

ABERDEEN CITY COUNCIL

COMMITTEE	Enterprise, Planning & Infrastructure
DATE	31 January 2012
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	Aberdeen Western Peripheral Route (AWPR) – Progress & Governance Report
REPORT NUMBER:	EPI/12/056

1. PURPOSE OF REPORT

The purpose of this report is to update members on the progress of the Aberdeen Western Peripheral Route (AWPR) and to gain approval of refined governance arrangements which, it is proposed, will apply to the AWPR and its associated projects to ensure a robust and efficient decision making process once the scheme enters its procurement and construction phase (subject to the satisfactory resolution of current legal proceedings). A similar report was presented to Elected Members of Aberdeenshire Council's Infrastructure Services Committee on 26th January 2012.

2. RECOMMENDATION(S)

It is recommended that Elected Members:

- (a) Note the on-going legal appeal against the AWPR;
- (b) Endorse the proposed project governance and project management structures at Appendix 2;
- (c) Note the key role for Members from both Councils with regard to investment decision making within Stage 4 of the Independent Project Assurance Model being used on the project as set out at paragraph 5.39;
- (d) Endorse the delegation of the remaining decision making powers within Stages 1 to 3 of the Independent Project Assurance Model to the Chief Executive, or her nominated representatives, as set out at paragraph 5.38; and,
- (e) Per Standing Order 1 (3), Members approve the commencement of procurement for the provision of a variety of bat mitigation measures as detailed at paragraph 5.11.

3. FINANCIAL IMPLICATIONS

- 3.1 Funding for the Aberdeen Western Peripheral Route has been the subject of agreement between Aberdeen City Council, Aberdeenshire Council and the Scottish Government with a signed Memorandum of Understanding.
- 3.2 The Memorandum of Understanding commits Aberdeen City Council to contributing 9.5% to the scheme development and construction of the Northern & Southern Legs of the AWPR Scheme (coloured orange and green respectively at Appendix 1). The scheme development and construction of the Fastlink (coloured purple) and the A90 Balmedie-Tipperty Dualling project (coloured red) will be met in its entirety by the Scottish Ministers. The maintenance of the whole of the APWR and A90 Balmedie to Tipperty will be met by the Scottish Ministers.
- 3.3 The Scottish Government Budget 2011/12 and Scottish Government 2011 Infrastructure Investment Plan confirms that the AWPR and A90 Balmedie to Tipperty projects would be brought forward for construction in a combined Non-Profit Distributing (NPD) model contract with a view to bringing forward for construction as soon as the legal issues surrounding the AWPR are resolved.
- 3.4 A number of local authority transportation infrastructure projects (Aberdeen City Council's A96 Park & Choose/Link Road and, subject to the outcome of the Public Local Inquiry, the Access from the North - Third Don Crossing – projects in addition to Aberdeenshire Council's A90 South Park & Choose site) are also under active consideration for inclusion within the AWPR package of works, subject to resolution of appropriate legal, financial and technical issues within the relevant timescale. A final decision on the inclusion of these local authority projects in the contract to construct the AWPR and Balmedie to Tipperty has still to be made.
- 3.5 A review of the funding profile will be required following completion of the statutory procedures and as such it is intended to report back to Committee on an updated cost estimate at a future date. The cost estimate will be reviewed and updated following resolution of the legal issues surrounding the AWPR and prior to the commencement of the formal procurement process. It would not be prudent to re-estimate project costs until the statutory procedures are complete, and a programme to construction is known. The final costs will not be known until tenders have been returned and the contract has been completed.

4. OTHER IMPLICATIONS

- 4.1 The delivery of the AWPR will achieve a number of the objectives and policies listed in Aberdeen City Council's vision of being Vibrant, Dynamic & Forward Looking and also the Single Outcome Agreement. This includes, for example, contributing to a modern, efficient transport

system within and around Aberdeen, and making Aberdeen a more attractive place to do business.

