



# Is the green light really on for trams?

Last month's DfT report on the costs of light rail appeared to signal a new start. Over the next three pages, experts **Nick Maltby** and **Aaron Nelson** of **Bircham Dyson Bell** and **Matt Brunt** of **PTEG** take a closer look

**N**orman Baker's recent publication of a comprehensive report into light rail had many in the sector jumping for joy. While welcome, on closer examination the report is rather an anti-climax as it does not contain the much-needed measures to bring more schemes into reality.

Its aim was to "consider how the capital costs of light rail schemes can be reduced" so as to "put light rail in a good place to compete for funds against other modes." In the event, the report's recommendations are rather modest. It suggests a number of "cost-saving" recommendations for promoters and operators:

- investigate low-cost alternatives, such as tram/train, streetcar, ultra-light rail and personal rapid transit;
- increase standardisation and harmonisation in design;
- avoid "gold plating" design through over-reliance on heavy rail expertise;
- share best practice on applications and procurement excellence;
- pool maintenance facilities, spare parts and expertise; and
- reduce the cost of utility diversions. These recommendations have been

welcomed by most in the light rail industry but they fall short of the DfT-led 'measures' needed to kick-start projects. The Government clearly wants the industry, rather than the DfT, to take the lead in finding actual cost savings, as did McNulty in his review of heavy rail. The report, in effect, tasks UK Tram with taking the lead and has simply suggested some areas to look at.

However, these areas are not without difficulty.

### Standardisation

First, increasing standardisation and harmonisation in design will necessarily involve UK Tram "picking a winner": that is, selecting one tram scheme (whether an existing system in the UK or abroad, or a "virtual" tram scheme based on new, CENELEC or VdV standards) which all UK tram schemes are then to emulate. The cost/benefit ratio of the various contenders will no doubt be carefully considered, so any move to standardisation is likely to take some time, given the starting point that no tram in the UK can operate on any other UK tram system.

There also appears to be a tension between the report's desire for standardi-

sation and the fact that it encourages investigation of low-cost alternatives, such as streetcar, ULR, PRT and tram/train. The operating environments of a tram/train and a streetcar are very different, and may not conform easily to the standardised model. Local operational requirements, acknowledged by the report, are also likely to continue to influence scheme design. Also, any promoter, keen to attract private sector investment, will want to demonstrate that the light rail system proposed is not only deliverable but desirable – and the cheapest option may not be.

It is also unlikely that the Government could restrict funding to a preferred solution as far as EU procurement laws are concerned. The procurement rules require contracting authorities to have reference to European standards where these exist and not to adopt technical specifications that have the effect of creating unjustified obstacles to the opening up of public procurement to competition or discriminate against one or more bidders. In particular, a contracting authority may not reject an offer on the basis that the goods or services offered do not comply with a technical

specification if the bidder proves that its solution satisfies the requirements of the specification in an equivalent manner. Framing a specification to meet the concerns of the report while complying with the EU rules is likely to be challenging.

### Cost and funding

The report argues that the higher cost of UK tram systems, as against our European neighbours, does not arise from the construction phase. It cites the National Audit Office's 2004 report, which concluded that the construction costs per mile of European schemes, when corrected to 2010/11 prices, are slightly more than UK schemes. Instead, it puts the higher outturn costs down to the early project formulation and pre-construction phases such as design and procurement, while acknowledging that the authorisation of light rail systems under the Transport and Works Act 1992 is operating well.

What the report does not expressly acknowledge is that the current system requires a lot of upfront investment by promoters in convincing the DfT of the scheme's advantages and value for money – making the DfT a crucial but costly "layer" in the process. Because the DfT controls most of the funding, and has seen projects overrun in the past, it often adds as much as 50% optimism bias to the economic appraisal, which can have the psychological and real effect of actually increasing the cost of the project. Then, when the local authority hands over the project to the private sector to build the scheme, costs can increase again because of the authority's retained risks.

