

From: Graham Porteous
Head of Construction Branch
15 June 2012

Cabinet Secretary for Investment & Infrastructure
Minister for Housing & Transport

**FREEDOM OF INFORMATION APPEAL – MR RAMI OKASHA –
TRANSPORT SCOTLAND AND EDINBURGH TRAMS**

Purpose

1. To advise the Cabinet Secretary and Minister that Transport Scotland (TS) have received a request via the Freedom of Information Unit, Scottish Government from the Scottish Information Commissioner (OSIC), in relation to Transport Scotland and the Edinburgh Trams.

Priority

2. Immediate

Background

3. Transport Scotland has received a request via the Freedom of Information Unit in relation to a request from the Scottish Information Commissioner (OSIC) that the OSIC have now confirmed that they consider an appeal from Mr Rami Okasha (FOI Case ref: FOI/11/01150) to be valid and will now begin their investigations.

4. Mr Okasha has applied for a decision from OSIC as he is dissatisfied with the way in which Transport Scotland dealt with his requests for information.

5. OSIC have confirmed that his application is valid and as such have requested copies of the information in both redacted and unredacted format to enable OSIC to consider Mr Okasha's appeal.

6. In light of the request Transport Scotland will forward the following information to the FOI Unit as documented in the attached Annex A: Schedule Template which highlights the six redacted documents originally released to Mr Okasha.

7. The documents were originally redacted under Regulation 10 (4) e - Environmental Information (Scotland) Regulations 2004 - "the request involves making available internal communications".

8. I am also attaching the documents in unredacted (Appendix B) and redacted (Appendix C) format for information. The Revised Governance letter from the then Chief Executive Transport Scotland to the then CEC Chief Executive is attached as Annex D.

Recommendation

11. That the Cabinet Secretary and Minister note the documents will be released to the Scottish Information Commissioner for the appeal process.

Graham Porteous
Head of Construction
15 June 2012

| Copy List: | For Action | For Comments | For Information | | |
|------------|------------|--------------|--------------------|------------------|-------------------|
| | | | Portfolio Interest | Constit Interest | General Awareness |
| | | | | | |

PS/Transport Scotland
 David Middleton
 Ainslie McLaughlin
 Graham Porteous
 Scott Noble
 Dominic Murphy
 Andrew Cooper
 Fred O'Hara
 Campbell Docherty
 Lucy Adamson
 Steven Carmichael
 Press Transport Scotland
 Danny Chalmers
 Elizabeth Lloyd, Special Adviser
 DG Enterprise, Environment and Digital
 Stephen Orr

ADVICE TO MINISTERS

Annex A – FoI Edinburgh Trams R Okasha Appeal Schedule List

| Foi 11 /01150 - RAMI OKASHA: Information Release List | | | | | |
|--------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-----------------|-------------------|
| Doc No. | Date | Exemption under Regulation 10 (4) e - Environmental Information (Scotland) Regulations 2004 | Description | released | All / Part |
| | | | | | |
| 1 | 06-Jul-07 | yes | Cabinet Secretary Briefing on Trams - Next Steps | yes | Redacted |
| 2 | 11-Jul-07 | yes | Cabinet Secretary agreement to Trams Next Steps | yes | Redacted |
| 3 | 24-Jul-07 | yes | Cabinet Secretary Briefing - Scaled back role for Transport Scotland on Trams | yes | Redacted |
| 4 | 30-Jul-07 | yes | Cabinet Secretary agreement to Scaled back role for Transport Scotland on Trams | yes | Redacted |
| 5 | 02-Aug-07 | yes | Note of Meeting between Tie & Transport Scotland on Governance etc | yes | Redacted |
| 6 | 02-Aug-07 | yes | Revised Governance Letter from Chief Executive Transport Scotland to CEC Chief Executive - Annex D. | yes | All |

Annex B – Unredacted Documents

1. Cabinet Secretary Briefing on Trams – Next Steps.

From: Malcolm Reed
Transport Scotland
6 July 2007

Cabinet Secretary for Finance and Sustainable Growth

EARL AND EDINBURGH TRAM: NEXT STEPS

Purpose

1. To provide you with advice on taking forward Parliament's view on the EARL project in response to the e-mail request from your office on 2 July 2007. Because of your undertaking to Parliament that alternatives to EARL would also be explored, I am also setting out proposals in respect of that work, and additionally, commenting on future roles in relation to the Edinburgh Tram project in the light of the position reached in Parliament.

Priority

2. Immediate. Agreement of the proposals set out in this minute will determine the scope of work and other actions which Transport Scotland and tie Ltd will carry out over the summer recess in relation to the EARL project, and which Transport Scotland will take forward in relation to wider improvements to the Edinburgh and Glasgow railway.

Background

3. Following the Transport Debate on Wednesday, 27 June you requested that Transport Scotland prepare advice on a number of matters relating to the EARL project.

EARL - Governance Review and Next Steps

4. In the light of your statement to the press following the Transport Debate on 27 June, our working assumption is that the Governance Review will lead to a decision to cancel the project. In taking forward the Governance Review, we are also instructing tie Ltd that current work on the project should be suspended, and a plan put in place that can be implemented in the event of the likely outcome. The objectives of this plan is to:

- Minimise any further expenditure on the EARL project;
- Understand the continuing obligations and liabilities associated with the role of Authorised Undertaker for the project.

Clarification of this last point will enable us to provide appropriate advice to you on the future discharge of this role.

ADVICE TO MINISTERS

5. You have offered to meet with BAA and Network Rail as part of the review process. This is welcomed, and in our view will help to contribute to the robustness of the Governance Review.

6. Your office has forwarded tie Ltd's letter of 28 June which refers to the disbandment of the EARL team. Separately, I have received from tie correspondence in relation to proposed redundancies, and further detail is provided in Annex A.

7. I expect that the Governance Review will be completed by the end of August and the other related matters resolved in time for you to report back to Parliament in September as the amended motion specifies.

Edinburgh & Glasgow/EARL Replacement Study

8. The Minister told Parliament that Transport Scotland would investigate alternatives to EARL and report back to Ministers in the autumn. The alternatives would focus on 'our priority for the rail network, which is to improve the reliability, attractiveness and journey time of the Edinburgh to Glasgow route'. We propose following the STAG (Scottish Transport Appraisal Guidance) process: work with our key stakeholders to identify the problems and opportunities on the route; use this to inform the specific objectives for the work; identify a whole range of options for improvements; and appraise how well the options achieve the objectives. The final STAG report will be used as the basis for providing Ministers with recommendations on options to be taken forward in the short, medium and longer term to improve Edinburgh-Glasgow rail connections, and we intend to provide this by end of September. We would also provide an outline delivery plan for the recommended options, which would indicate the further detailed design work that is required but cannot be completed within the next three months. Further details of this proposed approach are set out in Annex B.

Tram Project

9. The e-mail of 2 July asked how Tram might fit into the alternatives available to the EARL project. Our understanding is that, without EARL, the business case for the Edinburgh Tram scheme may be strengthened and we have also noted the possibility for the Tram to provide links to the airport from the rail network which will be explored further in the replacement study.

10. The Parliamentary decision on the Tram scheme has clarified the position in relation to future risk-bearing and governance in relation to this project, with responsibility now clearly lying with tie Ltd and City of Edinburgh Council. This is discussed further in Annex C.

11. Our recommendation would be that an early opportunity is taken to agree Transport Scotland's capped financial contribution to the Tram scheme on behalf of Ministers, and that at the same time Transport Scotland should scale back its direct involvement with this project.

Recommendation

12. You are invited to note the terms of this minute and to agree:

- The actions proposed to implement the outcome of the Parliamentary debate on 27 June
- A restated cap of £500m on Transport Scotland's contribution to the Tram scheme.

ADVICE TO MINISTERS

MALCOLM REED
Chief Executive
Transport Scotland
6 July 2007

| Copy List: | For Action | For Comments | For Information | | |
|-----------------------------------------------------------|------------|--------------|--------------------|----------------------|-------------------|
| | | | Portfolio Interest | Constituent Interest | General Awareness |
| Minister for Transport, Infrastructure and Climate Change | | | | | x |

DG Economy
 PS/Transport Scotland
 Bill Reeve
 Jim Barton
 Frances Duffy
 Guy Houston
 Ainslie McLaughlin
 Jerry Morrissey
 Damian Sharp
 Lucy Adamson
 Communications Finance & Sustainable Growth
 Press Transport Scotland
 Stephen Noon
 Kevin Pringle

ADVICE TO MINISTERS

ANNEX A

EARL AND EDINBURGH TRAM: NEXT STEPS

TIE LTD: REDUNDANCIES

1. I have received a letter from tie Ltd indicating that 26 posts will be redundant because of the cessation of work on EARL, involving a total redundancy cost in the order of £450,000. We are examining the details and proposals that have been provided, but my expectation is that the calculations will be in order and that Transport Scotland will have an obligation to meet this liability. We are separately discussing with tie Ltd the possibility of transferring some staff to Transport Scotland to undertake specific pieces of work on a time-limited basis.