- 4.2 Environmental and sustainability issues associated with the Scheme were considered during the Environmental Impact Assessment of the proposed scheme as published in the 2007 Environmental Statement, and examined during the subsequent Public Local Inquiry (PLI) and with appropriate mitigation measures being confirmed within the Ministerial Decision Letter of 21st December 2009.

5. BACKGROUND/MAIN ISSUES

- 5.1 In accordance with the Memorandum of Understanding (MOU) Agreement made among the Scottish Ministers, Aberdeen City Council and Aberdeenshire Council (the funding partners) Aberdeen City Council is obliged to procure necessary contracts and services required to complete the AWPR Scheme.
- 5.2 Members should also be made aware that the Scottish Ministers have announced that the A90 Balmedie to Tippetty Dualling project will be procured alongside the Aberdeen Western Peripheral Route (AWPR) in a combined Non Profit Distributing (NPD) Model form of contract. These schemes have been developed separately through the statutory process. The two schemes are shown in Appendix 1.
- 5.3 In addition to the AWPR and Balmedie to Tippetty Dualling project the Scottish Ministers have indicated that they will consider the inclusion of some local authority transportation infrastructure projects in the contract to construct the AWPR and A90 Balmedie to Tippetty Dualling. The projects under consideration may consist of some, or all, of the following elements:

Aberdeen City Council Projects

- Access from the North Proposal (The Third Don Crossing) (subject to the decision of the Reporter following the recent Public Local Inquiry); and,
- A96(T) Dyce Drive Park and Choose and associated Link Road (Dyce).

Aberdeenshire Council Project

- A90(T) Aberdeen South Park and Choose (Schoolhill):

- 5.4 All the above listed projects are now collectively being referred to as 'The Aberdeen Western Peripheral Route and Associated Projects'.
- 5.5 Reference is made to the Minutes of the Enterprise Planning and Infrastructure Committee of 26 November 2009 (item 22) Report No EPI/09/123. This report discussed the arrangements for acceptance of

tenders in advance of the main AWPR construction works. Members should note that in the Minutes an additional recommendation (iv) was moved which states “that there would be no further tender for works until final approval for the AWPR had been announced by the Scottish Ministers”. It is understood that this is meant to be read in relation to the main AWPR construction works and not ancillary works required in advance of the main construction works contract being let.

AWPR Acceptance of Tenders

- 5.6 In light of the legal appeal by Messrs Walton & Fraser to the Outer House of the Court of Session in February 2011 and subsequent appeal by Mr Walton to the Inner House of the Court of Session (heard in December 2011) and the subsequent delays to the statutory approvals process, the following advance procurement of services have been implemented;
- Financial Advisors are being appointed through an OJEU procurement process (OJEU reference 2011/S 224-363754) by Transport Scotland for identified Non Profit Distributing (NPD) Transportation projects (currently the M8/M73/M74 Motorway Improvements Project). The scope of Services includes an option to provide financial advisory services for the AWPR scheme, subject to the resolution of the current legal challenge.
 - Legal Advisors are being appointed through the Scottish Government Legal Directorate’s existing Framework to provide advice on Transport Scotland’s NPD Model Projects. As with the procurement of financial advisory services (above) the scope of Services includes an option to provide advice for the AWPR, subject to the resolution of the current legal challenge.
- 5.7 Procuring a single set financial and legal advisors for all Transport Scotland NPD Model projects will ensure consistency of advice and ensure no delay in securing these appointments which will be required prior to commencing any construction works for the AWPR and its associated projects as soon as the legal issues surrounding the AWPR are resolved and the statutory process has been completed.
- 5.8 Pursuant to the decision of Elected Members of this Committee on 26 November 2009 (Article 22 refers) to suspend previous Standing Orders 75 & 76 and to delegate powers to the Corporate Directors for Enterprise, Planning & Infrastructure and Corporate Governance in consultation with the Head of Finance, Head of Legal & Democratic Services, and the Head of Procurement, in consultation with the Convenors of the Enterprise, Planning & Infrastructure and Finance & Resources Committees, OJEU Notices are (subject to approval per Standing Order 1(6)(b) as described in paragraph 5.10 below) soon to be issued for various advance services, namely;

