

Item No.
3

## City of Westminster

<b>Report to</b>	<b>Date</b>	<b>Title of Report</b>
Committee of the Cabinet	04 March 2002	Paddington Station Long Term Vehicle Access
<b>Classification</b>	<b>Report of</b>	
For General Release	Director of Planning and Transportation	
<b>Wards involved</b>	Little Venice, Hyde Park, Westbourne, Bayswater, Lancaster Gate, Bryanston, Harrow Road, Church Street, Baker Street	
<b>Policy context</b>	Transportation and Highways 2001/2002 Performance Plan Aim 3 is for a modern successful City Aim 4 is for a city that works for its residents	
<b>Financial Summary</b>	No further financial approvals are required. Authority was granted at 19 November 2001 Cabinet to fully implement the project, subject to the satisfactory conclusion of the collaboration agreement and procurement of cost over-run insurance, in the accumulative sum of £48.02M of which the City Council's share will be £22.53M. The report sets out the current situation on Legal Agreements and cost overrun insurance. The cost of delay to the Contract is in the region of £300K to £500K per month.	
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### 1. Summary of this Report

Following the in principle agreement of Cabinet on 21 January 2002 to proceed with this project subject to caveats, this report provides a status summary of progress in resolving outstanding issues and suggests an interim commitment to the project. Specifically the report details :

- status of the Collaboration Agreement negotiations
- status of the Works Agreements and in particular the LUL working tolerances
- progress regarding cost over-run insurance.

The report concludes that whilst these fundamental issues have yet to be finally resolved, significant encouraging progress has been made which suggest it will be possible to successfully conclude discussions within the next 6 / 8 weeks. Unfortunately the construction tenders are approaching time expiry and therefore delay and cost escalations would result in additional costs of £300K / £500K per month. To protect the City Council's position it is suggested that a interim design only arrangement with the bridge contractor is adopted costing circa £200K / £250K per month.

## 2 Recommendations

- 2.1 The current position regarding the Collaboration Agreement, Works Agreements and cost overrun insurance be noted.
- 2.2 That it be noted that it is proposed to issue a Letter of Intent with a cost ceiling of £1,000,000 to Hochtief to minimise cost and delay to the project.

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## 3 Background to this Report

- 3.1 **Since last report on 21 January 2002**  
The LTVA project was reported to Cabinet on 21 January 2002. A copy of this report is attached as Appendix 1. It was resolved "that it be noted that a Committee of Cabinet be established with delegated authority to consider and take decisions on Paddington Station LTVA and in particular to consider at an early stage the issue of cost overrun insurance for the scheme and the anticipated LUL undertaking in respect of the Bakerloo Line tunnels".

## 4 Key Issues

- 4.1 This report covers progress on the following issues:
  - A The delivery of the Parliamentary Undertaking by seeking agreement on the Collaboration Agreement.
  - B The mitigation of risk through Works Agreements with LUL, Railtrack and BWB.
  - C The tender for the Main Bridge and Civil Contract
  - D The mitigation of risk through cost over-run insuranceThe further developments on key issues are set out below:

### A Collaboration Agreement

- 4.2 BAA, Railtrack and the City Council are joint partners in this project under a Parliamentary Undertaking. The project costs, after deduction of external contributions and Works inside the station for which Railtrack are responsible, are funded approximately 50% by the City Council and 50% by BAA / Railtrack. An interim funding agreement covering the design stage is already in place. A further collaborative agreement, which commits all parties to fund and implement the final scheme, will need to be signed prior to the engrossment of the contract with Hochtief.

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- 4.3 Progress has been made on agreeing the other terms of the Collaboration Agreement. Two major issues have recently been debated. BAA have sought reassurance that in return for their contributions they will secure an improved station access to service an increasing passenger demand for taxis, a key factor in their business. At the 21 January 2002 Cabinet meeting it was resolved that the LTVA taxi tunnel be adopted as the default station access.
- 4.4 A further BAA proposal was to “cap” their contribution at £15M on the basis that any additional cost over-run should be funded by insurance and additional third party funding. This issue has also been resolved with the Collaboration Agreement being finalised on the basis that there is no cap.
- 4.5 Further meetings have been held between the funding partners and the terms of the agreement are close to finalisation. Whilst there are no significant areas of disagreement, the process of finalising and agreeing the drafting and detailed appendices is taking longer than anticipated primarily because of the reasons set out below. The document is now expected to be ready for signature by late March 2002.

