

From: Ainslie McLaughlin
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Transport Scotland

28th October 2010

**Cabinet Secretary for Finance and Sustainable Growth
Minister for Transport, Infrastructure and Climate Change**

EDINBURGH TRAM

Purpose

1. To advise Ministers that TIE expect to be in a position to recommend to the next full Council meeting on 16 December that the tram contract should be terminated. In order to assist the process City of Edinburgh Council have approached us seeking approval to waive the 30 days formal notice period to give Ministers prior to termination of the contract. We recommend Ministers agree to that request.

Priority

2. Routine.

Contract termination

3. TIE are of the view that termination of the contract is now all but inevitable. Negotiations around Project Carlisle have halted and the contractor has to all intents and purposes stopped work in anticipation of the contract being terminated. What little communication there is between TIE and the contractor is concentrating on the potential for a negotiated settlement to avoid both sides in protracted legal action following termination.

4. In order for TIE to be in as strong a contractual position as possible before issuing the termination notice it first has to wait until 11 November for the contractor to respond to the last in a series of breach notices. Following that, TIE will consult with its legal advisers and Counsel to agree the final terms of the formal termination notice. TIE doesn't expect that to be in place until early December. We anticipate that the notice will be issued to the contractor almost immediately following the Council meeting on 16 December but TIE have still to confirm the final details.

5. As TIE and CEC will not be able to confirm the grounds for termination until early December, CEC have asked us to waive the requirement under the terms of the Grant conditions to give Ministers 30 days notice before exercising any rights to terminate the contract. This is not a requirement to seek agreement to terminate, that is a decision solely for CEC. It is simply to give adequate notice. As Ministers and Transport Scotland have been in close touch in recent weeks over

developments in this long running contractual dispute **we would recommend that Ministers waive the notice period requirement.**

Post termination

6. We do not yet know what TIE and CEC propose to recommend to the Council meeting on 16 December about progressing the project following termination of the main contract. We assume at this stage that they will wish to seek agreement to take steps to get at a tram up and running at least between the airport and the city centre as soon as possible. If so, that will require a new contractor to be brought in to complete the outstanding works and for Ministers to confirm continued support of the project.

7. The conditions of the Grant agreement allow Ministers to take action in the event that the project runs into difficulties that would threaten delivery of the project. Clearly the termination of the contract constitutes such an event. There are a range of possible actions which would enable some form of direct intervention in the situation. We are discussing these with SGLD and will provide Ministers with more detailed advice in due course. However, the most obvious measure that Ministers might wish to consider is a suspension of payments for any new contracts as an interim step until they are satisfied as to the business case and governance arrangements for proceeding with further work. There will be a need to continue to support ongoing commitments such as the remaining utilities diversion work but this is likely to involve relatively modest sums.

8. We are also aware that Audit Scotland plan to carry out a review of the tram project including Transport Scotland's arrangements for monitoring effective use of Scottish Government funding. They will report by December and intend to highlight key issues for the management of the project going forward. The timing is such that any recommendations made by Audit Scotland may help inform Ministers in deciding how best to proceed.

Conclusion

9. Ministers are invited to agree to waive the 30 days notice period in the event that CEC move to terminate the tram contract.

10. Ministers are also invited to note that the CEC's position post termination remains unclear but we will prepare further advice on possible handling. In the meantime Ministers may find it helpful to discuss with officials.

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

DG Economy
PS Transport Scotland
David Middleton
Sharon Fairweather
Kenneth Hannaway
Raymund Johnstone
John Ramsay
Lucy Adamson
Campbell Docherty
Kevin Pringle
Stephen Gethin

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