Transport Scotland
6 July 2007

ANNEX B

EARL AND EDINBURGH TRAM: NEXT STEPS

EDINBURGH GLASGOW IMPROVEMENT OPTIONS: PROPOSED SCOPE FOR PROJECT

Background

1. *The Minister said in Parliament on 27 June: 'Edinburgh airport needs an effective public transport link, but it does not need a tunnel under its main runway. I have therefore asked Transport Scotland to investigate alternatives to EARL ... and to report back to ministers in the autumn.'*

I want to focus on our priority for the rail network, which is to improve the reliability, attractiveness and journey time of the Edinburgh to Glasgow route, which will improve significantly the connectivity between those two fine and important cities. Transport Scotland will work with Network Rail and First ScotRail on a package of measures, including infrastructure improvements such as a new station at Gogar as an alternative link to the airport, improvements at Dalmeny and firm proposals for the most cost-effective ways to improve reliability, bring down journey times and provide capacity for the expected continuing growth in rail passenger numbers.

Aim and Objectives

2. The overall aim of this project is to provide Ministers with recommendations on cost effective improvements to the reliability, attractiveness and journey time of rail between Edinburgh and Glasgow by early October.

The specific objectives of this project will be agreed at the workshop on 19 July, but might be as follows:

- Improved journey times between Edinburgh and Glasgow
- Improved reliability of services between Edinburgh and Glasgow
- Improved capacity between Edinburgh and Glasgow and at the termini, if necessary
- An effective interchange from the rail network to Edinburgh airport

Key Deliverables

- Outline project plan (13 July)
- Pre-appraisal workshop to agree objectives and identify options for improvements (19 July)
- Draft report chapters covering problems, objectives and options to be appraised (end July)
- Option appraisal workshop (mid August)
- Draft of remaining report chapters covering appraisal of options against objectives (end August)
- IDM presentation to TS Board on conclusions (early September)
- Final STAG report (mid September)

ADVICE TO MINISTERS

- Submission to Ministers recommending improvements to the Edinburgh Glasgow rail routes, with annexes discussing costs and financing options, and giving an outline implementation plan (end September)
- Resourced project plan for delivery of agreed options (end November)

Transport Scotland
6 July 2007

ANNEX C

EARL AND EDINBURGH TRAM: NEXT STEPS

EDINBURGH TRAMS

1. Overall Funding

Last week's decision of Parliament that Ministers accept the wishes of Parliament to support the Edinburgh Tram project to the limit of the previous administration's funding limit. You subsequently set this at '£490m' and no more, although there were other references to '£500m', essentially emanating from the Auditor General's report. You also took the opportunity to confirm that the scheme was the 'City of Edinburgh's - not the Executive's' in the post-debate press conference.

The previous administration essentially undertook to support the construction of Phase 1a (from Newhaven to the Airport) with £375m that would be index-linked to inflation. At the time of this original commitment the final outturn contribution was estimated at £450m- £500m. Our latest calculation of the final contribution based on the published inflation indices and programme contained within the draft final business case (dFBC) place the final contribution at £492m.

The latest statements present the following possible interpretations: -

- 1) Maintain the contribution at £375m indexed to the dFBC programme with an expected final overall contribution of £492m but with the actual final contribution being dependant on actual inflation.
- 2) Maintain the contribution at £375m indexed to the dFBC programme with an expected final overall contribution of £492m and with any final contribution capped at £500m regardless of actual inflation.
- 3) £375m recalculated on the new baseline programme for 1a to be delivered at the July Tram Project Board. This programme is anticipated to present a degree of delay and therefore the current estimate of £492m will rise to circa £500m with an option to cap at that point or not.
- 4) £375m recalculated on the prevailing programme at the point of financial close, i.e. agreement of final business case. Based on the indexation methodology to date the estimated final contribution is likely to exceed £500m, i.e. anticipating further programme slippage between now and financial close.
- 5) Restate the £375m as an already out-turned fixed and capped sum of £490 or £500m.

In literal terms Option 1 is closest to the position of the previous administration but it could be argued that in the event of cost and time overruns that a definition in line with Option 2 could have been enforced.

ADVICE TO MINISTERS

Options 2 could be described as being unfair by not taking into account the latest debates around the scheme.

Option 3 would allow an indexed contribution to be calculated in a transparent way (and based on the latest available programme) with an anticipated final contribution at or very close to £500m with the cap applied at that point.

Option 4 reflects a certain degree of logic and transparency but exposes the Executive's contribution to a further period of uncertainty and therefore makes the task of capping it at £500 potentially more fraught.

Option 5 could be described on certain levels as arbitrary in nature. It may not be possible to adequately explain the basis of the contribution at a future point in time.

Recommendation

We believe Option 3 provides the most explainable, defensible, professional and fair position to adopt whilst maintaining a cap of £500m on the Executive's final contribution to the scheme.

Future Governance and the Role of Transport Scotland

1. The Parliament's decision places the risk of any cost overruns on the Tram Scheme with the City of Edinburgh Council, and makes it clear that responsibility for managing and delivering the scheme rests with the promoter.

2. To achieve this clarity of roles, and ensure that situations could not arise subsequently in the governance of the project which might generate further calls on central funding, I propose that Transport Scotland's future engagement with the Edinburgh Tram Project should be on the basis of revised grant conditions and once these conditions are in place Transport Scotland staff should withdraw from active participation in the governance of this project.

Transport Scotland
6 July 2007

ADVICE TO MINISTERS

2. Cabinet Secretary's Agreement to Trams Next Steps.

From: Morrissey J (Jerry)
Sent: 11 July 2007 14:46
To: Ramsay J (John); Davis L (Lorna); Mackie AW (Andrew) (Transport Scotland); Spence M (Matthew); McShane N (Natalie); Milligan S (Steve); Savage N (Nadia)
Cc: McShane N (Natalie)
Subject: FW: EARL and Edinburgh Tram: Next Steps
Matthew/Steve,

Can you please forward this email to your direct reports.

We need to define and agree "scale back" for the tram project.

Thanks

Jerry

Jerry Morrissey
Major Projects Team
Rail Directorate
Transport Scotland
7th Floor, Buchanan House

Ext [REDACTED]
[REDACTED]

-----Original Message-----

From: Cranney S (Shauna) **On Behalf Of** Cabinet Secretary for Finance and Sustainable Growth
Sent: 11 July 2007 11:01
To: PS/Transport Scotland; Cabinet Secretary for Finance and Sustainable Growth
Cc: Minister for Transport, Infrastructure and Climate Change; DG Economy; Reeve W (Bill); Barton JG (Jim); Duffy F (Frances); Houston G (Guy); McLaughlin AC (Ainslie); Morrissey J (Jerry); Sharp DP (Damian); Adamson L (Lucy); Communications Finance and Sustainable Growth; Press Transport Scotland; Noon S (Stephen); Pringle K (Kevin); McKay S (Stuart)
Subject: RE: EARL and Edinburgh Tram: Next Steps

Malcolm

Copy as above

EARL AND EDINBURGH TRAMS: NEXT STEPS

Thank you for your minute of 9 July regarding the above. I have noted Mr Swinney's comments below:

EARL Replacement Study

Can the timeline for the outline delivery plan for the recommended options be brought forward to mid September to allow for a statement to Parliament by the end of September.

Tram Project

ADVICE TO MINISTERS

Mr Swinney agrees with the approach outlined in Option 3 (annex C of the minute) as the cap on Trams and he also agrees that Transport Scotland should “scale back” its direct involvement with this project.

Thanks
Shauna

Shauna Cranney

APS/Cabinet Secretary for Finance and Sustainable Growth

Ext: [REDACTED]

-----Original Message-----

From: PS/Transport Scotland

Sent: 09 July 2007 10:22

To: Cabinet Secretary for Finance and Sustainable Growth

Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; DG Economy; Reeve W (Bill); Barton JG (Jim); Duffy F (Frances); Houston G (Guy); McLaughlin AC (Ainslie); Morrissey J (Jerry); Sharp DP (Damian); Adamson L (Lucy); Communications Finance and Sustainable Growth; Press Transport Scotland; Noon S (Stephen); Pringle K (Kevin); McKay S (Stuart)

Subject: EARL and Edinburgh Tram: Next Steps

Cabinet Secretary for Finance and Sustainable Growth

cc As above

Please see attached Minute from Malcolm Reed (8 pages).