## B Works Agreements

- 4.6 Works agreements have been further developed and progress is reported as follows;
- 4.7 Railtrack: One further issues has been raised. The project currently provides for the diverted BT cables to remain within the under track crossing and legal agreements were being drawn up on this basis. We have not allowed for diverting back into the replacement bridge as this would cost circa £600,000. Railtrack are concerned that they will be left with an impediment to future development in this area. There are three possible solutions.
- i) that the project agrees to accept the residual risk of diverting the cables back into the replacement bridge should this prove necessary in the future. This would cost circa £600,000 (circa £ 300,000 to WCC) but adjusted for future inflation for which Railtrack will bear approx. £150,000.
- ii) that Railtrack review their position and agree to accept the diverted stats and future redevelopment risk, that Officers consider to be small.
- iii) as ii) above but with Railtrack being compensated by the project in a nominal sum of say £100,000 for their future risk. This would be a cost to the project to avoid future risk.
- The funding partners have concluded that the most appropriate solution would be for all parties to enter into a separate agreement whereby the three funders agree that, in the event of the need arising in the future to divert the BT cables again, the costs would be met as described in option i) above
- Some further minor work is required to conclude the agreements and the document is not now expected to be ready for signature before mid March 2002.
- 4.8 An issue related to Railtrack post Ladbroke Grove signal work which Railtrack previously advised would have a knock on effect to the start of the main contract. Signal related work can only be undertaken with the co-operation and approval of Railtrack. The implications on the project have been analysed with Railtrack and a strategy for minimising delay, cost and risk has been

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progressively developed over many months. The risk of a delay was reduced from potentially exceeding twelve months to a minor delay which was incorporated into the revised programme submitted to Cabinet on 21 January 2002. A formal undertaking by Railtrack to commit to this programme had been promised by 29 January 2002. This remains outstanding at despatch date. A briefing by Railtrack on 01 Feb has served as an advanced warning of a slippage to this previously reported position. The Ladbroke Grove signalling works are behind programme and a further detailed review of the relationship between LTVA and the remaining Ladbroke Grove works is being undertaken by Railtrack. A formal response will not now be issued until 21 March 2002. Early indications are of a delay of circa 10 weeks but this is subject to the further work being done by Railtrack with their Ladbroke Grove signal contractor to claw this back. It is still not possible to determine the exact cost and programme implications. It is therefore unlikely that the funding partners can sign the Collaboration Agreement until this is clarified.

- 4.9 British Waterways Board: BWB have agreed most of the terms of the under-track crossing wayleave but further minor work is required. One outstanding issue to be resolved is the rights of BT to add new cables into the tunnel during the period the bridge is closed. Further legal advice from leading counsel has been sought with respect to the New Roads and Street Works Act which concludes that BT do not have this right. This advice is being forwarded to BT and should resolve this issue. BWB are also working to obtain consents from the tenants of 63 –65 North Wharf Rd. for the deed of easement. Both of these issues are expected to be complete by mid March 2002.

- 4.10 London Underground Ltd: Two issues are outstanding.

i) The City Council require an assurance that LUL do not object to the LTVA taxi tunnel under the CrossRail safeguarding directive. It is not anticipated that there will be any difficulties in concluding this.

ii) The City Council also require realistic movement criteria for the anticipated settlement of Bakerloo line tunnels arising from the Works. Unfortunately, these tunnels are already at their limits and train speed restrictions are already in place. It is not possible to build the works without some movement of the track and tunnels. The City Council have instructed a minimum amount of survey work to establish if there are seasonal movements of the tunnels before the work commences but these will not provide a comprehensive history. The cost of each survey which has to be undertaken during night time possessions is circa £9,000. The work involves not only measuring track levels but also checking the clearances between the train's kinematic envelope and the tunnel segments. (Tunnel and track can move differentially) Whilst awaiting the second survey report we understood that the surveys would probably confirm that there is a seasonal or background movement of the track levels and clearances within the tunnel. LUL have previously undertaken to provide the results of the surveys and the acceptable tolerances for tunnel settlement by 31 January 2002 for agreement with the main bridge contractor.

