

## **Paper on Proposed Next Steps, dated 7 December 2022**

From: **Lawrence Shackman**  
**Transport Scotland, Major Projects**

Deputy First Minister/Acting Cabinet Secretary Finance

### **A9 Dualling Programme**

#### **Priority and Purpose**

1. This routine submission is seeking a ministerial decision on the proposed next steps for the A9 Dualling Programme (the “Programme”).

#### **Recommendation**

2. It is recommended that Ministers:
  - Note the issues which are considered to result in it being necessary to review the work undertaken to date to determine the most suitable procurement options for the remainder of the Programme;
  - Approve the recommendation to proceed on the basis of Option 2 (progressing certain elements of the Programme while reviewing and updating the work to determine the most suitable procurement options), together with the associated recommendation on changes to funding allocations in support of that option; and
  - Note the need to develop an appropriate handling plan for whichever option is selected by Ministers.

#### **Context and Issues**

3. The Programme comprises 11 projects, of which:
  - Two (Kincraig to Dalraddy and Luncarty to Pass of Birnam) have been constructed and are open to use;
  - One (Tomatin to Moy) is in procurement;
  - Seven have received favourable Ministerial decision to proceed with making of Orders; and
  - One (Pass of Birnam to Tay Crossing) is still to have its preferred route confirmed as a precursor to commencing statutory processes.
4. Work has been progressing for some time to determine the most suitable procurement options for the remaining projects of the Programme. This is a complex exercise which looks at a number of factors including how the project

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can be delivered most efficiently by the industry, whilst minimising disruption to road users and helping to support economic recovery post-COVID. The two primary options considered in this work are procurement of either:

- Eight individual capital funded Design and Build (D&B) contracts; or
  - Three resource funded Mutual Investment Model (MIM) contracts, each comprising two or three of the eight individual projects.
5. Separately, procurement of the Tomatin to Moy project as a capital funded D&B project has been progressed, with the Dialogue Period commencing in December 2021 and tenders submitted in October 2022. This tender was the subject of limited market interest, with only one tender submitted. Evaluation of the tender received has concluded that the bid received from the single bidder does not represent a competitive offer, that detailed assessment has concluded that it does not represent value for money and therefore it is not considered appropriate to recommend award of this contract. This conclusion has been reached on the basis that:
- The tender received was for a sum of approximately £170m;
  - This is around 48% higher than the pre-tender estimate of £115m at 2020 prices, and around 28% higher than the inflation adjusted pre-tender estimate of £133m at 2022 prices;
  - It is around 24% higher than the cost-comparator price of £137m, prepared against the possibility of a single tender submission being received; and
  - The difference between the reference estimates and the tender offer received are considered to be too significant to be representative of “normal” market variability, even after accounting for the effects of factors such as Brexit and the COVID-19 pandemic.
6. In view of the tender evaluation findings, should Ministers wish to accept this tender, Transport Scotland's Accountable Officer would require a Ministerial direction, due to the value for money concerns noted above. It would also be necessary to prepare a Full Business Case, which is likely to show a much reduced Benefit to Cost Ratio, and complete the necessary Gateway Review procedures prior to contract award. It would be challenging to complete this process, as the tender validity period of 90 days expires on 10 January 2023, although this may be extended by negotiation by a further 30 days, to 9 February 2023.
7. The position reached on the procurement of the Tomatin to Moy project, together with a range of other issues that have arisen in recent months, as noted below, mean that the work undertaken to date to determine the most suitable procurement options requires to be reviewed. In particular, it will have to consider:

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- Whether, in light of the outcome of the Tomatin to Moy procurement, it should be incorporated in an alternative MIM packaging arrangement as opposed to the capital solution assumed to date;
  - Whether the current assumptions on the level of risk transfer included within the D&B contracts are achievable in current market conditions, or whether modifications to that level are required to generate effective competition, and, if so, what implications this would have for the costs of the D&B option;
  - The implications of the recent increases in costs of borrowing, including market volatility, for the costs of the MIM option;
  - The implications of the current high levels of inflation and the wider macro-economic implications of the cost crisis on costs of both D&B or MIM options;
  - The significant affordability challenges applying across Scottish Government as a whole, exacerbated by the effects of high levels of inflation, and the implications of these for the phasing and prioritisation of delivery of the Programme as part of Scottish Government's wider capital project programme;
  - The implications of the currently very active construction market in the United Kingdom coupled with continuing resource and supply-chain challenges for the costs of both the D&B and MIM options; and
  - The implications of all of the above for the Programme's Business Case.
8. During 2022 there has been a significant number of fatal accidents on single carriageway sections of the A9 between Perth and Inverness, well above the number of accidents seen in preceding years. Work is in progress to develop short and medium term measures to improve road safety on these sections of the corridor, which is the subject of separate advice to Ministers. The options considered in this paper are in addition to any measures taken forward following consideration of that advice.