Thanks
Marion

[REDACTED]

<< File: Minute to Mr Swinney - Earl and Edinburgh Tram Next Steps - 6 July 2007.doc
>>

3. Cabinet Secretary Briefing – Scaled back role for Transport Scotland.

From: Matthew Spence
Deputy Head of Major
Projects
Transport Scotland
24th July 2007

Cabinet Secretary for Finance and Sustainable Growth

EDINBURGH TRAM: THE ROLE OF TRANSPORT SCOTLAND

Purpose

1. To inform the Cabinet Secretary the proposed **Priority:** Routine
2. redefined role of Transport Scotland with respect to the Edinburgh Tram Project.

Background

3. The position reached by Parliament on 27 June 2007 follow the debate on transport.
4. The minute of 9 July 2007 from Transport Scotland ‘Earl and Trams: The Next Steps’.
5. The following proposals aim to define, in practical terms, ‘scaling back’ the role of Transport Scotland.

Basis of the Proposals

6. The Scottish Executive to grant up to a maximum of £500m to City of Edinburgh Council to construct Phase 1A of the project (i.e. the airport to Newhaven waterfront via Haymarket and Princes Street).
7. Expectation that Phase 1A will be operational during Q1 2011.
8. The system will not require any operating subsidy (although the network will be able to participate in the national concessionary fares scheme).

Governance & Engagement

9. Transport Scotland to provide the associated funding to City of Edinburgh Council via standard Section 70 grant conditions (against an agreed draw-down profile).
10. Transport Scotland to surrender its seat on the Tram Project Board. City of Edinburgh Council, as the promoter, to re-structure the governance arrangements as appropriate.
11. City of Edinburgh Council to meet with Transport Scotland at official level on a four-weekly basis to present a progress report (based on the standard Transport Scotland reporting process).
12. City of Edinburgh Council Chief Executive to provide confirmation on a quarterly basis that the conditions of grant are being complied with.

Milestones & Short Term Funding Profile

13. City of Edinburgh is currently drawing on an initial grant of £60m to take the project to a position of financial close. This was originally planned for October 2006 but will now slip to January 2007.

ADVICE TO MINISTERS

14. Transport Scotland will not offer any further funding until financial close is achieved i.e. any shortfalls in the lead-up to this milestone will need to be met by the council (theoretical £12m exposure for them but more likely to be in the range £0 to 5m).
15. Grant funds post financial close will only be provided on the condition they are accompanied by funds from the Council in the ratio of 9 to 1. This is to ensure; 1) the Council provide their commitment of £45m as outlined in the draft final business case 2) in the event of phase 1A only costing £500m the Executive's contribution will be a maximum of £455m and 3) none of the Executive's contribution can be channelled to phase 1b or 2 of the project.

Timing

16. These proposals have been discussed with officials at Tie Limited. It is the intention to discuss the proposals with City of Edinburgh Council w/c 30 July 2007 to allow the arrangements to be formally adopted following the Transport Scotland meeting of directors on Wednesday 8 August 2007.

Risk Profile

17. The £500m capped grant offer is based on Scottish Minister's original of £375m (to be indexed in accordance with published inflation criteria). Latest estimates suggest this would result in a final out-turned contribution of circa £494m. Within the context of the current discussions TS intend to update this figure in line with latest programme information and potentially use any remaining headroom to the £500m cap in final negotiations to ensure a clear and defined risk transfer to the Council.

Matthew Spence
24th July 2007

| Copy List: | For Action | For Comments | For Information | | |
|---------------------------------------------------------|------------|--------------|--------------------|------------------|-------------------|
| | | | Portfolio Interest | Constit Interest | General Awareness |
| Minister for Transport, Infrastructure & Climate Change | | | | | x |

PS/Transport Scotland
 Bill Reeve, Director - Rail Delivery, TS
 Frances Duffy, Director – Strategy & Investment, TS
 Guy Houston, Director – Finance TS
 Mark Pettit, Rail Finance
 Jerry Morrissey, Head of Major Projects
 Martin McKinlay, Major Projects Technical Advice
 Lucy Adamson, Communications TS
 Press Transport Scotland
 Communications Finance & Sustainable Growth

ADVICE TO MINISTERS

4. Cabinet Secretary's Agreement to Scaled back role for Transport Scotland on Trams.

From: Robertson J (Julie) on behalf of Cabinet Secretary for Finance and Sustainable Growth
Sent: 30 July 2007 10:17
To: Davis L (Lorna); Cabinet Secretary for Finance and Sustainable Growth
Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; Reeve W (Bill); Morrissey J (Jerry); Ramsay J (John); Savage N (Nadia); Duffy F (Frances); Houston G (Guy); Pettit M (Mark); McKinlay M (Martin); Adamson L (Lucy); McShane N (Natalie); Press Transport Scotland; Communications Finance and Sustainable Growth; Spence M (Matthew)
Subject: RE: BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram
Lorna

Copy: as above

BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram

Mr Swinney has noted Matthew Spence's minute of 26th July and is content with the proposed redefined role of Transport Scotland with respect to the Edinburgh Tram Project.

Thanks
Julie

Julie Robertson
Assistant Private Secretary to the Cabinet Secretary for Finance and Sustainable Growth
Scottish Executive
t: [REDACTED]
e: julie.robertson@scotland.gsi.gov.uk

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

-----Original Message-----

From: Davis L (Lorna)
Sent: 26 July 2007 12:06
To: Cabinet Secretary for Finance and Sustainable Growth
Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; Reeve W (Bill); Morrissey J (Jerry); Ramsay J (John); Savage N (Nadia); Duffy F (Frances); Houston G (Guy); Pettit M (Mark); McKinlay M (Martin); Adamson L (Lucy); McShane N (Natalie); Press Transport Scotland; Communications Finance and Sustainable Growth; Spence M (Matthew)
Subject: RE: BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram

All

Please find attached a revision to the "Milestones & Short Term Funding Profile" section. Dates should have stated Oct 2007 and Jan 2008 – the attached version now reflects this amendment.

Kind regards,
Lorna

<< File: Ministerial Briefing - Edinburgh Tram Role of Transport Scotland - v2.0.doc >>

-----Original Message-----

ADVICE TO MINISTERS

From: Spence M (Matthew)

Sent: 25 July 2007 17:57

To: Cabinet Secretary for Finance and Sustainable Growth

Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; Reeve W (Bill); Morrissey J (Jerry); Ramsay J (John); Davis L (Lorna); Savage N (Nadia); Duffy F (Frances); Houston G (Guy); Pettit M (Mark); McKinlay M (Martin); Adamson L (Lucy); McShane N (Natalie); Press Transport Scotland; Communications Finance and Sustainable Growth

Subject: BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram

Briefing: Role of Transport Scotland in Edinburgh Tram Project

Priority: Routine

Cleared by: Dr Malcolm Reed

<< File: Ministerial Briefing - Edinburgh Tram, Role of Transport Scotland.doc >>

Best regards

α Matthew Spence

Deputy Head of Major Projects

Major Projects Group, Rail Delivery Directorate

Transport Scotland, Buchanan House (7/09)

58 Port Dundas Road, Glasgow G4 0HF

TEL: [REDACTED] *MOB:* [REDACTED]

5. Note of Meeting between TIE & Transport Scotland on Governance etc.

EDINBURGH TRAM PROJECT

GOVERNANCE, FUNDING, BUSINESS CASE, APPROVALS

Note of meeting between Tie and Transport Scotland 2 August 2007

General

1. A letter will go to TA from MR in the next day or two. The content will be consistent with recent senior level exchanges, reflecting the main principles described below. We discussed other follow up documentation and this is captured at the end of this note. In particular, the basis of all new funding will be set out in a New Award Letter.
2. The interests of the Government (shorthand for Cabinet, the Cabinet Secretary, the Executive and Transport Scotland) can be summarised as follows :
 - a. Satisfaction that the Airport / Leith tramline will be delivered
 - b. Confirmation that the BCR is greater than 1.0, now to reflect the world without EARL and any other substantial changes from the Draft FBC (December 2006) ; and
 - c. Confirmation that there will be no Government subsidy requirement for the integrated bus and tram operations.

These are in line with the parameters used to assess the DFBC and are the measures which will be used to determine grant award. Other than general adherence to proper practices designed to protect the public pound, these are the only areas of Government focus. Documentation provided for Government assessment should be limited to material which is directly relevant to these parameters.

