did not include the hundreds of detailed comments made by CEC as part of the Roads Design technical approval process).

- The drawings necessarily show both the existing TRO features as well as the proposed TRO features. The drawings had however different legends for TRO features common to both the existing and proposed situations (e.g. lengths of double yellow lines). In the interests of clarity and public understanding CEC requested that the existing and proposed TRO legends be rationalised and made the same (as is normal for TRO drawings).

- The existing TRO features would be checked for correctness against the CEC GIS records.

2.4 In the event a complete set of "90% Drawings" was not delivered by SDS until mid-September causing the public exhibitions to be delayed by 3 weeks. The exhibitions were held between 23 September and 15 October 2008.

## 3 Work Required to TRO Design Following The Public Exhibitions

3.1 At the Exhibitions the public were encouraged to record their comments. Approximately 130 comments were received, analysed and summarised. The comments were treated as quasi objections and the opportunity taken to make reasonable amendments to the TRO Design. By doing this **tie**/CEC could demonstrate that reasonable amendments had been made in response to the public comments in moving from the 90% to the 100% Design. This is an important factor and is calculated to lay an audit trail on matters of public concern which should at the time of the formal statutory process reduce the volume of Objectors and thereby inform and streamline the Council decision making process in respect of the TRO as far as possible.

3.2 To take this forward the Designers (PB/ Halcrow) were asked to provide a technical commentary against the summarised public comments provided by tie to SDS on 30 October 2008 in tabular form. **Tie** received a response from SDS on 27 November 2008 but this was found to be of a perfunctory nature and was rejected by **tie**. A satisfactory response was received on 8 January 2009.

3.3 In the meantime **tie** and CEC carried out a joint review of the summarised public comments and **tie** produced a series of sketched mark-up design amendments of the TRO exhibition drawings to SDS (Alan Dolan) during November. These covered the

on-street section from Haymarket to Newhaven. A detailed confirmatory list of both physical and regulatory amendments required to progress the TRO Drawings from "90%" to "99%" was produced by tie and forwarded for incorporation into a formal Change Request on 17 December 2008.

3.4 The TROWoG agreed a delivery date of 31 January 2009 for the delivery of the amended "99%" Drawings. This was intended to allow the most rapid possible progression to the consultation with the "statutory consultees" thus paving the way for a public deposit (triggering the substantive part of the statutory TRO process) in the early summer.

3.5 By early February it became clear that there were contractual issues between PB and their design sub-contractor (Halcrow) which had resulted in no progress being made on the production of the "99%" Drawings. The dispute has escalated through the novated contract arrangements for design that now require the situation to be resolved through BSC. PB have put forward 3 Change Notice Estimates (DCR0110 of 19 Nov 2008, DCR0083 of 25 Feb 2009 and, DCR0119 of 25 Feb 2009). These have been valued by PB at a total of £63301. Fundamentally these are requesting additional payment for all of the work done to produce the "90%" Drawings, the TRO Public Exhibition and, all of the TRO design changes instructed (but not yet carried out).

3.6 As at the date of this report the situation remains unresolved and attempts to arrange a resolution meeting were rejected by BSC on 16 March 2009. The reason stated by BSC was that the matter is "not yet coordinated".

## 4 Contractual Position

4.1 The contractual position for BSC and SDS support for the TRO process is set out in Clause 19 of the INFRACO contract. In particular, Clauses 19.1 and 19.2 oblige INFRACO to "provide all other reasonably necessary assistance and support to **tie** for the purposes of tie's activities". The TRO's are **tie** consents and the contract therefore requires that the obtaining and maintenance of **tie** consents requires all reasonably necessary assistance.

4.2 It is **tie's** view that:-

- Holding the TRO public design exhibitions was a necessary step in managing the risks associated with obtaining the TRO's. The Tram TRO(s) is a major Order and if it is to be successfully obtained through a process of reporting objections only (rather than a public hearing which would be the norm for such a TRO) then it is vital that there is a an auditable process that demonstrates how the major issues of public concern have been gauged and what reasonable steps have been taken to address these issues in the finalisation of the Roads Design/ TRO Design.

- This could not have been achieved without the holding of the Public Exhibitions and the formulating of responses and reasonable design adjustments which would have otherwise have become difficult formal objections during the statutory TRO process later this year. It was the view (shared by **tie**) of CEC as the Roads Authority therefore that the exhibitions were an essential element of the TRO design finalisation.

- It must also be considered that much of the work referred to in the PB Change Notice Estimates would have been required anyway as the TRO Drawings were only 90% complete. How were PB going to complete them in the absence of the process actually used? Other aspects, such as the need to change the TRO Drawing legend was required to make the Drawings fit for purpose.

- In addition the TRO Drawings for the section Haymarket to Airport were much less developed in TRO terms (i.e. well below 90%) and nor was that section of the Tram line covered by the TRO Design Exhibitions as it is mainly off road. Why then is it included in the PB Change Notice Estimates? The comments given to PB for this Section were statements of the things that were wrong with or, omitted from, the Drawings and which required to be rectified. As such they were entirely within the scope of PB's obligations to **tie**.

4.3 In summary the majority of the works described in the PB Change Notice Estimates would require to have been undertaken anyway to get the TRO Design to Statutory Consultation readiness. Also, the design is subject to a technical approval process that would have raised the changes as issues anyway and in the event the design finalisation was streamlined for PB by the inclusion of the public design exhibitions in the design finalisation process. The TRO's required significant design finalisation in any event and all of this is therefore considered to be within the scope of the contract as summarised in paragraph 4.1.

4.4 Work has effectively been at a standstill on the mainstream TRO activities for 3 months due to the dispute. It is vital therefore that a way forward is found that frees up progress on this critical path activity. Some additional costs at the margin may be reasonable (e.g. production of drawings/ staffing of the exhibitions) but substantially the scope of the work seems to be appropriately covered by the contract terms.

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25 March 2009