### **Options Considered and Advice**

9. Due to the significant nature of the issues noted above and the implications of these for the work undertaken to date, it is not considered possible to provide a recommendation at present regarding the most suitable procurement options for the remainder of the Programme. Two options have therefore been considered for determining next steps:
- Option 1: Pausing the Programme in its entirety for an indefinite period, to be restarted when circumstances permit; or
  - Option 2: Progressing certain elements of the Programme while reviewing and updating the work to determine the most suitable procurement options, enabling procurement and construction to progress following

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normal business cases processes and subject to suitable market conditions prevailing and budget availability permitting.

### **Assessment of Options**

10. Option 1 would be likely to have several significantly adverse implications for the Programme, including:

- Statutory authorisations would lapse for projects where Made Orders had been published but vesting of land had not yet occurred. At present four projects are in this position, and were the statutory authorisation to lapse all statutory procedures would have to be repeated to gain a replacement statutory authorisation;
- Having to obtain new statutory authorisations would reduce flexibility in how the Programme is progressed and may also cause additional delay beyond the period that the Programme is paused;
- Delaying the point at which alternative delivery options can be considered, and hence delaying the point at which decision making on particular delivery options can take place; and
- Significant criticism that the Scottish Government was not progressing with one of its major transport policy commitments for an undefined period.

11. Option 2 would mitigate these adverse implications for the Programme, by:

- Maintaining sufficient progress with statutory processes to secure the statutory authorisations and eliminate the risk of these lapsing;
- Maintaining flexibility in how the Programme is progressed and minimising delays to completion of the Programme;
- Enabling early consideration of alternative delivery options and hence minimising the delay to the point at which decision making on particular delivery options can take place, following normal business case processes and subject to suitable market conditions prevailing and budget availability permitting; and
- Demonstrating that the Scottish Government remains committed to completion of the Programme by continuing to take forward certain elements of the Programme.

12. Under either Option 1 or Option 2 the date for completion of the Programme is uncertain, as it is subject to decision making on the preferred procurement approach and associated delivery programme, which itself is subject to factors such as market stability supporting commencement of a programme of procurement and sufficient funding being available to support procurement and construction. Work undertaken to date to consider procurement options has indicated that, depending on the approach adopted, completion would be no earlier than early-mid 2030s, based on work being undertaken at as fast a rate as

it was considered the market could accommodate. As the work to be undertaken as part of Option 2 will include considering a range of phasing and prioritisation options, it is not considered that a definitive date can be offered for completion of the Programme. It is, however, considered that it should be made clear that the current published completion date of 2025 will no longer apply to the Programme.

**13. It is recommended that Option 2 be adopted**, in view of the mitigations that this option provides against the adverse outcomes that would follow from Option 1. Specific implications of adopting Option 2, including the scope of work that would be undertaken to progress certain elements of the Programme, include:

- Rejection of the Tomatin to Moy tender, on the grounds that the bid received from the single bidder did not represent a competitive offer, and the detailed assessment concluded that it did not represent value for money;
- Publicly indicate a move from the current 2025 completion date to an approach based on a phased/prioritised investment in dualling sections following normal business case processes and subject to suitable market conditions prevailing and budget availability permitting;
- Continue to progress measures in an appropriate timetable to secure statutory authorisations for all 11 projects included within the Programme, including confirming the Preferred Route and initiating statutory procedures for the Pass of Birnam to Tay Crossing project; and
- Undertake a full review of potential delivery strategies for the Programme to consider a range of potential phasing/prioritisation approaches and to reflect latest market conditions in terms of costs of borrowing, effects of inflation, industry appetite for risk transfer and wider macro-economic factors.

### **Bute House Agreement Implications**

14. As the Programme is not explicitly referenced within the Bute House Agreement, it falls within the group of projects and programmes covered by the statement that:

“work on other trunk roads projects and programmes under construction, design, development or procurement will continue and be subject to the normal statutory assessment and business case processes.”

15. The advice within this submission is therefore consistent with the provisions of the Bute House Agreement.

### **Financial and Legal Considerations**

16. At present there is a capital funding allocation over several years for the Tomatin to Moy project, based on the project progressing to procurement. However, the wider Programme does not have a capital funding allocation beyond the 2022/23

financial year as it was included as an “over” commitment in the Capital Spending Review published in May 2022.