- Non-invasive archaeological investigations (~£300,000)
 - Supplementary Ground Investigation (GI) (~£950,000)
- 5.9 The indicative value of these contracts is higher than previously estimated in November 2009 following a review of the current information available. The reasoning for this in respect of the non-invasive archaeological investigation is that there has been further consultation with Historic Scotland and that the scope of the works is now for the Aberdeen Western Peripheral Route and Associated Projects. With regard to the supplementary GI this is primarily due to land owner access difficulties such that some of the GI which was planned at that earlier date could not be carried out at that time. That outstanding GI will now be incorporated into the Supplementary GI.
- 5.10 At the time of writing, exemption from Standing Orders 1(6)(b) was being sought from the Chief Executive, Head of Finance, Head of Legal & Democratic Services and the Head of Procurement to allow the procurement of the non-invasive archeological and supplementary ground investigations to proceed.
- 5.11 Additionally, Elected Member approval is sought in this report for the commencement of procurement for the provision of bat mitigation measures (circa £40,000) at the former International School of Aberdeen site at Fairgirth, Milltimber. These mitigation measures involve the refurbishment of an existing adjacent building to create a suitable replacement habitat.
- 5.12 The commencement of the above procurements have been judged necessary to ensure the AWPR project is at an advanced stage of preparation which would subsequently allow the OJEU Competitive Dialogue procurement of the Main Works Contract of the AWPR (and associated projects) to commence as soon as possible following resolution of the current legal appeal.

Statutory process update

- 5.13 The Scottish Ministers announced, on 21st December 2009, their decision to proceed with the project and the relevant Schemes and Orders were approved by affirmative resolution of the Scottish Parliament on 3rd March 2010. The publication of the public notices on 26th March 2010 marked the start of a six week challenge period whereby any person aggrieved by the Scheme or Orders could, by application to the Court of Session, petition for the suspension of operation of, or the quashing of, the Scheme or Orders.
- 5.14 Following official publication in the Edinburgh Gazette, three challenges (one of which was subsequently withdrawn) were submitted by objectors to the Court of Session challenging the decision of Scottish Ministers to proceed with the AWPR project, and the making of the Schemes and Orders.

- 5.15 The appeals (one by Mr. William Walton acting for, and on behalf of, Road Sense and Mr & Mrs Fraser) were heard in the Outer House of the Court of Session before Lord Tyre at a 9 day hearing between 22 February 2011 and 7 March 2011.
- 5.16 On 11 August 2010 Lord Tyre published his judgment refusing the legal challenges submitted against the AWPR. Thereafter there was a 21 day period where relevant parties could lodge an appeal against the decision of Lord Tyre to the Inner House of the Court of Session (before three Court of Session judges).
- 5.17 On 31 August 2011 Transport Scotland received intimation from William Walton of his intention to appeal Lord Tyre's judgment to the Inner House of the Court of Session (before 3 judges). The appeal was lodged in the Court of Session on 1 September 2011. Mr & Mrs Fraser did not intimate their intention to appeal the decision of Lord Tyre.
- 5.18 The Scottish Ministers submitted a motion seeking urgent disposal of the appeal submitted by Mr Walton. This motion was granted by the Court of Session with early hearing dates set for 13 –16 December 2011.
- 5.19 As with the initial legal challenges, full and detailed responses on these issues were presented on behalf of the Scottish Government during the course of the hearing, setting out the basis on which the Scottish Government considers that the issues raised have not resulted in any error in law, and that the appeal should therefore be refused.
- 5.20 At this stage it is difficult to be precise about the timescale for a judgment to be issued. However it is likely that it will take a number of months, following on from the main Hearing, for a judgment to be issued. If the Inner House of the Court of Session disposes of all aspects of the current appeal by Mr. Walton then there is a 42 day period in which either party can lodge an appeal to the Supreme Court.
- 5.21 Having already seen this much needed scheme significantly held up due to the initial legal challenges, we must now await the decision of the Court with regard to this appeal before substantial progress can be made with the AWPR.