Governance

3. TS will withdraw from routine monitoring and from the TPB and sub-committees, in favour of the monitoring regime to be summarised in the MR / TA letter and set out in detail in the New Award Letter, in summary :
 - 4-weekly report as now
 - 4-weekly meeting between senior TS people (probably Bill Reeve and Jerry Morrison) and senior CEC people (probably Andrew Holmes and Donald McGougan), others at CEC's invitation including senior Project / tie / TEL people, scope to be only key issues relevant to TS / CEC with no additional reports unless agreed by exception
 - Quarterly TS / CEC CEOs meeting, scope to be agreed but probably focussed on key tram project issues and wider Edinburgh transport matters, at discretion of the two CEOs.
 - Quarterly confirmation from CEC of compliance with New Award Letter terms
4. Satisfaction with governance arrangements planned for the construction period is CEC's responsibility, finalised by approval of the Final Business Case (FBC) which will set out those proposed arrangements.

Funding

ADVICE TO MINISTERS

5. Subject to overall agreement on funding terms, the anticipated aggregate grant award will be £500m. There will be no further indexation (up or down). The grant will be available to fund Phases 1a and 1b but strictly on the basis that the whole of Phase 1a must be delivered. A decision to proceed with Phase 1b – whether coincident with financial close or at some future date – is solely that of CEC, but no additional grant award for Phase 1 will be made beyond £500m.
6. There is no Government requirement to future proof the EARL project (or any other project) in designing and constructing the Tram. In the event that the termination of the EARL project results in additional costs or savings to the Tram Project, these will be absorbed within the project budget and will not result in any change to the grant award of £500m.
7. The New Award Letter will reflect all previous grant awards for the implementation of the Tram Project, including the award of £60m approved in Spring 2007 and rollover from prior awards. To assist clarification of certain points below, assume that the total pre-approved funding is £120m, of which £119m has been provided by Government and £1m by CEC. The balance of grant award up to £500m of £381m will be subject to the terms of the New Award Letter.
8. The award of £381m will be on the basis that a proportionate funding mechanism is agreed. This will reflect the balance of commitment of £381m from the Government and the balance of commitment from CEC of £44m. This creates a ratio of 89.65% Government, 10.35% CEC to be applied to all future drawdowns until the aggregate Government funding reaches £500m. All further funding will be to the account of CEC.
9. There is agreement that the bidder terms should be based on cash flow neutrality in their accounts as a means of limiting capital cost bids. Accordingly, the funding from the Government should be scheduled alongside the CEC contribution such that payments can be made to contractors in a manner which achieves cash flow neutrality for the contractors.
10. There may be further advantage if advance sums can be offered to contractors. However, there are public sector accounting difficulties which will need to be addressed if this is to be pursued. DS to organise a meeting with TS Finance people to explore this.
11. Agreed that drawdown arrangements should be kept as administratively simple as possible, consistent with proper control by all parties. Government cannot advance very large sums – eg a full year's estimated requirement – but a quarterly structure should be workable. This will require sound forward estimates of spend and cash flows, reflecting in due course the contractual terms agreed with the successful bidders. The funding for the balance of 2007-08 to Financial Close ("Tranche A" of the new award) is covered below. For the period from Financial Close, using such estimates, cash drawdowns by CEC from Government should reflect an initial drawdown ("Tranche B") of the first two quarters' funding requirement with subsequent drawdowns to be made quarterly based on the succeeding quarter's requirement. This should provide adequate base funding avoiding a cash shortage. The operation of this mechanism will be monitored quarterly.
12. The drawdowns will require to reflect the proportionate funding arrangement, such that each new drawdown from Government (starting with Tranche A) will be restricted to 89.65% of the full amount required, with the balance to be contributed by CEC. It is recognised that the precise arrangements need further definition to accommodate the mix of cash and in-kind

ADVICE TO MINISTERS

(land) contribution by CEC, but the broad principle should be adhered to by both parties. GB to provide further analysis on this matter. The operation of the proportionate mechanism will also be monitored quarterly.

13. It is recognised that there is likely to be a substantial additional funding requirement in the period prior to Financial Close beyond the funding currently in place. This was previously estimated at c£60m and reflects continuation of the current programme, including land acquisition and utility works. Although programme slippage arising from the post-election period has moved some cost forward, the sum involved remains substantial. GB to arrange an up to date estimate. DS noted a risk that Government may not be willing to provide further funding prior to financial close, which would have extremely damaging consequences for the project. The solution lies in the progress made through procurement, preparation of FBC and in the commitments given by CEC – see below under approvals.
14. CEC and tie are examining options for leasing and debt arrangements to support overall funding. These may prove to be financially efficient and carry other advantages. The scope of these arrangements is focussed on incremental funding for Phase 1b, but it may transpire that there is advantage in extending the facilities to encroach on Phase 1a. In the event that there is demonstrable advantage to all parties, CEC and Government will engage in good faith to conclude on appropriate action, most likely in 2008.

Approvals involving Government

15. The summary of the proposed top-down programme is attached. Now anticipates substantially complete FBC (Version 1) to accompany Preferred Bidder recommendation and draft New Award Letter (which includes Tranche A funding) going before full Council on Sept 27th. Careful project management should allow TS IDM to approve same on Oct 10th, followed by full council approval on Oct 25th and Cabinet approval in week beginning Oct 29th.
16. Assuming finalisation of contracts and all related documentation is achieved in line with September Documents over the period Nov / Dec, full Council to approve on Dec 20th and mechanism to be established to achieve Government approval on Dec 21st. Actual award and contract completion on Jan 11th.
17. Scope of Gateway 3 to be in line with standard OGC guidelines and to be agreed in advance with TS. Report to go to IDM Board Oct 10th, all subsequent approvals dependent on all “red, hold” issues being resolved.

Final Business Case

18. Agreed that FBC should be DFBC amended only as necessary. Specific points to update are embedding of the no-EARL scenario as base case, reflected also in BCR calculation (work already substantially executed in support of DFBC) ; and revised capital costs based on preferred bids.
19. TS comments / tie responses on DFBC to be embedded in FBC, understood not to be fundamental, no further iterations or reporting & debate with TS needed on these matters.

Contingencies

ADVICE TO MINISTERS

20. Recognised that desire is for a straight-forward arrangement between CEC and Government ; however, certain contingencies cannot be accepted unqualified by CEC in view of scale of financial risk relative to CEC resources :
- a) Action taken by the Government which leads to a material extension of programme or increase in cost - incremental costs to be met by Government
 - b) Government determines not to support the project at some stage in the future resulting in termination costs – all termination costs and CEC sunk investment to be reimbursed
 - c) Network Rail frustrate progress of project through immunisation (or other) arrangements – Government will not underwrite this risk, but will enter into best endeavours agreement to support CEC in dialogue with NR. CEC / tie / TEL to consider whether risk is acceptable and process manageable.
 - d) Other third party involvement – BAA plc, HMRI, HSE, other – needs further consideration ; CEC foresee potentially unacceptable risk balance and need to address further.
21. Dispute resolution process to be embedded in New Award Letter covering inter alia failure by either party to meet payment obligations,
22. Mechanism required to protect CEC / TEL from Government action which affects materially the operational performance of the integrated bus and tram system, for example substantial financial support for Son of EARL (Tram disruption and revenue attrition).

Documentation required

- 23. MR / TA letter to be issued imminently, cc'd to Chairs of TEL and tie
- 24. Distilled version to be available by mid-August for public consumption (mainly for bidders to reinforce confidence)
- 25. Draft New Award Letter is being prepared by TS, to be finalised by end-August at latest.

Other matters

- 26. Government is neutral to asset ownership, corporate structuring and related matters which are CEC's prerogative so long as within bounds of normal public sector good practice.
- 27. Certain aspects of 4-weekly reporting require further discussion : construction period programme requires to be cost-loaded at a sensible level of detail and will be basis of cash flows which support drawdown ; timing of submission to be re-addressed with objective of bringing forward by one week to align with other TS projects, again probably effective construction commencement.
- 28. FBC to reflect same assumptions about concessionary fare support as in DFBC. Government position is that parties should be "no better and no worse off".

Next steps

- 29. DS / GB to agree this note, discuss issues within respective organisations.
- 30. Follow up meeting asap between GB / DS and Donald McGougan. GB to organise.

