

RESTRICTED ADVICE TO MINISTERS

From: Bill Reeve
Rail Delivery, Transport Scotland

29 March 2010

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

EDINBURGH TRAM DEVELOPMENTS

Purpose

1. To record recent discussions and advise of developments since.

Priority

2. Routine.

Background

3. On 10 March the Cabinet Secretary and Minister met senior representatives of TIE, including David MacKay and Richard Jeffrey with officials from Transport Scotland to discuss the current state of the Edinburgh Tram Project.
4. Tie officials made clear that significant differences in understanding of the operation of the main tram project contract persist between tie and the Bilfinger Berger – Siemens construction consortium. This is leading to continued delay to the project. There is no agreed construction programme. The construction consortium is suggesting completion in 2014.
5. Tie advised orally at the meeting that it is unlikely to be possible to construct the entire scope of the project within the £545m funding envelope previously agreed. Costs are likely to be significantly in excess of £600m: the final cost at this state cannot be determined. A final cost in excess of £100m more than the previous £545m target is possible.
6. The Cabinet Secretary made clear that this position is unsatisfactory.
7. Tie outlined its commercial plans to use contractual mechanisms to secure delivery of the remaining project scope at the lowest cost now achievable from the contractor.
8. Following the meeting, the Cabinet Secretary asked Transport Scotland officials to increase the level of monitoring of tie's progress, and in particular its proposed commercial plans.
9. Subsequently, David McKay wrote to David Middleton suggesting the creation of a new Funders' Oversight Group to include CEC and Transport Scotland.

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Consideration

10. The Scottish Government is funding its agreed maximum £500m contribution to the tram project through a grant letter from Scottish Ministers to City of Edinburgh Council administered by Transport Scotland. One of the terms and conditions of this grant letter is that the full “Phase 1a” project scope (i.e. Edinburgh Airport to Leith and Newhaven) should be delivered within £545m. If tie formally advises that this will not be possible, it is open to the discretion of Scottish Ministers to exercise some of the remedy provisions within the grant letter.
11. The first step in the remedy provisions would normally be to issue a Cure Notice. A Cure Notice is a notice from Ministers to CEC requiring CEC to submit and agree within 10 Business Days (or such other period as specified in the Cure Notice) a programme of action, called the Cure Plan, to remedy or otherwise resolve the matters referred to in the Cure Notice within a reasonable time, to the satisfaction of Ministers.
12. In this instance, however, tie has already told Ministers of its intended action to address the programme and cost issues. Therefore serving a Cure Notice would not achieve anything which is not already being done.
13. The Funders’ Oversight Group affords an opportunity to examine in more detail the means by which City of Edinburgh Council will meet its obligation to fund all cost increases of the tram project in excess of £545m. It is proposed, therefore, that Sharon Fairweather, the Finance Director of Transport Scotland should attend this group for Transport Scotland. It is expected that Donald McGougan, Director of Finance for CEC will attend as well.
14. The terms of the grant letter set out a requirement for four weekly reporting from CEC, which provides the information for a four weekly Project Progress Meeting, attended by Jerry Morrissey, Head of Rail Projects at Transport Scotland. There is also a Quarterly Review Meeting chaired by Bill Reeve, Director, Rail Delivery at Transport Scotland and attendance from David Anderson, Director of Development for CEC, and Richard Jeffrey, Chief executive of tie Ltd.
15. It is considered that monitoring should be increased during the implementation of tie’s current commercial plan. In addition to the reporting and meeting arrangements set out above, it is proposed that weekly discussions should take place between Bill Reeve and Richard Jeffrey to ensure a close understanding of progress is maintained. Further ad hoc discussions will take place as appropriate and necessary, and these may involve Ainslie McLaughlin, Director of Major Transport Infrastructure Projects who has extensive experience of dealing with a wide range of civil engineering contractors, including Bilfinger Berger.
16. The proposed commercial plan of tie will take some months to take effect. It is proposed, therefore, that it would be appropriate to make an assessment of progress after three months in mid May. We understand that this is likely to be a formal report to Edinburgh Council during the course of May, which is likely to attract publicity.

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Recommendations

17. It is recommended that that Ministers should :
- i. Note the record of recent discussions.
 - ii. Note the proposed enhanced monitoring arrangements including the Funders' Oversight Group
 - iii. Note that we will review tie's progress further in May.

Bill Reeve

Rail Delivery, Transport Scotland

Ext. [REDACTED]

29 March 2010

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

David Middleton
PS/TS
Permanent Secretary
Director of Finance
David Reid
Murray Sinclair
Frances Duffy
Ainslie McLaughlin
Jim Barton
Sharon Fairweather
Richard Scott
Jonathan Pugh
Claire Keggie
Press TS
Communications FSG
DG Economy
Stephen Noon
Kevin Pringle
David Binnie
Martin McKinlay
Jerry Morrissey
Rodger Querns
Shaun Keenan