- 4.11 During the tender period, tenderers were encouraged to discuss their proposals with the third parties. The Hochtief submission contained well developed proposals to minimise the impacts on the Bakerloo line tunnels. The movements on the tunnel predicted by Hochtief by preliminary finite element analysis were in the region of plus or minus 2mm which were considered to be

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as low as reasonably possible and at a level where it would be difficult to measure or monitor using conventional survey techniques. LUL have also confirmed their preference for the City Council appointing Hochtief. Officers have therefore sought to obtain settlement criteria from LUL in the region of plus or minus 6mm. This was considered to be a realistic tolerance for civil engineering works.

- 4.12 A preliminary response from LUL has now been received. This is attached as Appendix 2A. For one running tunnel they have proposed plus or minus 4mm, slightly less than our previous expectation. Unfortunately, for the other tunnel, they are persisting with a proposal to restrict movements arising from the bridge works to zero settlement but plus 4mm heave. There is an "escape clause" in that zero may be relaxed in certain areas subject to further survey and investigation. On this basis Officers were unable to conclude the works agreement and sought a meeting with LUL to clarify the issue.
- 4.13 Initial comments from our Project Manager (Symonds) and design consultant (Hyder) on the technical issues relating to this is attached as Appendix 2B. [These were based upon previous "verbal report figures" of plus or minus 6mm rather than the 4mm subsequently confirmed. However this would not affect the validity of these preliminary comments.] The LUL offer and consultant comments both suggest that a negotiated compromise position is achievable, albeit that this will inevitably increase costs.
- 4.14 At a meeting on 25 February 2002, LUL tabled the gauge survey results and stated that the record surveys demonstrate consistent results meaning that there was no evidence of seasonal or background movements. LUL have also confirmed that the movements stated in their Email referred to changes in gauge between track levels and tunnel segments and not do not relate to track movements. In other words a settlement of say 6mm at track level would be acceptable providing that the whole tunnel settles uniformly. The settlement currently predicted by Hochtief (circa 2mm) is likely to result in an acceptable gauge reduction of 0.2mm – 0.4mm which LUL accept as negligible. LUL require detailed calculations to verify these estimates but observed that the Hochtief settlement was likely to be less than currently predicted if the stiffening effect of the existing tunnel was taken into consideration. Officers have noted that this conciliatory position is slightly inconsistent with the proposed "zero tolerance" and requested that LUL redefine "zero" to include these negligible predictions.
- 4.15 LUL have undertaken to reissue their gauge survey with the LTVA bridge position overlaid so that WCC can superimpose the settlement and change of gauge predictions. Preliminary observations are that the LUL "pinch points" fall outside the zone of influence of the LTVA abutment. LUL are unable to confirm their position until this further work has been done. LUL have also undertaken to propose a revised and clearer technical definition of acceptable movements for incorporating in the proposed works agreement. It is proposed to conclude an agreement with LUL that the Contractor accepts and leaves no residual risk with WCC.
- 4.16 Realistically, in a worst case scenario that movements resulting from LTVA exceed the LUL limits at some locations, this could still result in gauge clearances that are no worse than existing "pinch points", which have resulted in operational speed restrictions being imposed by LUL.

## C Tender process

- 4.17 The 21 January Cabinet resolution provided for the conditional award of the Contract to subject to the following:
- The issues with LUL being resolved
  - The Collaboration Agreement being signed committing those organisations to their share of the necessary funding
- The issue of Cost overrun insurance was de-linked from the award of the main contact.
- 4.18 The selected contractor, Hochtief, has previously agreed to extend his tender until 05 March 2002. Matters reported to Cabinet on 21 January 2002 were based upon the key date for awarding the Main Bridge and Civil contract by 06 Feb 02. This date has now inevitably slipped as a result of the issues outlined above. The cost of delay to the project has been assessed as in the region of £75,000 to £125,000 per week, which is also dependent on the overall length of the delay.