ADVICE TO MINISTERS

APPENDIX

Top-down programme

The critical dates are set out in summary below and it is implicit in the references to FBC V1 that full agreement has been reached on all key terms of the Infraco / Tramco contracts and on the funding agreement between CEC and TS :

| | |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| End-July | Issue of a more detailed version of the outline programme linked to the existing procurement programme and agreement of all key tie / TEL / CEC and TS people to deliver [Done, currently under refinement] |
| End August | Draft of FBC V1 available for tie / TEL / CEC review, including best estimate of preferred bid based on end-August returns from bidders (draft revised sections will be circulated during August, BPIC / Procurement Group meetings will be convened to address issues and to help manage progress and the TPB will be updated on 9 August and 6 September). |
| Mid-Sept | Finalisation and informal approval by tie / TEL / CEC of "September Documents" : 1) FBC V1 2) preferred bidder recommendation 3) draft New Award Letter including Tranche A funding |
| Sept 20 th | September Documents submitted to TPB |
| Sept 27 th | TPB approval (and recommendation to TEL Board / CEC) of same [preferably alongside draft report to Council]. Submission of September Documents to CEC Officials and extracts submitted to Government (prior review preferable and to be planned) |
| Oct 1 | Contracts for additional advance works entered into, conditional inter alia on termination without adverse cost in event that CEC / Government do not approve FBC V1, Preferred bidder recommendation and / or Tranche A funding within New Award Letter. |
| Early Oct | Gateway 3 review, confirmation to TS on critical issues |
| Oct 10 th | TS IDM reviews / approves September Document extracts, plus update on Gateway 3 |
| Oct 18 th | Report and supporting documents circulated in advance of full Council meeting on |
| Oct 25 th | Full council meeting to approve FBC V1, Preferred bidder recommendation and draft New Award Letter |
| Oct 29 th | Cabinet approval of September documents including New Award Letter / Tranche A funding |
| Nov / Dec | Completion of all contractual and funding documentation, update to produce FBC V2, official level approval by all parties |

ADVICE TO MINISTERS

- Dec *** TPB approval, recommendation to TEL Board / CEC (*date may need revised)
- Dec 20th** Report to full Council, which should reflect only marginal changes to form agreed in October ; full Council approval
- Dec 21st** Government sign-off conditional on all other aspects of financial close (mechanics of sign-off to be addressed)
- To 11th Jan** Finalisation of documentation, final negotiation etc

ADVICE TO MINISTERS

6. Revised Governance Letter from Chief Executive Transport Scotland to CEC Chief Executive.

- Attached as Annex D

Annex C –Redacted Documents

1. Cabinet Secretary Briefing on Trams – Next Steps.

From: Malcolm Reed
Transport Scotland
6 July 2007

Cabinet Secretary for Finance and Sustainable Growth

EARL AND EDINBURGH TRAM: NEXT STEPS

Purpose

4. To provide you with advice on taking forward Parliament's view on the EARL project in response to the e-mail request from your office on 2 July 2007. Because of your undertaking to Parliament that alternatives to EARL would also be explored, I am also setting out proposals in respect of that work, and additionally, commenting on future roles in relation to the Edinburgh Tram project in the light of the position reached in Parliament.

Priority

Immediate. Agreement of the proposals set out in this minute will determine the scope of work and other actions which Transport Scotland and tie Ltd will carry out over the summer recess in relation to the EARL project, and which Transport Scotland will take forward in relation to wider improvements to the Edinburgh and Glasgow railway.

Background

6. Following the Transport Debate on Wednesday, 27 June you requested that Transport Scotland prepare advice on a number of matters relating to the EARL project.

EARL - Governance Review and Next Steps

4. In the light of your statement to the press following the Transport Debate on 27 June, our working assumption is that the Governance Review will lead to a decision to cancel the project. In taking forward the Governance Review, we are also instructing tie Ltd that current work on the project should be suspended, and a plan put in place that can be implemented in the event of the likely outcome. The objectives of this plan is to:

- Minimise any further expenditure on the EARL project;
- Understand the continuing obligations and liabilities associated with the role of Authorised Undertaker for the project.

Clarification of this last point will enable us to provide appropriate advice to you on the future discharge of this role.

ADVICE TO MINISTERS

5. You have offered to meet with BAA and Network Rail as part of the review process. This is welcomed, and in our view will help to contribute to the robustness of the Governance Review.

6. Your office has forwarded tie Ltd's letter of 28 June which refers to the disbandment of the EARL team. Separately, I have received from tie correspondence in relation to proposed redundancies, and further detail is provided in Annex A.

7. I expect that the Governance Review will be completed by the end of August and the other related matters resolved in time for you to report back to Parliament in September as the amended motion specifies.

Edinburgh & Glasgow/EARL Replacement Study

8. The Minister told Parliament that Transport Scotland would investigate alternatives to EARL and report back to Ministers in the autumn. The alternatives would focus on 'our priority for the rail network, which is to improve the reliability, attractiveness and journey time of the Edinburgh to Glasgow route'. We propose following the STAG (Scottish Transport Appraisal Guidance) process: work with our key stakeholders to identify the problems and opportunities on the route; use this to inform the specific objectives for the work; identify a whole range of options for improvements; and appraise how well the options achieve the objectives. The final STAG report will be used as the basis for providing Ministers with recommendations on options to be taken forward in the short, medium and longer term to improve Edinburgh-Glasgow rail connections, and we intend to provide this by end of September. We would also provide an outline delivery plan for the recommended options, which would indicate the further detailed design work that is required but cannot be completed within the next three months. Further details of this proposed approach are set out in Annex B.

Tram Project

9. The e-mail of 2 July asked how Tram might fit into the alternatives available to the EARL project. Our understanding is that, without EARL, the business case for the Edinburgh Tram scheme may be strengthened and we have also noted the possibility for the Tram to provide links to the airport from the rail network which will be explored further in the replacement study.

10. The Parliamentary decision on the Tram scheme has clarified the position in relation to future risk-bearing and governance in relation to this project, with responsibility now clearly lying with tie Ltd and City of Edinburgh Council. This is discussed further in Annex C.

11. Our recommendation would be that an early opportunity is taken to agree Transport Scotland's capped financial contribution to the Tram scheme on behalf of Ministers, and that at the same time Transport Scotland should scale back its direct involvement with this project.

Recommendation

12. You are invited to note the terms of this minute and to agree:

- The actions proposed to implement the outcome of the Parliamentary debate on 27 June
- A restated cap of £500m on Transport Scotland's contribution to the Tram scheme.

ADVICE TO MINISTERS

MALCOLM REED
Chief Executive
Transport Scotland
6 July 2007

| Copy List: | For Action | For Comments | For Information | | |
|-----------------------------------------------------------|------------|--------------|--------------------|----------------------|-------------------|
| | | | Portfolio Interest | Constituent Interest | General Awareness |
| Minister for Transport, Infrastructure and Climate Change | | | | | x |

DG Economy
 PS/Transport Scotland
 Bill Reeve
 Jim Barton
 Frances Duffy
 Guy Houston
 Ainslie McLaughlin
 Jerry Morrissey
 Damian Sharp
 Lucy Adamson
 Communications Finance & Sustainable Growth
 Press Transport Scotland
 Stephen Noon
 Kevin Pringle

ANNEX A

EARL AND EDINBURGH TRAM: NEXT STEPS

TIE LTD: REDUNDANCIES

1. I have received a letter from tie Ltd indicating that 26 posts will be redundant because of the cessation of work on EARL, involving a total redundancy cost in the order of £450,000. We are examining the details and proposals that have been provided, but my expectation is that the calculations will be in order and that Transport Scotland will have an obligation to meet this liability. We are separately discussing with tie Ltd the possibility of transferring some staff to Transport Scotland to undertake specific pieces of work on a time-limited basis.

[REDACTED]

Transport Scotland
6 July 2007

ANNEX B

EARL AND EDINBURGH TRAM: NEXT STEPS

**EDINBURGH GLASGOW IMPROVEMENT OPTIONS:
PROPOSED SCOPE FOR PROJECT**

Background

1. *The Minister said in Parliament on 27 June: 'Edinburgh airport needs an effective public transport link*

I want to focus on our priority for the rail network, which is to improve the reliability, attractiveness and journey time of the Edinburgh to Glasgow route, which will improve significantly the connectivity between those two fine and important cities. Transport Scotland will work with Network Rail and First ScotRail on a package of measures, including infrastructure improvements such as a new station at Gogar as an alternative link to the airport, improvements at Dalmeny and firm proposals for the most cost-effective ways to improve reliability, bring down journey times and provide capacity for the expected continuing growth in rail passenger numbers.

Aim and Objectives

2. The overall aim of this project is to provide Ministers with recommendations on cost effective improvements to the reliability, attractiveness and journey time of rail between Edinburgh and Glasgow by early October.

