

Nottingham Express Transit Phase Two, UK

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The Nottingham Express Transit (NET) Phase Two Project was one of the largest and most complex transactions to have closed in the UK during 2011 and was the UK's largest local authority transport deal to complete during the year. Forming part of the Government's National Infrastructure Plan, NET Phase Two is a £570 million project to extend the city's tram network and its successful close means that construction work can commence to bring the two extensions to life.

Work has already begun to clear land to accommodate the extended tram system. With the addition of two new lines, the network will be extended by a total of 17.5km to reach over 30km in length and is expected to initially carry around ten million passengers a year. The new lines will serve key sites such as Chilwell, Beeston, Clifton, the Meadows residential area, the ng2 development site, the Queens Medical Centre (the main regional hospital) and the University of Nottingham, and will both terminate at new park and ride sites near junctions 24 and 25 of the M1 respectively.

The combined network will provide a peak service of eight trams per hour in each direction between Nottingham Station and Hucknall, Chilwell and Clifton respectively. The lines are scheduled to be complete and open to passengers in the final quarter of 2014.

Nottingham City Council's experienced project team, which included project and commercial management support from Turner and Townsend, and advisers successfully negotiated a Private Finance Initiative (PFI) concession agreement which was completed on 15 December 2011, with the introduction of a new consortium over a period of 22 years.

Tramlink Nottingham has taken over the operation and maintenance of the existing NET Line One from the incumbent operator, as well as taking on responsibility for the design, construction, commissioning, operation and maintenance of two new tram lines.

Tramlink Nottingham will sub-contract the construction of NET Phase Two to Vinci (Taylor Woodrow) and Alstom, with operations and maintenance of the entire network passing to a joint venture of Keolis and Wellglade (a local bus operator). Alstom will also provide ongoing tram maintenance services. Each of these parties will contribute 12.5 per cent of the equity investment in Tramlink Nottingham, alongside Meridiam and OFI Infravia who will contribute 30 per cent and 20 per cent respectively.

Breaking new ground

Investing in infrastructure is a proven remedy for encouraging growth in the economy. The Government has committed to provide continued support via its National Infrastructure Plan and NET Phase Two is the first scheme under the plan's remit to secure its investment for continued development.

As the UK's largest local authority transport deal to complete last year, it was hugely significant and a truly ground-breaking deal. The Council had set out to replicate the successful delivery of NET Line One and the project was used as a

template for structuring and delivery, taking on board the valuable lessons learned from this first process. These lessons were supplemented by three market sounding exercises which provided extra insight into what would contribute to the success of the project.

An example of action taken as a result of experience from NET Line One was the letting of a design development contract to provide bidders with a greater level of design understanding which reduced the delivery risk and resulting cost premium for NET Phase Two. Retaining a DBFO approach to achieve a clear and full transfer of system integration risk was of paramount importance.

The procurement and negotiation of a PFI concession which transferred usage risk to the private sector as well as risk in the original system was, in the current market, a significant achievement in itself. In addition the concession also put in place a revenue sharing mechanism as well as bespoke provisions to allow for the design, construction, financing, operation and maintenance of future extensions without necessarily having to terminate the concession.

The planning complexities, coupled with the financial, legal and commercial structuring for the termination of the NET Line One concession (including negotiating with five shareholders, the incumbent sub-contractors and the funders), and the acquisition of the concessionaire company, also completed on the same day, made the procedure extremely complicated creating serious challenges for the Council and its team to overcome.

Careful negotiations took place to put in place termination agreements, releases and consents by the NET Line One funders, in order to enter into NET Phase Two and to ensure a seamless handover of NET Line One operations. The new deal terminated all the existing PFI arrangements, transferring all the assets, systems and contractual rights, acquiring the existing project company and entering into a new PFI contract on the same day.

An escrow arrangement allowed the release of the NET Line One termination documents and Arrow acquisition documents to occur sequentially. The result was effectively three closes in two different locations, all taking place on the same day and involving the near simultaneous live breaking of the existing interest rate swap alongside the execution of a new one for NET Phase Two. The transaction saw the use of, for the first time ever in the UK, a Workplace Parking Levy to partially fund the project.

Funding

Tramlink Nottingham was appointed preferred bidder on 29 March 2011 and arranged a project finance package of £590 million. Project finance combined £310 million of commercial debt – which included a £100 million capital contribution bridge – with £110 million of EIB debt.

Meridiam and OFI Infravia provided additional mezzanine debt and all the co-sponsors provided equity to the deal, in addition to utilising existing tram revenues. Four commercial banks were involved in provision of senior debt for the scheme; BBVA, Credit Agricole, Royal Bank of Scotland and Bank of Tokyo-Mitsubishi UFJ, who joined the financing towards the end of the process when the basic loan structure was agreed. Between them, each commercial bank has equally split the £310 million commercial loan.

DfT will provide funding of up to a maximum £371 million towards the total maximum scheme cost of £570 million. The council will provide the remaining funding over the 22 year concession life, largely from revenues obtained via the Workplace Parking Levy.

Legal advice

DLA Piper's team played a key role in achieving this from inception through to completion, advising the Council on a variety of legal and commercial matters over the last 10 years before running the three concurrent closes across different locations on the same day.

Our role also encompassed both legal and commercial advice, advising on the procurement routes, drafting and

negotiating innovative contractual solutions, preparing various procurement documents, assisting with the necessary business cases and other documents to be submitted to the DfT for approval, structuring and drafting payment provisions involving capital contributions and advising on the powers of the Council to undertake the vast array of activities required for such a complex project.

The journey ahead

The construction of Lines Two and Three of the tram network will take place concurrently during 2012 - 2014. Advanced works, including utility diversions, have already commenced and the main construction is expected to start in March 2012. Once the tracks are laid and the overhead cables are installed, there will be a period of several months in 2014 of testing the trams along the new tracks.

The new lines will, on completion, provide a significant boost to the local economy, creating more jobs and offering an improved public transport system for thousands of people.

Natasha Luther-Jones is a Leeds-based partner in the Finance & Projects team at DLA Piper who was actively involved the recently completed Nottingham Express Transit Phase Two scheme.

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