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## Way Forward

- 4.19 As a result of the uncertainty surrounding the project it has not yet been possible to conclude all the legal issues set out above.
- 4.20 The key issues are reiterated as follows.
- It is anticipated that the Collaboration Agreement securing the necessary funding partner contributions can be completed promptly after Railtrack have clarified the signalling issues.
  - The other technical issues associated with the outstanding legal agreements and project insurance will require further work and time.
- 4.21 It is anticipated that these issues can be resolved and formalised in legal agreements by late March 2002. The programmed date for commencing the enabling works is mid March 2002. This could lead to a delay in commencing the implementation of the enabling works and associated increased cost.
- 4.22 The following strategy has therefore been agreed with the funding partners, to minimise the potential delay costs to the project. It is proposed to immediately issue a formal "letter of intent" regarding the award of the contract to the Main Bridge and Civil Works to Hochtief and agreeing to pay for all design costs incurred up to a ceiling of £1,000,000. This letter will advise that in the event that outstanding legal issues cannot be resolved by 05 July 2002, the City Council will not proceed with contract award. Hochtief will not be permitted to claim for loss of profit. Legal advice has been received that confirms that this is a normal and acceptable means of buying the contractor's services on a "quantum meruit" basis whilst outstanding issues are resolved, which does not commit the Council to subsequently enter into contract. The results of the competitive tender process are thus captured and the detailed design and 3<sup>rd</sup> party approval process can commence. Hochtief can then become a full and important participant in all aspects of the project including the proposed technical debate with LUL. However, the City Council still retain the ability to abandon the project. The additional costs payable to Hochtief (circa £50,000 per week) is justifiable in comparison to the delay mitigated (circa £100,000 per week) and a minor element of the total cost of abandoning the project (circa

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£7.5million). The funding partners will pay 50% of these costs under the existing design collaboration agreement.

- 4.23 Hochtief have been asked to confirm that they will accept this proposal. Their response will be reported at the meeting. If we do not issue the Letter of Intent, unless the project is abandoned, we will need to ask Hochtief to extend their tender still further for which there will inevitably be further delay cost and price increase implications.

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## 5 Financial Implications

- 5.1 The LTVA project is jointly funded between the City Council, Railtrack and BAA. The Council's contribution (less than 50%) is funded from the PPRA.
- 5.2 The January 2002 Cabinet report emphasised that the ongoing project uncertainties as set out within it had given rise to a significant delay (circa 12 months) in awarding the contract and subsequent increased cost. These included the developments to resolve of the Railtrack signalling issues and the further deliberations of the funding partners regarding external funding and CrossRail. The monthly running costs of the project are circa £300,000 comprising of legal, Client and sponsor costs, third party charges and various consultant fees. The revised cost plan was based upon the programme of awarding the Main Bridge and Civil contract on 06 February 2002. As reported by the project cost manager, Gardiner and Theobald, the cost of delay to the project is in the region of £300K to £500K per month. Precise costs are now being calculated and will be reported prior to final project commitment.

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### Approvals Required

- 5.3 No further financial approvals are required. Authority was granted at 21 January 2001 Cabinet to fully implement the project, subject to the satisfactory conclusion of the collaboration agreement and subject to a Committee of Cabinet being satisfied that the position in relation to the Bakerloo Line tunnels has been satisfactorily resolved.
- 5.4 In the event that it is not possible to proceed with the implementation of the project, the abortive cost to the end of March 2002 will be circa £7.5 million for which the City Council will be liable for circa £2.5M ( there is no legal requirement to refund the S106 contribution of £1.8M).