Main Issues

- 5.22 In accordance with Sections 4 and 5 of the Roads (Scotland) Act 1984 the Scottish Ministers entered into an Agreement with Aberdeen City Council and Aberdeenshire Council to promote the AWPR through a Memorandum of Understanding (MoU) Agreement dated 30 October 2003 (and subsequently updated in April 2007).

- 5.23 In accordance with the Memorandum of Understanding Agreement, Aberdeen City Council were appointed by the Scottish Ministers to act as their Agent under Section 4 of the Roads (Scotland) Act 1984 for the carrying out of any of the Scottish Minister's functions as trunks road authority in relation to the AWPR including responsibility for providing, or arranging for the provision of, all services in connection with the preparation, procurement and construction of the AWPR.
- 5.24 Internal Transport Scotland procedures state that for projects like the AWPR (i.e. Major Project, value in excess of £50M), an Investment Decision Making (IDM) Board supports Transport Scotland's Chief Executive in his/her decision on major capital and resource investment programmes.
- 5.25 As outlined above, as the AWPR is being promoted by Transport Scotland in partnership with Aberdeen City Council and Aberdeenshire Council, the function of an IDM Board on this Project is replaced by the AWPR Project Board which shall assume the main responsibilities of the IDM Board.
- 5.26 On the AWPR Project, the Project Board will have representation from the three Project Partners (Transport Scotland, Aberdeen City Council, Aberdeenshire Council) and will have executive decision making responsibility for all strategic direction, progress, policy, finance and procurement matters.
- 5.27 The AWPR Project Board, chaired by the Chief Executive of Transport Scotland, will consist of the following members:
- Transport Scotland Chief Executive }
 - Aberdeen City Council Chief Executive } Executive Board
 - Aberdeenshire Council Chief Executive }
- 5.28 In the event that one, or more, of the Executive Board members are unavailable, then the following post holders shall assume their executive decision making powers and responsibilities as nominated deputies (or other nominated Chief Officers such as Aberdeen City Council's Director of Enterprise, Planning & Infrastructure and Aberdeenshire Council's Head of Transportation as required).
- Transport Scotland: Director of Major Transport Infrastructure Projects
 - Transport Scotland: AWPR Projects Sponsor/Director
 - Aberdeen City Council: Head of Planning & Sustainable Development
 - Aberdeenshire Council: Director of Infrastructure Services
- 5.29 The Project Board is supported by an AWPR Project Team consisting of:

- Transport Scotland AWPR Project Manager
 - The appointed AWPR Managing Agent
 - Senior staff from the appointed multi-disciplinary consultancy (Jacobs UK Ltd)
- 5.30 The AWPR Project Team's role, which has no executive decision making powers, is to monitor progress and to project manage the delivery of the AWPR Project.
- 5.31 An overview summary diagram and a fuller description of the Project Board roles and responsibilities are given at Appendix 2 "Aberdeen Western Peripheral Route: Governance Overview Summary".
- 5.32 Whilst the underlying principles of governance are the same for the AWPR as for other Transport Scotland trunk road schemes, the partnership nature of the AWPR demands some adjustments to the normal Transport Scotland governance model.
- 5.33 As outlined above, an Executive Board consisting of the Chief Executives of the three partner organisations in their roles as Accountable Officers are proposed to be responsible for all major decisions which require to be mandated or undertaken by their respective parent organisations.
- 5.34 Subject to resolution of the current legal appeal the AWPR (and associated projects) Main Works Contract will be procured by Competitive Dialogue, with Economic Operators invited to participate in Competitive Dialogue being selected by means of a pre-qualification process. Participants will be required to demonstrate a clear transfer of risk to the private sector and value for money for the public sector in accordance with Non-Profit Distributing (NPD) principles.
- 5.35 In the NPD model, there is a partnership with a private sector provider, who finances, constructs and maintains an asset. The public sector then pays an annual charge over a 25-30 year period to the private sector provider from the revenue budget once the asset has been built. The NPD model seeks to transfer risk and exert private sector discipline during the construction phase of a project and throughout its lifetime, but without the excessive profits associated with past Private Finance Initiative (PFI) projects.
- 5.36 The Competitive Dialogue (CD) process is divided into four stages: pre (up to issue of) OJEU Contract Notice, an Invitation to Participate in Dialogue (ITPD); the Dialogue Period (DP) itself; and final negotiations and contract close. All NPD projects are required to go through an Independent Project Assurance Model (IPAM) at certain pre-defined points during the procurement (based on the competitive dialogue process), namely:
- IPAM 1 – Pre Official Journal European Union (OJEU)

