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EDINBURGH TRAM: THE ROLE OF TRANSPORT SCOTLAND

Purpose

1. To define the revised, 'scaled back' role of Transport Scotland with respect to the Edinburgh Tram project in the light of the modified funding arrangements.

Timing

2. Immediate.
These proposals would allow a statement to be drafted to City of Edinburgh Council (with associated revisions to current grant conditions) in conjunction with a response to the letter (dated 12th July 2007) from the Chairman of the Tram Project Board (TPB).

Reference

3. This minute should be read in conjunction with your minute of 9th July 2007 (EARL and Trams: Next Steps) to the Cabinet Secretary and his response of 11th July 2007.

Background

4. On 19th March 2007 a further grant of £60m was offered to City of Edinburgh Council for 'Utilities Diversions and Continuing Development and Procurement of Phase 1A of the Edinburgh Tram Network'.
5. This offer allowed drawdown of the funds between 1st April 2007 & 31st March 2008.
6. The offer contained the following conditions (summarised):-
 - ◆ The governance arrangements agreed on 25/09/06 should be adhered to.
 - ◆ CEC should provide a suitable response to any reviews (i.e. action Gateway Review outputs as appropriate).
 - ◆ Produce an action plan in response to TS comments on the draft final business case.
 - ◆ Consider affordability at 'best and final offer stage'.
 - ◆ That a funding agreement (stating allocation of risks) be in place before negotiations are concluded with the preferred bidder (financial close).
 - ◆ Complete the Final Business Case by 1st October 2007.
 - ◆ Work towards compliance with ISO 9000.
 - ◆ Comply with the standard Transport Scotland reporting requirements.
7. The position reached in parliament requires the above arrangements to be modified.

Basis for the Revised Arrangements

8. The following key points represent the basis for formulating the revised role of Transport Scotland;
 - ◆ The investment of up to £500m (capped) of public funds in Phase 1A of the project (i.e. the airport to Newhaven waterfront via Haymarket and Princes Street).
 - ◆ Phase 1A to be operational during Q1 2011 without the need for an operating subsidy at any point.
 - ◆ The protection provided by standard grant offer conditions.
 - ◆ The Scottish Public Finance Manual.

Governance & Engagement

9. Transport Scotland to provide the associated funding to City of Edinburgh Council via standard grant conditions.
10. Transport Scotland to give up its seat on the Tram Project Board. City of Edinburgh Council, as the promoter, to re-structure the governance arrangements as appropriate.
11. A TS official (e.g. project manager) to meet with City of Edinburgh Council to be briefed on the content of the standard TS report.
12. The Chief Executive of City of Edinburgh Council to provide confirmation on a quarterly basis that conditions of the prevailing grant are being complied with.

Milestones

13. The July 2007 meeting of the Tram Project Board proposes that TS provide 'approval' at two milestones in the short to medium term, namely; nomination of recommended bidder (November 2007) and Financial Close (January 2008). This approach not only appears confused and is, essentially, now unnecessary from a TS point of view (it would also have lead to a two-phase Gateway 3 process which does not, as a minimum, reflect good practice).

14. We propose to simplify the above by providing one 'agreement to release further funds' in January 2008 at the point of financial close i.e. in practice provide a final grant letter (standard conditions) releasing the remaining funds up to the cap. This will provide the appropriate level of comfort that the investment is capable of providing the required scope and programme (bearing in mind the general controls already in place as described in paragraphs 9-12 above) whilst maintaining the agreed TS risk profile associated with the capped funding arrangements.

15. The 'approval' by TS at financial close will be based on the following: -

- ◆ Compliance with standard grant conditions to date.
- ◆ Having received a copy of the completed Final Business Case as endorsed by City of Edinburgh Council.
- ◆ Having received confirmation that the project has successfully passed a standard OGC Gateway 3 Review.
- ◆ Ongoing information received via the standard TS reporting process and 4-weekly meetings with the City of Edinburgh Council.

16. For clarity it should be noted that standard grant conditions facilitate the draw down of funds via an agreed payment profile (agreed at least 12 months in advance) and on the basis of expenditure to date i.e. it does not allow any up-front lump-sum type payments.

Short Term Funding Profile

17. Current forecasts suggest (but do not confirm or are supported by current spending rates) that the current £60m will be insufficient to fund the project to a point of financial close in January 2008. As the project is undertaking a re-baselining exercise with respect to the procurement processes it is unclear what the shortfall will be but it has been estimated at in the range of £10-15m.
18. We suggest that the Council confirm any shortfall by October 2007 but make in clear that a request for any further interim funding up to financial close will only be considered in light of a measurable contribution from the council. (If financial close is not reached by March 2008 a revised grant would be required in any instance).

Other Interfaces / Considerations

19. *Immunisation of Network Rail infrastructure*: Transport Scotland had previously agreed to contract directly with NR in order to facilitate this work-stream on behalf of the tram project on the basis it may realise some minor efficiencies with respect to the Airdrie to Bathgate project and assist Tie in managerial interfaces with NR. This arrangement is clearly no longer appropriate. Tie/CEC will need to contract directly with NR to ensure the NR infrastructure is immunised against DC currents using their available funding accordingly.
20. The current levels of AC immunity on that area of the network should mean that the effects of extending electrification under AtoB are minimal with respect to the tram. It may be prudent for the AtoB scheme to install AC/DC immune track circuits in the Newbridge Junction area at minimal cost. Similarly, any effects on OLE piling should be manageable within the AtoB project without the need to creating any formal links with the tram project.
21. *Traffic Regulation Orders (TROs)*: The tram project has already approached the Executive (not via TS) to facilitate amendments to provide a means of achieving the necessary TRO's without recourse to unnecessary appeals / hearings. Such statutory amendments represent a key risk mitigation strategy for the project programme (we believe the current programme to be unachievable without such amendments being obtained). Both the Executive and Transport Scotland have to date 'supported' this approach.
22. TS needs to make it clear that it cannot formally influence the outcome of these discussions or process nor do the council have any recourse under the grant conditions if they ultimately fail to obtain these amendments in time (or at all). However, TS should continue to support and facilitate this approach where appropriate in the general interests of the project.
23. *Impact of no EARL on Tram*: There is now no requirement from TS for the tram project to make any provisions (passive or active) for the EARL scheme. We should reject any claim that this revised position will increase the cost of the Tram scheme in some way although this could be reserved as a final negotiation position to 'round-up'

the final indexation figure to £500m (it is currently envisaged still to slightly fall short of £500m).

Conclusions

24. The above arrangements detail an appropriate role for Transport Scotland in line with the wishes of the parliament whilst maintaining the appropriate controls expected /required in relation to the investment of public funds.
25. The above arrangements allow the role of TS to be clearly defined and described to the promoter of the tram project and therefore allow them to understand and manage their obligations accordingly.
26. The current conditions of grant can be suitably modified in accordance with this paper allowing the promoter to revise the existing governance arrangements accordingly.
27. A second variation to the current conditions of grant can be issued in October 2007 to address short term funding arrangements (if necessary or appropriate).
28. Ministers can be invited in December 2007 to approve a new grant to be issued in January 2008 (effectively releasing the remaining funds) subject to the promoter achieving a successful (and appropriate) financial close.