The specific objectives of this project will be agreed at the workshop on 19 July, but might be as follows:

Improved journey times between Edinburgh and Glasgow

Improved reliability of services between Edinburgh and Glasgow

Improved capacity between Edinburgh and Glasgow and at the termini, if necessary

An effective interchange from the rail network to Edinburgh airport

Key Deliverables

Outline project plan (13 July)

Pre-appraisal workshop to agree objectives and identify options for improvements (19 July)

Draft report chapters covering problems, objectives and options to be appraised (end July)

Option appraisal workshop (mid August)

ADVICE TO MINISTERS

Draft of remaining report chapters covering appraisal of options against objectives (end August)

IDM presentation to TS Board on conclusions (early September)

Final STAG report (mid September)

Submission to Ministers recommending improvements to the Edinburgh Glasgow rail routes, with annexes discussing costs and financing options, and giving an outline implementation plan (end September)

Resourced project plan for delivery of agreed options (end November)

Transport Scotland

6 July 2007

ANNEX C

EARL AND EDINBURGH TRAM: NEXT STEPS

EDINBURGH TRAMS

1. Overall Funding

Last week's decision of Parliament that Ministers accept the wishes of Parliament to support the Edinburgh Tram project to the limit of the previous administration's funding limit. You subsequently set this at '£490m' and no more, although there were other references to '£500m', essentially emanating from the Auditor General's report. You also took the opportunity to confirm that the scheme was the 'City of Edinburgh's - not the Executive's' in the post-debate press conference.

The previous administration essentially undertook to support the construction of Phase 1a (from Newhaven to the Airport) with £375m that would be index-linked to inflation. At the time of this original commitment the final outturn contribution was estimated at £450m-£500m. Our latest calculation of the final contribution based on the published inflation indices and programme contained within the draft final business case (dFBC) place the final contribution at £492m.

The latest statements present the following possible interpretations: -

Maintain the contribution at £375m indexed to the dFBC programme with an expected final overall contribution of £492m but with the actual final contribution being dependant on actual inflation.

Maintain the contribution at £375m indexed to the dFBC programme with an expected final overall contribution of £492m and with any final contribution capped at £500m regardless of actual inflation.

£375m recalculated on the new baseline programme for 1a to be delivered at the July Tram Project Board. This programme is anticipated to present a degree of delay and therefore the current estimate of £492m will rise to circa £500m with an option to cap at that point or not.

£375m recalculated on the prevailing programme at the point of financial close, i.e. agreement of final business case. Based on the indexation methodology to date the estimated final contribution is likely to exceed £500m, i.e. anticipating further programme slippage between now and financial close.

Restate the £375m as an already out-turned fixed and capped sum of £490 or £500m.

In literal terms Option 1 is closest to the position of the previous administration but it could be argued that in the event of cost and time overruns that a definition in line with Option 2 could have been enforced.

ADVICE TO MINISTERS

Options 2 could be described as being unfair by not taking into account the latest debates around the scheme.

Option 3 would allow an indexed contribution to be calculated in a transparent way (and based on the latest available programme) with an anticipated final contribution at or very close to £500m with the cap applied at that point.

Option 4 reflects a certain degree of logic and transparency but exposes the Executive's contribution to a further period of uncertainty and therefore makes the task of capping it at £500 potentially more fraught.

Option 5 could be described on certain levels as arbitrary in nature. It may not be possible to adequately explain the basis of the contribution at a future point in time.

Recommendation

We believe Option 3 provides the most explainable, defensible, professional and fair position to adopt whilst maintaining a cap of £500m on the Executive's final contribution to the scheme.

Future Governance and the Role of Transport Scotland

1. The Parliament's decision places the risk of any cost overruns on the Tram Scheme with the City of Edinburgh Council, and makes it clear that responsibility for managing and delivering the scheme rests with the promoter.
2. To achieve this clarity of roles, and ensure that situations could not arise subsequently in the governance of the project which might generate further calls on central funding, I propose that Transport Scotland's future engagement with the Edinburgh Tram Project should be on the basis of revised grant conditions and once these conditions are in place Transport Scotland staff should withdraw from active participation in the governance of this project.

Transport Scotland
6 July 2007

ADVICE TO MINISTERS

2. Cabinet Secretary Agreement to Trams Next Steps.

From: Morrissey J (Jerry)
Sent: 11 July 2007 14:46
To: Ramsay J (John); Davis L (Lorna); Mackie AW (Andrew) (Transport Scotland); Spence M (Matthew); McShane N (Natalie); Milligan S (Steve); Savage N (Nadia)
Cc: McShane N (Natalie)
Subject: FW: EARL and Edinburgh Tram: Next Steps
Matthew/Steve,

Can you please forward this email to your direct reports.

We need to define and agree “scale back” for the tram project.

Thanks

Jerry

Jerry Morrissey
Major Projects Team
Rail Directorate
Transport Scotland
7th Floor, Buchanan House



-----Original Message-----

From: Cranney S (Shauna) On Behalf Of Cabinet Secretary for Finance and Sustainable Growth

Sent: 11 July 2007 11:01

To: PS/Transport Scotland; Cabinet Secretary for Finance and Sustainable Growth

Cc: Minister for Transport, Infrastructure and Climate Change; DG Economy; Reeve W (Bill); Barton JG (Jim); Duffy F (Frances); Houston G (Guy); McLaughlin AC (Ainslie); Morrissey J (Jerry); Sharp DP (Damian); Adamson L (Lucy); Communications Finance and Sustainable Growth; Press Transport Scotland; Noon S (Stephen); Pringle K (Kevin); McKay S (Stuart)

Subject: RE: EARL and Edinburgh Tram: Next Steps

Malcolm

Copy as above

EARL AND EDINBURGH TRAMS: NEXT STEPS

Thank you for your minute of 9 July regarding the above. I have noted Mr Swinney's comments below:

EARL Replacement Study

ADVICE TO MINISTERS

Can the timeline for the outline delivery plan for the recommended options be brought forward to mid September to allow for a statement to Parliament by the end of September.

Tram Project

Mr Swinney agrees with the approach outlined in Option 3 (annex C of the minute) as the cap on Trams and he also agrees that Transport Scotland should “scale back” its direct involvement with this project.

Thanks

Shauna

Shauna Cranney

APS/Cabinet Secretary for Finance and Sustainable Growth

Ext:

-----Original Message-----

From: PS/Transport Scotland

Sent: 09 July 2007 10:22

To: Cabinet Secretary for Finance and Sustainable Growth

Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; DG Economy; Reeve W (Bill); Barton JG (Jim); Duffy F (Frances); Houston G (Guy); McLaughlin AC (Ainslie); Morrissey J (Jerry); Sharp DP (Damian); Adamson L (Lucy); Communications Finance and Sustainable Growth; Press Transport Scotland; Noon S (Stephen); Pringle K (Kevin); McKay S (Stuart)

Subject: EARL and Edinburgh Tram: Next Steps

Cabinet Secretary for Finance and Sustainable Growth

cc As above

Please see attached Minute from Malcolm Reed (8 pages).

Thanks

Marion

<< File: Minute to Mr Swinney - Earl and Edinburgh Tram Next Steps - 6 July 2007.doc >>

3. Cabinet Secretary Briefing – Scaled back role for Transport Scotland.

From: **Matthew Spence**
Deputy Head of Major
Projects
Transport Scotland
24th July 2007

Cabinet Secretary for Finance and Sustainable Growth

EDINBURGH TRAM: THE ROLE OF TRANSPORT SCOTLAND

Purpose

- 18.** To inform the Cabinet Secretary the proposed **Priority:**
Routine
- 19.** redefined role of Transport Scotland with respect to the Edinburgh Tram Project.

Background

- 20.** The position reached by Parliament on 27 June 2007 follow the debate on transport.
- 21.** The minute of 9 July 2007 from Transport Scotland ‘**Earl and** Trams: The Next Steps’.
- 22.** The following proposals aim to define, in practical terms, ‘scaling back’ the role of Transport Scotland.

Basis of the Proposals

- 23.** The Scottish Executive to grant up to a maximum of £500m to City of Edinburgh Council to construct Phase 1A of the project (i.e. the airport to Newhaven waterfront via Haymarket and Princes Street).
- 24.** Expectation that Phase 1A will be operational during Q1 2011.
- 25.** The system will not require any operating subsidy (although the network will be able to participate in the national concessionary fares scheme).

Governance & Engagement

- 26.** Transport Scotland to provide the associated funding to City of Edinburgh Council via standard Section 70 grant conditions (against an agreed draw-down profile).
- 27.** Transport Scotland to surrender its seat on the Tram Project Board. City of Edinburgh Council, as the promoter, to re-structure the governance arrangements as appropriate.
- 28.** City of Edinburgh Council to meet with Transport Scotland at official level on a four-weekly basis to present a progress report (based on the standard Transport Scotland reporting process).

ADVICE TO MINISTERS

29. City of Edinburgh Council Chief Executive to provide confirmation on a quarterly basis that the conditions of grant are being complied with.