- IPAM 2 – Pre Invitation to Participation in Dialogue (ITPD)
 - IPAM 3 – Pre Close of Dialogue
 - IPAM 4 – Pre Award
- 5.37 IPAM reviews are short, focused reviews of a programme or project that occur at key decision points in a project(s) lifecycle. They are conducted by a team of experienced practitioners, independent of the AWPR Managing Agency team, and drawn from, or on behalf of, the Scottish Futures Trust (SFT) who play a key role in advising Scottish Ministers on major investment decisions.
- 5.38 Within the context of Aberdeen City Council, this report seeks Elected Member approval for the Chief Executive (subject to resolution of the current legal issues surrounding the AWPR), or her nominated representatives, to be authorised to accept the outcomes of IPAM reviews 1, 2 and 3 and to provide for or arrange for the provision of, all services in connection with the preparation, procurement and construction of the AWPR without further recourse to Elected Members.
- 5.39 The outcome of IPAM 4 (Pre Competitive Dialogue Contract Award) review shall be placed before Elected Members of both Aberdeen City and Aberdeenshire Councils at the appropriate juncture.
- 5.40 A flowchart diagram of the Competitive Dialogue process interwoven with the IPAM Review process can be found at Appendix 3.
- 5.41 The Project Board will meet three times a year or at more frequent intervals as is required to comply with both governance and project management requirements. In exceptional circumstances, Executive Board members – or their nominated deputies – will be able to take decisions by written procedure, subject to homologation at the next subsequent Project Board meeting.

6. IMPACT

Corporate - The AWPR will provide access to the Park & Ride and rail freight transfer sites around the periphery of Aberdeen and improve access to national and European transport networks, reducing the peripherality of the Aberdeen City and Shire. It will remove traffic from unsuitable rural and urban roads in and around Aberdeen and will improve road safety. By cutting congestion it will reduce journey times and improve journey time reliability.

Public - The AWPR will provide a boost to the north-east economy increasing business and tourism opportunities. It is estimated that the road will generate total additional income in the North East of more than £6.33 billion and employment of 14,220 over the 30-year assessment period.

In terms of tourism, it is estimated that there will be a 5 per cent increase in sales and a 2.5 per cent reduction in costs five years after the scheme's completion. It is estimated that, over the same timescale, there will be a reduction in costs of greater than 3 per cent in the haulage and distribution sector. In addition, it is estimated that the AWPR will reduce costs in the oil and gas sector by 2 per cent.