17. In view of the position reached on the Tomatin to Moy procurement, it is apparent that capital funding will not be required for this project as currently assumed within the Capital Spending Review. Noting that the recommendation to adopt Option 2 is not supported by a capital allocation beyond FY 22/23, **it is recommended that a significantly reduced portion of the current capital allocation for Tomatin to Moy over the Capital Spending Review period is reallocated as a capital allocation for the overall Programme.** In addition to allowing a partial release of funding currently allocated for Tomatin to Moy, this will also allow full release of the current “over” commitment for the wider Programme.
18. Any future decision to progress elements of the programme to procurement and construction will be subject to decisions at that time on allocations of sufficient capital and/or resource funding to support such progress.
19. Other than the need to take action as required by legislation to secure the statutory authorisations as noted above, no specific legal considerations have been identified in relation to the issues noted in this submission.

### **Sensitivities**

20. There is significant stakeholder, public, political and media interest in the progress of the Programme. **All of these will require to be addressed within a handling plan to be developed to communicate the nature and implications of the option selected by Ministers.** This will also include consideration of the form and timing of an update to Parliament on the Programme, which is anticipated to be required to be addressed within the Scottish Government’s budget statement for 2023/24 at the latest, if not addressed prior to that date.

### **Quality Assurance**

21. This Submission has been approved by Michelle Quinn, Transport Scotland’s Chief Executive, and Lawrence Shackman, Transport Scotland’s Director of Major Projects.

### **Conclusions and next Steps**

22. In conclusion, it is recommended that Ministers:
- Note the issues which are considered to result in it being necessary to review the work undertaken to date to determine the most suitable procurement options for the remainder of the Programme;
  - Approve the recommendation to proceed on the basis of Option 2, (progressing certain elements of the Programme while reviewing and updating the work to determine the most suitable procurement options), together with the associated recommendation on changes to funding allocations in support of that option; and

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- Note the need to develop an appropriate handling plan for whichever option is selected by Ministers.

23. Following confirmation of Minister's views on the above officials will engage with Ministers and Special Advisors on the development of the handling plan.

**Lawrence Shackman**

Transport Scotland, Major Projects

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<b>Cabinet Secretaries and Ministers Copy List</b>	<b>For Action</b>	<b>For Information Portfolio interest</b>	<b>For Information Constituency interest</b>	<b>For Information General awareness</b>
Deputy First Minister/Acting Cabinet Secretary Finance	X			
Cabinet Secretary Net Zero, Energy and Transport		X		
Minister for Transport		X		

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## ANNEX A – CURRENT AND PROPOSED CAPITAL FUNDING ALLOCATIONS

### Current Capital Funding Allocations

Allocation	Financial Year			
	22/23	23/24	24/25	25/26
Luncarty to Pass of Birnam/ Kincaig to Dalraddy (funded)	£0.5m	£0.6m	£0.5m	£0.5m
Tomatin to Moy (funded)	£44.2m	£28.6m	£62.0m	£40.5m
A9 Programme (funded)	£32.5m	-	-	-
A9 Programme (unfunded)	£0.0m	£31.3m	£34.7m	£38.8m

Notes:

1. Figures noted above are drawn from the Capital Spending Review refresh published in May 2022.
2. A9 Programme (unfunded) is the “over” commitment carried as part of the Capital Spending Review refresh published in May 2022.

### Proposed Capital Funding Allocations (£m)

Allocation	Financial Year			
	22/23	23/24	24/25	25/26
Luncarty to Pass of Birnam/ Kincaig to Dalraddy (funded)	£0.5m	£0.6m	£0.5m	£0.5m
Tomatin to Moy (funded)	£6.1m	£1.5m	£0.6m	£0.5m
A9 Programme (funded)	£20.6m	-	-	-
A9 Programme (funded via reallocation from Tomatin to Moy)	-	£16.2m	£15.3m	£10.9m
Release of surplus A9 Programme funded allocation	£11.9m	-	-	-
Release of surplus Tomatin to Moy funded allocation	£38.1m	£12.4m	£46.7m	£29.6m
Release of “over” commitment from A9 Programme	-	£31.3m	£34.7m	£38.8m

Notes:

1. Luncarty to Pass of Birnam and Kincaig to Dalraddy spend is legally committed associated with the construction contracts for these projects.
2. Tomatin to Moy (funded) lines shows estimated sums to conclude the procurement process within the current financial year, together with land acquisition costs for Tomatin to Moy that are legally committed and an allowance for costs associated with ongoing management of land acquired.
3. A9 Programme lines show costs estimated to undertake the activities set out in Paragraph 13 of this paper, and include land acquisition costs that will become legally committed once land vesting procedures are initiated as well as an allowance for costs associated with ongoing management of land acquired.