

## **Edinburgh Tram Project – Governance Arrangements**

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### **The City of Edinburgh Council**

**20 August 2009**

#### **1 Purpose of report**

- 1.1 At its meeting on 12 March 2009, the Council delegated authority to the Chief Executive to put in place an interim governance structure for the Trams Project. This report updates Council on the changes made to the governance arrangements within tie Ltd, TEL and Lothian Buses to provide integrated bus and tram services across Edinburgh and the Lothians by 2011.
- 1.2 The report also describes the required amendment to the Articles of tie Ltd and seeks Council approval for the appointment of Richard Jeffrey as a Director of tie Ltd. The report finally seeks Council approval for the required changes associated with governance.

#### **2 Summary**

- 2.1 In May 2008, the Council entered into separate operating agreements with tie Ltd and TEL in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network (Lines 1 and 2). A number of changes to the existing governance arrangements are now required to enable the transition towards the integration of tram and bus services in Edinburgh and the Lothians.
- 2.2 The range of governance changes proposed include a revision of the Operating Agreement between the Council and TEL. These changes facilitate the transfer of tie Ltd's shares from the Council to TEL. Other significant changes will include:
  - the revision of the Boards of tie Ltd and TEL to ensure that TEL has the necessary skills and resources to oversee the entire Tram Project from construction, into operation and ongoing maintenance;
  - arrangements for the potential delivery of the tram infrastructure elements an Intermodal Station at Gogar by tie Ltd, as agents for the Council, on behalf of Transport Scotland;
  - revised provisions relating to remuneration matters within tie Ltd and TEL;

- clarification of the role of the Council's Tram Monitoring Officer (TMO) so as to avoid any potential future conflict of interest;
- variation to the scope of delegated authority given by the Council to TEL to ensure that the Council has the ability to manage the costs of the project closely; and
- effecting any consequential changes to the Memorandum and Articles of Association for each company which may be necessary.

### **3 Main report**

- 3.1 The report to Council in March 2009 detailed proposals for the integration of bus and tram operations within the context of a future corporate structure for tie, TEL and Lothian Buses. This report provides an update on progress with that work.
- 3.2 Sound and effective corporate governance is crucial to the long term success and sustainability of any business. In the case of tie Ltd and TEL this is especially important given their contractual agreement with the Council accepting its statutory responsibilities for managing public funds in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network and, in due course, its planned integration with public bus services in Edinburgh and the Lothians. It should be emphasised that the present model of governance is not being criticised; this has proved to be robust, but now requires updating to serve changing circumstances.
- 3.3 Work on the completion of Line 1a (Edinburgh Airport to Newhaven) is underway and it is timely and appropriate to make revisions to existing corporate governance arrangements to ensure that the remainder of the construction project can be managed, as effectively and efficiently as possible, in anticipation of the move, in 2011, towards a single company providing integrated tram and bus services.

#### **Main Features of the New Arrangements**

- 3.4 The Operating Agreement between the Council and TEL will be subject to a number of changes to better regulate the relationship between the parties with regard to the delivery of the tram system and its operation, in due course, as part of an integrated tram and bus network. It is acknowledged that this agreement will require further adaptation prior to the operation of the tram system, including the transfer of Lothian Buses' shareholding to TEL. This report seeks delegated authority for the Chief Executive to approve the final terms of the new arrangements and to sign off on behalf of the Council.
- 3.5 The changes will not affect the legal rights and obligations of the Council, tie Ltd or TEL under any of the contractual or guarantee arrangements currently in place but are focussed on the practical efficiency and clarification of the operation of the governance model. The revised arrangements will have the following features:
- While day to day management, control and execution of the Tram Project will remain with tie Ltd, all strategic and other material decisions will be made by

TEL (or in certain circumstances by the Council) and direction will be given to tie Ltd on such matters, through the Tram Project Board, a formal sub-Committee of the TEL Board

- The settlement of any claims and payments will be within the control of TEL and the Tram Project Board, subject to overall scrutiny as described below.
  - Remuneration matters will be monitored and controlled by the Remuneration Committee of the TEL Board following policy principles to be agreed by the Council's Chief Executive (including success criteria for payment of staff bonuses), once the appropriate powers are delegated to the Chief Executive.
  - tie Ltd will no longer be required independently to produce a business plan (its plan will be subsumed within the business plan prepared by TEL).
  - Under strict delegated authority from TEL or the Tram Project Board tie will retain authority to approve changes to contractual arrangements, scope, cost or other aspects of the Tram Project.
  - The Tram Monitoring Officer (TMO) will no longer formally be a TEL Board member, but will continue to attend meetings, ex officio, as required.
- 3.6 The terms of the tie Ltd Operating Agreement of 2005 otherwise remain extant except where superseded by the Operating Agreement of May 2008.