The report suggests that the Government will reduce promoters' over-reliance on central government funding by enabling councils to retain growth in business rates, including through tax increment financing (paying for infrastructure now by allowing councils to borrow against projected business rate growth). It's also clear that developer contributions will be paramount: "it is recommended that promoters of [new] systems consider and quantify the potential economic benefits of new tram schemes which in turn will make it easier for local authorities to capture the maximum developer contributions toward the funding for these projects". This will reduce the DfT's role as holder of the purse and should also be accompanied by a reduction in its overseeing role. This would show a genuine commitment to localism on the part of the DfT.

Arguably, the discretionary role of the DfT should be reduced further, to remove many of the inefficiencies in obtaining central funding. If the DfT had a pre-defined and well-established set of criteria, a local authority would

know if it had hit those criteria before submitting its proposal for funding, making things quicker and simpler.

A bolder solution yet would be to pass control of all, or at least the substantial majority of fundraising for local transport schemes to the promoter (probably requiring local tax-raising powers going beyond business rate growth retention and TIF), along with the means to sustain policy and political support to delivery.

This is much what the last secretary of state said to a conference of Local Enterprise Partnerships in mid-September, promising a consultation this autumn on how the DfT might devolve to local transport consortia decision-making on funding major local transport projects from 2015 onwards (TT last month).

This could really help light rail, as long as our cities can step up to the mark with rigorous project appraisal processes and strong local leadership that can earn the DfT's respect and confidence. Localism is certainly a key driver for the Government and the concept is mirrored in the way that European cities raise funds for their tram systems – for example, the French *versement transport*.

### Utility diversion

Turning to the cost of diverting utilities, the report suggests that it is a complicated area and a further consultation should be held. In the first respect, it is undoubtedly correct. The relevant UK legislation is the New Roads and Street Works Act 1991 (NRSWA) and the regulations made under it. In the context of constructing a light rail system, NRSWA requires the constructor to agree with the utility companies (which own the pipes and cables in the street) the "measures which need to be taken in relation to the apparatus... in consequence of, or in order to facilitate" the construction and operation of the light rail system.

In general, the measures which are identified as needing to be taken include the diversion of the utility's apparatus from under the line of the light rail system. This prevents disruption to the light rail system's operation in the event that access is required to the utility's assets. Determining an accurate cost for the "measures that need to be taken", and providing a sufficient financial contingency to cover those assets whose location and condition is unknown, is a challenge for all project promoters.

The costs of carrying out the agreed diversion are then shared between the contractor and the utility company in accordance with regulations made under NRSWA. In England and Wales the contractor generally pays 92.5% and the utility company 7.5%, although for

some diversionary works the contributions are 82% and 18% respectively. In Scotland the split is always 82%/18%. In both cases, a discount is applied to allow for "betterment", that is installing increased capacity or newer apparatus for old.

The reasoning behind cost-sharing is that the apparatus needs to be moved because of the light rail system (such that the contractor bears most of the cost) but the utility company gains some benefit in moving the apparatus (at least in part because the diversion itself provides an opportunity to inspect, survey, repair or renew the apparatus).

The light rail industry has long argued that there is no justification for the difference in cost-sharing percentages for different types of diversionary works, a change made in the 1990s in England and Wales following heavy lobbying by National Joint Utilities Group on behalf of the utilities, and this should certainly be addressed in the upcoming consultation.

### The way forward

The report has very usefully distilled the key issues for light rail. While it may not say anything new or that will come as a startling revelation to anyone, we have to hope that it provides the jolt that light rail certainly needs.

What will make all the difference, though, is if local authorities and others such as LEPs come forward with keenly designed and priced schemes: we cannot just have the industry itself making the case for new projects.

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## Bircham Dyson Bell



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**Blackpool's tram system upgrade and the Midland Metro extension are among the few schemes to get the go-ahead recently**