

TRANSPORT FOR LONDON

BOARD

SUBJECT: CABLE CAR FOR LONDON: PROPOSED TRANSPORT AND WORKS ACT ORDER

DATE: 29 JUNE 2011

1 PURPOSE AND DECISION REQUIRED

1.1 The purpose of this paper is to seek the Board's approval to the submission of an application for an Order under the Transport and Works Act 1992 in respect of the Cable Car and to obtain the Mayor's written consent to make the Transport and Works Act Order ("TWAO") and associated delegations.

2 THE NEED FOR ADDITIONAL POWERS

2.1 Planning permission was granted for the Cable Car by the London Boroughs of Newham and Greenwich and the London Thames Gateway Development Corporation on 23 March 2011. All of the necessary land interests and rights were acquired by private negotiation.

2.2 The contract for the construction and operation of the Cable Car was let to Mace Limited on 15 April 2011. The Cable Car will be operated on behalf of Docklands Light Railway Limited (DLRL).

2.3 Even though planning permission has been granted and the land interests secured, it is nonetheless considered sensible to promote a TWAO for a number of ancillary powers and protections in respect of the Cable Car.

2.4 A TWAO would supplement the existing statutory powers that TfL and DLRL have to operate the Cable Car, thus ensuring that the Cable Car system integrates effectively and consistently with the rest of TfL's network.

2.5 Promotion of a TWAO should not be controversial for two key reasons:

- (a) the construction of the Cable Car system has already been authorised by the grant of planning permission. A separate consultation exercise was carried out as part of the planning process and the views of local stakeholders were fully considered by the three local planning authorities before granting permission; and
- (b) there is no compulsory purchase power sought through the TWAO. All of the necessary land interests and rights have been acquired by private negotiation. Accordingly, the TWAO would not constitute an interference with any third party rights.

2.6 The decision to make an application for a TWAO is a matter reserved to the Board. The Mayor's written consent is required to the making of a TWAO.

3 BENEFITS OF TRANSPORT AND WORKS ACT ORDER

- 3.1 It is proposed that the TWAO include provisions dealing with the following matters.

Statutory Authority

- 3.2 This would provide a statutory defence to nuisance proceedings on the grounds that interference with any public/private rights is justified by the wider public benefit which the project delivers. It is common for large transport projects to be granted such a right.
- 3.3 The impacts of the Cable Car were fully assessed as part of the planning process. It is not anticipated that the Cable Car will cause any unlawful interference with public/private rights. However, should any unforeseen interference occur, such a provision would give TfL additional legal protection.

Permitted Development

- 3.4 This provision would enable TfL to carry out necessary maintenance and enhancements to the Cable Car without needing to obtain planning permission each time from the local planning authority. This would accord with permitted development rights currently enjoyed by DLRL, LUL and London Overground.

Trespass

- 3.5 This provision would make trespass in relation to the Cable Car and adjacent land of DLRL a criminal offence.

Byelaws

- 3.6 TfL does not have the power to make any Byelaws in respect of the Cable Car as the existing power to make Byelaws in respect of railways does not apply. A power to make Byelaws for the Cable Car would be sought and, to ensure that the Byelaws are in place when the Cable Car opens, the Secretary of State could be asked both to make and confirm the Byelaws through the TWAO process.
- 3.7 Cable Car Byelaws would be closely based on the current TfL Railway Byelaws but modified to make them suitable for the Cable Car system.

Penalty Fares

- 3.8 This would apply the same penalty fare rules that apply to TfL's railway networks.

Policing

- 3.9 This provision would allow TfL and the British Transport Police ("BTP") to enter into agreements in relation to the provision of police services for the Cable Car system. Such agreements are already used in connection with the DLR and TfL railway networks and this provision would enable similar arrangements to be made in respect of the Cable Car if so desired.

Transfer

- 3.10 This would provide for future transactions relating to the Cable Car, such as granting an operating concession, and for those who are party to such a transaction to be able to benefit from the provisions of the TWAO.

4 TWAO PROCESS AND TIMING

- 4.1 The promotion of a TWAO for the powers outlined above would be much more straightforward than for other Orders which include land and works provisions.
- 4.2 Before an application for a TWAO was made, a consultation process would be undertaken with statutory consultees, landowners and other groups in order to explain the purpose of the TWAO. Prior notice of the application must also be published in a local newspaper.
- 4.3 The process allows time for consultees and other interested persons to register any objections to the proposed TWAO. If there were significant, unresolved objections then a Public Inquiry might be held. However, in view of the nature of the powers sought, it is hoped that a Public Inquiry would not be necessary. In that case, it should be possible for the TWAO to be made within nine months of the making of the application.
- 4.4 To have the best chance of securing the powers and statutory protections detailed above prior to the Cable Car commencing operations next summer, the TWAO application would be submitted before the end of July 2011.
- 4.5 The costs of the application will be met out of DLRL's project budget. It is not anticipated that these will exceed £100k.

5 ALTERNATIVES

- 5.1 In the absence of a TWAO, TfL would still be able to operate the cable car. However, consideration will need to be given to the availability of alternative means of achieving the powers and protections that a TWAO would afford.
- 5.2 A separate set of conditions of carriage could be prepared for the Cable Car system in any event but also as an alternative to the making of Byelaws. The main limitation of conditions of carriage is that, as contractual rights, they provide much weaker remedies and powers of enforcement than Byelaws. Reliance on conditions of carriage in this way for the Cable Car would be inconsistent with and not as effective as mechanisms in place on the rest of the TfL network.
- 5.3 In the case of policing, and in the absence of a TWAO, the Cable Car would be outside the jurisdiction of the BTP. While arrangements could be entered into with the Metropolitan Police in relation to the policing of the Cable Car these would be inconsistent with, and not as effective as, the mechanisms currently in place on the rest of the TfL network.
- 5.4 It would be possible for TfL to promote a Private Bill both to acquire Byelaw-making powers and to overcome the limitations on the BTP's jurisdiction. However, the timeframe for achieving this is less certain: a Bill might receive Royal Assent approximately 12 to 36 months after being introduced to

Parliament. There is also a risk of Parliamentary authorities refusing to accept a Bill on the grounds that a TWAO is a more appropriate route.

- 5.5 There is no ready alternative to some of the other matters proposed to be included in the TWAO, for example statutory authority.

6 RECOMMENDATIONS

6.1 The Board is asked to:

- (a) APPROVE the submission of an application for an Order under the Transport and Works Act 1992 that provides all of the powers required to implement the Cable Car;
- (b) DELEGATE authority to Howard Smith, Chief Operating Officer, London Rail (and in his absence, Howard Carter, General Counsel) to:
 - (i) agree the final terms of the application for the TWAO;
 - (ii) to obtain the Mayor's written consent (as required by the Greater London Authority Act 1999) to make the TWAO; and
 - (iii) do everything else necessary, including signing and/or sealing any documents, agreements or notices required in connection with the submission and promotion of the TWAO.

7 CONTACT

7.1 Contact: Howard Smith, Chief Operating Officer, London Rail
Number: 020 7126 1680
Email: HowardSmith@tfl.gov.uk