7. BACKGROUND PAPERS

[Ministerial Statement by John Swinney MSP to the Scottish Parliament, 13th January 2010 \(Col 22642 – 22647\)](#)

[Scottish Spending Review 2011 and Draft Budget 2012-13](#)

8. REPORT AUTHOR DETAILS

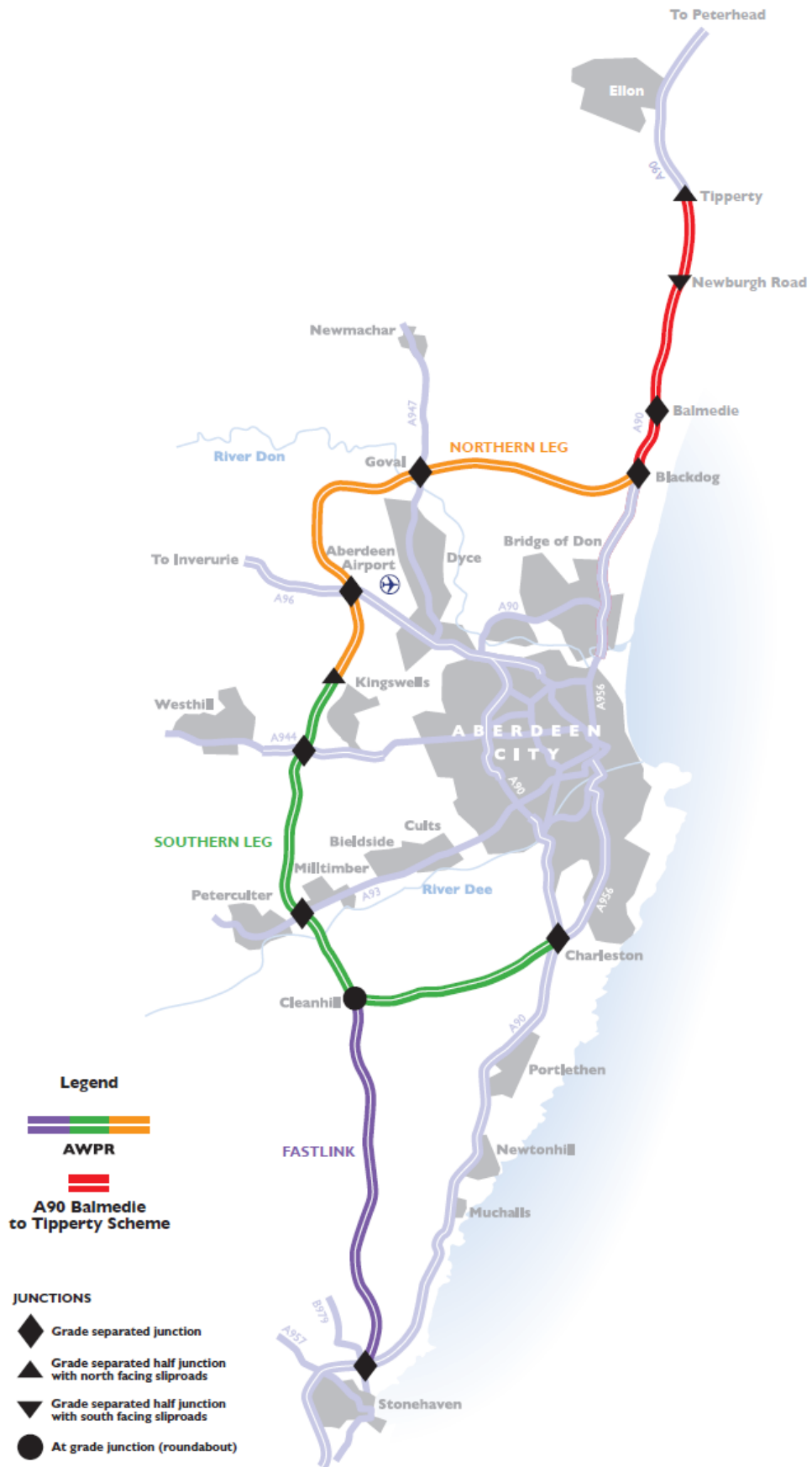