#### **TEL Operating Agreement**

- 3.7 The Operating Agreement between the Council and TEL will be subject to a number of changes to better regulate the relationship between the parties with regard to the delivery of the tram system and its operation, in due course, as part of an integrated tram and bus network. It is acknowledged that this agreement will require further adaptation prior to the operation of the tram system, including the transfer of Lothian Buses' shareholding to TEL.

#### **TEL's Obligations**

- 3.8 The Operating Agreement places obligations upon TEL and the Council as summarised below. TEL's main obligations include:
- the provision of services to the Council to assist in, carry out, promote, manage and administer the Edinburgh Tram Project;
  - ensuring a general duty of care to the Council in respect of third party advisers and contractors it may engage with;
  - using its best endeavours to deliver the project within the timescale and budget of the Final Business Case;
  - managing tie Ltd to deliver the project within the terms of the tie Operating Agreement;

- the formation of sub-committees, where required, to execute its duties, ensuring that its Board of Directors employ the requisite blend of skills, experience and aptitudes;
  - ensuring that it remains properly resourced to provide the required services and complies with the terms of the Council's funding agreement;
  - compliance with relevant health and safety, equalities legislation (including best endeavours in relation to contractors and other third parties) and also with the Freedom of Information ( Scotland ) Act;
  - securing appropriate insurance cover, including corporate public and products liability and professional indemnity policies;
  - using best endeavours to secure that Best Value in the use of funds provided by or through the Council is achieved;
  - adherence to the Council's Code of Corporate Governance (approved 29 June 2006);
  - providing access to the Council, its auditors and other delegated appointees, to financial and other information, as requested; and
  - determining and reporting to the Council all relevant matters affecting the programme, cost and scope of the Tram Project.
- 3.9 The agreement reserves, to the Council on a recommendation from the Chief Executive, any programme, scope and cost changes involving:
- any actual or reasonably expected delay to the Project revenue commencement date of over 3 months beyond the baseline date ;
  - any actual, or reasonably expected, increase in the capital cost of the project beyond £1,000,000 of the baseline programme cost; and,
  - any substantial change to the design, scope or service pattern set out in the Final Business Case.
- 3.10 TEL is required to liaise with the Tram Monitoring Officer, the Council (and any other bodies which the Council may specify) and report, on a four weekly and annual basis, on financial matters, and notify the TMO immediately it becomes aware of the likelihood of delay to, or overspend in the project.
- 3.11 Provision has been made in the revised TEL Operating Agreement for tie Ltd to have its remuneration policy approved by the TEL Board setting out the benchmarks and procedures for proposed bonus achievement and the project milestone outcomes to which any bonuses are linked. TEL's Board will also be required to have its remuneration policy, and that of tie Limited, approved annually by the Council's Chief Executive. The remuneration package of the Chairman of TEL and tie Ltd will, upon appointment, be required to be approved by the Council's Chief Executive, ( once he is in receipt of the appropriate delegated powers ), as will any changes thereafter.

3.12 TEL will also be required, as a matter of course, to:

- protect the Council's reputation in matters relating to the project;
- not novate, or otherwise transfer, any rights or obligations under any contractual arrangements without the prior written consent of the TMO;
- liaise regularly with the Council on publicity and communications arrangements; and
- help the Council properly discharge its responsibilities and obligations relating to the maintenance of roads and structures which are integral to the tram system.