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### INSURANCE

- 5.5 The revised situation regarding the procurement of Cost over-run insurance for the project was reported in detail to 21 January 2002 Cabinet when it was resolved to de-linking the cost overrun insurance placement from the main contract award activity. This allows a further period until mid March 02 when the enabling works tunnel is scheduled to commence to negotiate options without a knock on delay to the Contract. In the event that acceptable alternative proposals are not forthcoming, the insurance will default to the £60m cover described under paragraph 8.13 of the Jan 2002 Cabinet Report.
- 5.6 The relative cost estimates are reiterated below as follows:

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Cost plan total insured	Existing COI budget	Premium	Additional cost over £48.02m	Excess before claims paid
£48.02m (uninsured)	£300K	0	(£300) (saving)	N/A
£53.02m (risk financing)	£300K	£450K	£150K	£5m
£56.02m	£300K	£750K	£450K	£5m
£60m	£300K	£1,150K	£850K	£5m

For all of the above, the City Council shall bear 50% of the costs.

- 5.7 Cabinet have indicated that notwithstanding the poor terms set out above, they are minded to accept them for £60m cover. Cost overrun insurance will therefore become a project cost under the Collaboration Agreement.
- 5.8 Meanwhile, the "Due Diligence" report has been issued to the underwriter. A copy of the executive summary is attached as Appendix 3. It states "In conclusion we can say that the scope of the project is well defined and the probability of significant change is mitigated. Key risks to the project have been identified and dealt with. The main concern in terms of probability and financial impact being the area of delay to progress of or completion of the project." A delay to commencement of the project will not be an insured risk.
- 5.9 Negotiations are continuing with the underwriter and it is envisaged that the terms, policy wording and premium will be concluded following a meeting at the end of the February 2002. Any further developments will be reported verbally.

## 6 Programme Update

- 6.1 The key programme dates are as follows:

Consultation on Traffic Measures Spring 2000	
Report Consultation Results	October 2000.
Design and Procurement	January 2000– Autumn 2000
Amelioration Works (Design Only)	Autumn 2000 – Autumn 2001
Enabling / traffic Works (Design Only)	Autumn 2000 – Autumn 2001
Instruction to mobilise UTX	31 January 2002

- Current status-----
- Permissions for Station Access Feb 2002 – August 2002
  - Enabling / traffic Works (Implement) Feb 2002 – Dec 2002
  - Amelioration Work Programme April 2002 – December 2002
  - Main Contract Works start Feb 2002 (design only)
  - Bridge Closure Mar 2003 – Dec 2004
  - Complete Main Contract Works April 2005

- 6.2 No future approval milestones are anticipated unless additional traffic amelioration measures are required as a result of operational experience.

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## 7 Ward Members' Comments

This document has not been issued for Ward Member consultation

## 8 Conclusion

The reasons for noting the recommendations 2.1 and 2.2 of this report are summarised as follows

- There is a Parliamentary Undertaking to deliver the project
- The main bridge contract can be awarded within the cost plan allowance
- The validity of the main bridge tender expires on 05 March 2002.
- Project uncertainties have given rise to delays and increased cost. The proposed strategy will minimise further delay to the project and the outturn cost.

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If you have any queries about this report or wish to inspect one of the background papers please contact one of the following officers:

For matters relating to:

Management of the LTVA Project – David Ferrett on ext. 2407

### Background Papers

The documents referred to in compiling this report are .....

Report to 24 October 2000 Transportation and Highways Committee

Report to 22 May 2001 Housing Operational Sub-Committee

Currie and Brown "Cost Overrun Insurance Due Diligence Report" dated January 2002

### APPENDICES

**APPENDIX 1 – Report to 21 January 2002 Cabinet**

**APPENDIX 2 – LUL settlement papers**

**A – Preliminary LUL proposal**

**B – Preliminary Consultant responses**

**APPENDIX 3 – Currie and Brown Due Diligence Report - Executive Summary**

## APPENDIX 1 – Report to 21 January 2002 Cabinet

## **APPENDIX 2 - LUL settlement papers**

**A – Preliminary LUL proposal**

**B – Preliminary Consultant responses**

## **APPENDIX 3 – Currie and Brown Due Diligence Report - Executive Summary**