Milestones & Short Term Funding Profile

City of Edinburgh is currently drawing on an initial grant of £60m to take the project to a position of financial close. This was originally planned for October 2006 but will now slip to January 2007.

Transport Scotland will not offer any further funding until financial close is achieved i.e. any shortfalls in the lead-up to this milestone will need to be met by the council (theoretical £12m exposure for them but more likely to be in the range £0 to 5m).

Grant funds post financial close will only be provided on the condition they are accompanied by funds from the Council in the ratio of 9 to 1. This is to ensure; 1) the Council provide their commitment of £45m as outlined in the draft final business case 2) in the event of phase 1A only costing £500m the Executive's contribution will be a maximum of £455m and 3) none of the Executive's contribution can be channelled to phase 1b or 2 of the project.

Timing

33. These proposals have been discussed with officials at Tie Limited. It is the intention to discuss the proposals with City of Edinburgh Council w/c 30 July 2007 to allow the arrangements to be formally adopted following the Transport Scotland meeting of directors on Wednesday 8 August 2007.

Risk Profile

34. The £500m capped grant offer is based on Scottish Minister's original of £375m (to be indexed in accordance with published inflation criteria). Latest estimates suggest this would result in a final out-turned contribution of circa £494m. Within the context of the current discussions TS intend to update this figure in line with latest programme information and potentially use any remaining headroom to the £500m cap in final negotiations to ensure a clear and defined risk transfer to the Council.

Matthew Spence
24th July 2007

| | | | | | |
|-------------------|------------|--------------|--------------------|-------------------|-------------------|
| Copy List: | For Action | For Comments | For Information | | |
| | | | Portfolio Interest | Constit Interests | General Awareness |

ADVICE TO MINISTERS

| | | | | | |
|---------------------------------------------------------|--|--|--|--|---|
| Minister for Transport, Infrastructure & Climate Change | | | | | x |
|---------------------------------------------------------|--|--|--|--|---|

PS/Transport Scotland
 Bill Reeve, Director - Rail Delivery, TS
 Frances Duffy, Director – Strategy & Investment, TS
 Guy Houston, Director – Finance TS
 Mark Pettit, Rail Finance
 Jerry Morrissey, Head of Major Projects
 Martin McKinlay, Major Projects Technical Advice
 Lucy Adamson, Communications TS
 Press Transport Scotland
 Communications Finance & Sustainable Growth

ADVICE TO MINISTERS

4. Cabinet Secretary Agreement to Scaled back role for Transport Scotland on Trams.

From: Robertson J (Julie) on behalf of Cabinet Secretary for Finance and Sustainable Growth
Sent: 30 July 2007 10:17
To: Davis L (Lorna); Cabinet Secretary for Finance and Sustainable Growth
Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; Reeve W (Bill); Morrissey J (Jerry); Ramsay J (John); Savage N (Nadia); Duffy F (Frances); Houston G (Guy); Pettit M (Mark); McKinlay M (Martin); Adamson L (Lucy); McShane N (Natalie); Press Transport Scotland; Communications Finance and Sustainable Growth; Spence M (Matthew)
Subject: RE: BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram

Lorna

Copy: as above

BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram

Mr Swinney has noted **Matthew Spence's** minute of 26th July and is content with the proposed redefined role of Transport Scotland with respect to the Edinburgh Tram Project.

Thanks

Julie

Julie Robertson
Assistant Private Secretary to the Cabinet Secretary for Finance and Sustainable Growth
Scottish Executive
t:
e: julie.robertson@scotland.gsi.gov.uk

All e-mails and attachments sent by a Ministerial Private Office to another official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

-----Original Message-----

From: Davis L (Lorna)
Sent: 26 July 2007 12:06
To: Cabinet Secretary for Finance and Sustainable Growth
Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; Reeve W (Bill); Morrissey J (Jerry); Ramsay J (John); Savage N (Nadia); Duffy F (Frances); Houston G (Guy); Pettit M (Mark); McKinlay M (Martin); Adamson L (Lucy); McShane N (Natalie); Press Transport Scotland; Communications Finance and Sustainable Growth; Spence M (Matthew)
Subject: RE: BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram

All

Please find attached a revision to the "Milestones & Short Term Funding Profile" section. Dates should have stated Oct

ADVICE TO MINISTERS

2007 and Jan 2008 – the attached version now reflects this amendment.

Kind regards,

Lorna

<< File: Ministerial Briefing - Edinburgh Tram Role of Transport Scotland - v2.0.doc >>

-----Original Message-----

From: Spence M (Matthew)

Sent: 25 July 2007 17:57

To: Cabinet Secretary for Finance and Sustainable Growth

Cc: Minister for Transport, Infrastructure and Climate Change; PS/Transport Scotland; Reeve W (Bill); Morrissey J (Jerry); Ramsay J (John); Davis L (Lorna); Savage N (Nadia); Duffy F (Frances); Houston G (Guy); Pettit M (Mark); McKinlay M (Martin); Adamson L (Lucy); McShane N (Natalie); Press Transport Scotland; Communications Finance and Sustainable Growth

Subject: BRIEFING: 'Scaled Back' Role of Transport Scotland in Edinburgh Tram

Briefing: Role of Transport Scotland in Edinburgh Tram Project

Priority: Routine

Cleared by: Dr Malcolm Reed

<< File: Ministerial Briefing - Edinburgh Tram, Role of Transport Scotland.doc >>

Best regards

α **Matthew Spence**

Deputy Head of Major Projects

Major Projects Group, Rail Delivery Directorate

Transport Scotland, Buchanan House (7/09)

58 Port Dundas Road, Glasgow G4 0HF

TEL: **MOB:** (

5. Note of Meeting between TIE & Transport Scotland on Governance etc.

EDINBURGH TRAM PROJECT

GOVERNANCE, FUNDING, BUSINESS CASE, APPROVALS

Note of meeting between Tie and Transport Scotland 2 August 2007

General

31. A letter will go to TA from MR in the next day or two. The content will be consistent with recent senior level exchanges, reflecting the main principles described below. We discussed other follow up documentation and this is captured at the end of this note. In particular, the basis of all new funding will be set out in a New Award Letter.
32. The interests of the Government (shorthand for Cabinet, the Cabinet Secretary, the Executive and Transport Scotland) can be summarised as follows :
 - a. Satisfaction that the Airport / Leith tramline will be delivered
 - b. Confirmation that the BCR is greater than 1.0, now to reflect the world without EARL and any other substantial changes from the Draft FBC (December 2006) ; and
 - c. Confirmation that there will be no Government subsidy requirement for the integrated bus and tram operations.

These are in line with the parameters used to assess the DFBC and are the measures which will be used to determine grant award. Other than general adherence to proper practices designed to protect the public pound, these are the only areas of Government focus. Documentation provided for Government assessment should be limited to material which is directly relevant to these parameters.

Governance

33. TS will withdraw from routine monitoring and from the TPB and sub-committees, in favour of the monitoring regime to be summarised in the MR / TA letter and set out in detail in the New Award Letter, in summary :
 - 4-weekly report as now
 - 4-weekly meeting between senior TS people (probably Bill Reeve and Jerry Morrison) and senior CEC people (probably Andrew Holmes and Donald McGougan), others at CEC's invitation including senior Project / tie / TEL people, scope to be only key issues relevant to TS / CEC with no additional reports unless agreed by exception

ADVICE TO MINISTERS

- Quarterly TS / CEC CEOs meeting, scope to be agreed but probably focussed on key tram project issues and wider Edinburgh transport matters, at discretion of the two CEOs.
- Quarterly confirmation from CEC of compliance with New Award Letter terms

34. Satisfaction with governance arrangements planned for the construction period is CEC's responsibility, finalised by approval of the Final Business Case (FBC) which will set out those proposed arrangements.

Funding

Subject to overall agreement on funding terms, the anticipated aggregate grant award will be £500m. There will be no further indexation (up or down). The grant will be available to fund Phases 1a and 1b but strictly on the basis that the whole of Phase 1a must be delivered. A decision to proceed with Phase 1b – whether coincident with financial close or at some future date – is solely that of CEC, but no additional grant award for Phase 1 will be made beyond £500m.

There is no Government requirement to future proof the EARL project (or any other project) in designing and constructing the Tram. In the event that the termination of the EARL project results in additional costs or savings to the Tram Project, these will be absorbed within the project budget and will not result in any change to the grant award of £500m.

The New Award Letter will reflect all previous grant awards for the implementation of the Tram Project, including the award of £60m approved in Spring 2007 and rollover from prior awards. To assist clarification of certain points below, assume that the total pre-approved funding is £120m, of which £119m has been provided by Government and £1m by CEC. The balance of grant award up to £500m of £381m will be subject to the terms of the New Award Letter.