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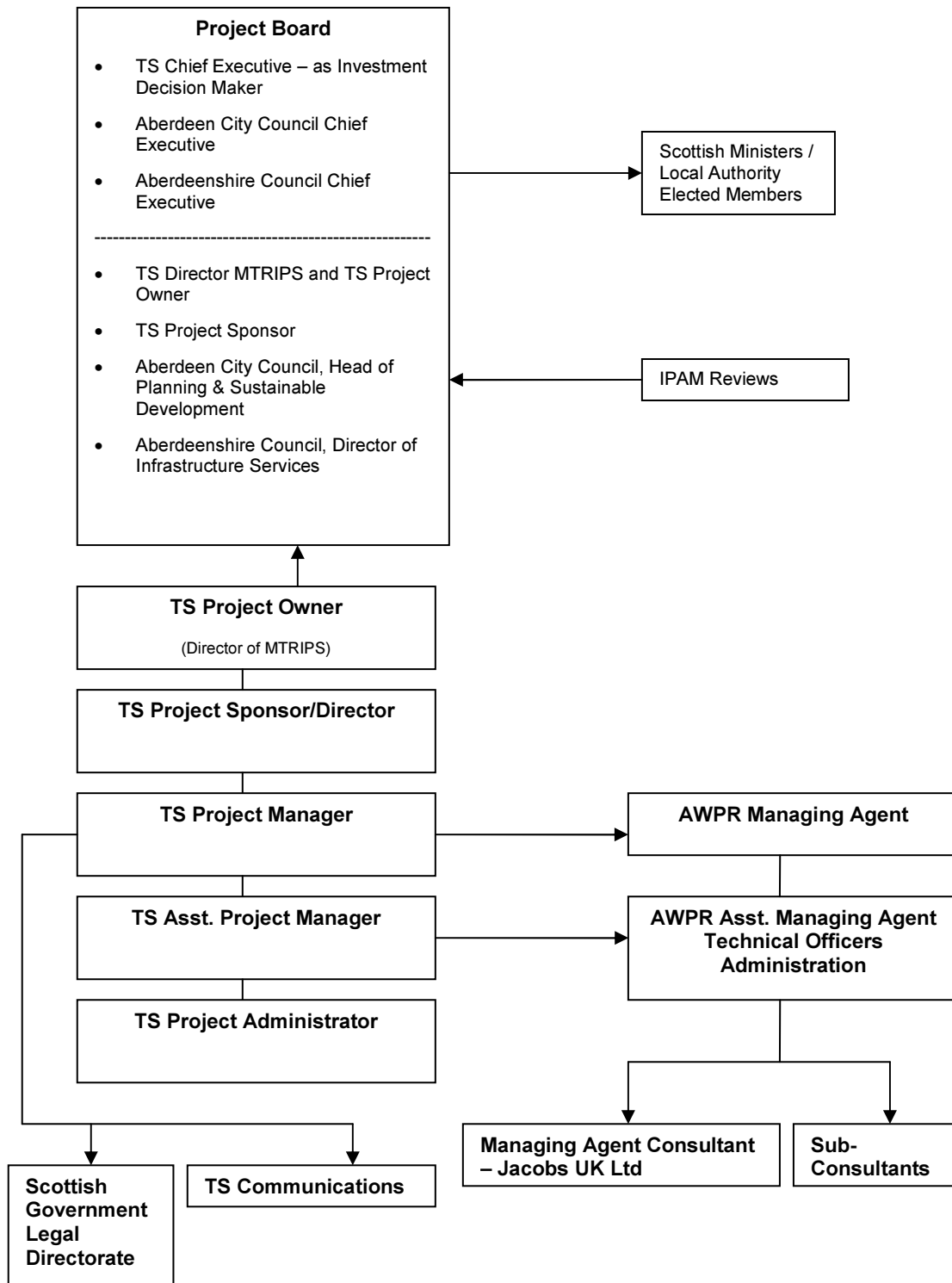
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Appendix 1: AWPR & A90 Balmedie to Tipperty Dualling Improvement



Appendix 2: AWPR Governance Overview Summary



Appendix 3: Timeline, IPAM Review Points and Competitive Dialogue (CD) Procurement Process