The award of £381m will be on the basis that a proportionate funding mechanism is agreed. This will reflect the balance of commitment of £381m from the Government and the balance of commitment from CEC of £44m. This creates a ratio of 89.65% Government, 10.35% CEC to be applied to all future drawdowns until the aggregate Government funding reaches £500m. All further funding will be to the account of CEC.

There is agreement that the bidder terms should be based on cash flow neutrality in their accounts as a means of limiting capital cost bids. Accordingly, the funding from the Government should be scheduled alongside the CEC contribution such that payments can be made to contractors in a manner which achieves cash flow neutrality for the contractors.

ADVICE TO MINISTERS

There may be further advantage if advance sums can be offered to contractors. However, there are public sector accounting difficulties which will need to be addressed if this is to be pursued. DS to organise a meeting with TS Finance people to explore this.

Agreed that drawdown arrangements should be kept as administratively simple as possible, consistent with proper control by all parties. Government cannot advance very large sums – eg a full year's estimated requirement – but a quarterly structure should be workable. This will require sound forward estimates of spend and cash flows, reflecting in due course the contractual terms agreed with the successful bidders. The funding for the balance of 2007-08 to Financial Close ("Tranche A" of the new award) is covered below. For the period from Financial Close, using such estimates, cash drawdowns by CEC from Government should reflect an initial drawdown ("Tranche B") of the first two quarters' funding requirement with subsequent drawdowns to be made quarterly based on the succeeding quarter's requirement. This should provide adequate base funding avoiding a cash shortage. The operation of this mechanism will be monitored quarterly.

The drawdowns will require to reflect the proportionate funding arrangement, such that each new drawdown from Government (starting with Tranche A) will be restricted to 89.65% of the full amount required, with the balance to be contributed by CEC. It is recognised that the precise arrangements need further definition to accommodate the mix of cash and in-kind (land) contribution by CEC, but the broad principle should be adhered to by both parties. GB to provide further analysis on this matter. The operation of the proportionate mechanism will also be monitored quarterly.

It is recognised that there is likely to be a substantial additional funding requirement in the period prior to Financial Close beyond the funding currently in place. This was previously estimated at c£60m and reflects continuation of the current programme, including land acquisition and utility works. Although programme slippage arising from the post-election period has moved some cost forward, the sum involved remains substantial. GB to arrange an up to date estimate. DS noted a risk that Government may not be willing to provide further funding prior to financial close, which would have extremely damaging consequences for the project. The solution lies in the progress made through procurement, preparation of FBC and in the commitments given by CEC – see below under approvals.

CEC and tie are examining options for leasing and debt arrangements to support overall funding. These may prove to be financially efficient and carry other advantages. The scope of these arrangements is focussed on incremental funding for Phase 1b, but it may transpire that there is advantage in extending the facilities to

ADVICE TO MINISTERS

encroach on Phase 1a. In the event that there is demonstrable advantage to all parties, CEC and Government will engage in good faith to conclude on appropriate action, most likely in 2008.

Approvals involving Government

The summary of the proposed top-down programme is attached. Now anticipates substantially complete FBC (Version 1) to accompany Preferred Bidder recommendation and draft New Award Letter (which includes Tranche A funding) going before full Council on Sept 27th. Careful project management should allow TS IDM to approve same on Oct 10th, followed by full council approval on Oct 25th and Cabinet approval in week beginning Oct 29th.

Assuming finalisation of contracts and all related documentation is achieved in line with September Documents over the period Nov / Dec, full Council to approve on Dec 20th and mechanism to be established to achieve Government approval on Dec 21st. Actual award and contract completion on Jan 11th.

Scope of Gateway 3 to be in line with standard OGC guidelines and to be agreed in advance with TS. Report to go to IDM Board Oct 10th, all subsequent approvals dependent on all "red, hold" issues being resolved.

Final Business Case

Agreed that FBC should be DFBC amended only as necessary. Specific points to update are embedding of the no-EARL scenario as base case, reflected also in BCR calculation (work already substantially executed in support of DFBC) ; and revised capital costs based on preferred bids.

TS comments / tie responses on DFBC to be embedded in FBC, understood not to be fundamental, no further iterations or reporting & debate with TS needed on these matters.

Contingencies

Recognised that desire is for a straight-forward arrangement between CEC and Government ; however, certain contingencies cannot be accepted unqualified by CEC in view of scale of financial risk relative to CEC resources :

Action taken by the Government which leads to a material extension of programme or increase in cost - incremental costs to be met by Government

Government determines not to support the project at some stage in the future resulting in termination costs – all termination costs and CEC sunk investment to be reimbursed

ADVICE TO MINISTERS

Network Rail frustrate progress of project through immunisation (or other) arrangements – Government will not underwrite this risk, but will enter into best endeavours agreement to support CEC in dialogue with NR. CEC / tie / TEL to consider whether risk is acceptable and process manageable.

Other third party involvement – BAA plc, HMRI, HSE, other – needs further consideration ; CEC foresee potentially unacceptable risk balance and need to address further.

Dispute resolution process to be embedded in New Award Letter covering inter alia failure by either party to meet payment obligations.

Mechanism required to protect CEC / TEL from Government action which affects materially the operational performance of the integrated bus and tram system, for example substantial financial support for Son of EARL (Tram disruption and revenue attrition).

Documentation required

MR / TA letter to be issued imminently, cc'd to Chairs of TEL and tie Distilled version to be available by mid-August for public consumption (mainly for bidders to reinforce confidence)

Draft New Award Letter is being prepared by TS, to be finalised by end-August at latest.

Other matters

Government is neutral to asset ownership, corporate structuring and related matters which are CEC's prerogative so long as within bounds of normal public sector good practice.

Certain aspects of 4-weekly reporting require further discussion : construction period programme requires to be cost-loaded at a sensible level of detail and will be basis of cash flows which support drawdown ; timing of submission to be re-addressed with objective of bringing forward by one week to align with other TS projects, again probably effective construction commencement.

FBC to reflect same assumptions about concessionary fare support as in DFBC. Government position is that parties should be "no better and no worse off".

Next steps

DS / GB to agree this note, discuss issues within respective organisations.

Follow up meeting asap between GB / DS and Donald McGougan. GB to organise.

ADVICE TO MINISTERS

APPENDIX

Top-down programme

The critical dates are set out in summary below and it is implicit in the references to FBC V1 that full agreement has been reached on all key terms of the Infraco / Tramco contracts and on the funding agreement between CEC and TS :

- End-July** Issue of a more detailed version of the outline programme linked to the existing procurement programme and agreement of all key tie / TEL / CEC and TS people to deliver [Done, currently under refinement]
- End August** Draft of FBC V1 available for tie / TEL / CEC review, including best estimate of preferred bid based on end-August returns from bidders (draft revised sections will be circulated during August, BPIC / Procurement Group meetings will be convened to address issues and to help manage progress and the TPB will be updated on 9 August and 6 September).
- Mid-Sept** Finalisation and informal approval by tie / TEL / CEC of "September Documents" : 1) FBC V1 2) preferred bidder recommendation 3) draft New Award Letter including Tranche A funding
- Sept 20th** September Documents submitted to TPB
- Sept 27th** TPB approval (and recommendation to TEL Board / CEC) of same [preferably alongside draft report to Council].
- Submission of September Documents to CEC Officials and extracts submitted to Government (prior review preferable and to be planned)
- Oct 1** Contracts for additional advance works entered into, conditional inter alia on termination without adverse cost in event that CEC / Government do not approve FBC V1, Preferred bidder recommendation and / or Tranche A funding within New Award Letter.
- Early Oct** Gateway 3 review, confirmation to TS on critical issues
- Oct 10th** TS IDM reviews / approves September Document extracts, plus update on Gateway 3

ADVICE TO MINISTERS

| | |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Oct 18th | Report and supporting documents circulated in advance of full Council meeting on |
| Oct 25th | Full council meeting to approve FBC V1, Preferred bidder recommendation and draft New Award Letter |
| Oct 29th | Cabinet approval of September documents including New Award Letter / Tranche A funding |
| Nov / Dec | Completion of all contractual and funding documentation, update to produce FBC V2, official level approval by all parties |
| Dec * | TPB approval, recommendation to TEL Board / CEC (*date may need revised) |
| Dec 20th | Report to full Council, which should reflect only marginal changes to form agreed in October ; full Council approval |
| Dec 21st | Government sign-off conditional on all other aspects of financial close (mechanics of sign-off to be addressed) |
| To 11th Jan | Finalisation of documentation, final negotiation etc |