#### **Council Obligations**

3.13 The Council's main obligations under the revised operating agreement with TEL include:

- authorising TEL to operate within a revised delegated authority structure (see Appendix 1);
- providing guarantees in relation to TEL's financial obligations for certain aspects of the project;
- releasing funding to enable TEL to discharge its obligations under the terms of the agreement;
- nominating a Council officer (the Tram Monitoring Officer) to act as a day to day liaison point for communications with TEL;
- ensuring adequate personnel are made available to the project;
- approving any work that TEL may undertake on other projects;
- facilitating the integration of the operations of trams and buses in the City of Edinburgh to help the Council, tie Ltd, Lothian Buses and TEL function as a single, co-ordinated entity in the delivery, management, operation and ownership of an integrated transport system.

#### **Gogar Intermodal Station**

3.14 As a key element of the planned Edinburgh-Glasgow improvement programme (EGIP) for rail connectivity in central Scotland, Transport Scotland wishes to ensure that certain limited defined works in connection with a tram, train, bus interchange are completed at Gogar. The new station will enable rail passengers connecting from the Fife line to transfer easily from train to tram or bus, and vice versa, improving significantly ease of access to Edinburgh Airport, the City Centre and all other parts of the tram and bus network.

3.15 Transport Scotland has asked the Council to procure that tie Ltd manage the delivery of the tram infrastructure related elements of the Gogar Intermodal Station (including the tram stop, but excluding the railway station which is to be

procured by Network Rail), ensuring that it is programmed for completion at the same time as the tram network opens for revenue service operations. Initial modifications to the governance arrangements to accommodate this project have been made and further changes may be required as formal legal agreements are firmed up. These will be reported to the Council, in due course, and any changes which may require a revised business case to be prepared will be brought to the Council for its approval.

#### **Articles of Association: tie Limited**

- 3.16 On 18 December 2008 the Council delegated authority to the Chief Executive to participate in the recruitment process for the appointment of the post of Chief Executive of tie Limited (in consultation with the Interim Chairman of tie Limited).
- 3.17 Following the recruitment process, the Board of tie Limited appointed Richard Jeffrey as Chief Executive of the company.
- 3.18 The Articles of Association for tie Limited restrict the number of Directors to nine (unless otherwise determined by Special Resolution) comprising five Directors and four Council Directors. In order to appoint Richard Jeffrey as a non - Council Director, the Articles of Association will require to be amended to increase the maximum number of Directors to ten.

#### **4 Financial Implications**

- 4.1 The proposed changes to governance arrangements will lead to a more streamlined and cost efficient organisational model.

#### **5 Environmental Impact**

- 5.1 The development of integrated public transport services within the City of Edinburgh will help to improve mobility into, out of and across the City and provide a viable alternative to private car use. The revised governance arrangements proposed in this report should help to enhance the prospects of the Council's goal of integrated public transport being realised, as well as delivering a more resource efficient approach to project delivery.

#### **6 Conclusions**

- 6.1 The proposed changes to governance arrangements between the Council, tie Ltd and TEL aim to streamline and clarify the current approach and achieve further progress towards the goal of achieving integrated public transport services in the City of Edinburgh. The proposed arrangements will help reduce overlap and duplication of effort by reinforcing a combined team effort, with clearly defined roles and contributions, to help deliver a high quality tram system for the City. The proposed improvements will help to better regulate the relationship between the Council, tie Ltd and TEL and achieve improved cost efficiency in the management of the project.

## 7 Recommendations


- 7.1
- a) The Council is asked to approve the key changes to corporate governance outlined in this report and to delegate, to the Chief Executive, the authority to sign the revised Operating Agreement between the Council and TEL and the related documentation, including a proposed Memorandum of Understanding.
  - b) The Council is asked to approve that the consequential changes that will flow from the revised corporate governance arrangements should be implemented as quickly as possible, and to ask the Chief Executive to report on their implementation no later than December 2009.
  - c) The Council is asked to expressly delegate the requisite authority to the Chief Executive to deal with the matters set out in paragraphs 3.4, 3.5 and 3.11 respectively.
  - d) The Council is asked to agree that the Articles of Association for tie Limited be altered to allow ten Directors to be appointed to the Board (six Directors and four Council Directors).
  - e) The Council is asked to agree the appointment of Richard Jeffrey to the Board of tie Limited.

  
Jim Inch,  
Director of Corporate Services

13/08/09

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Appendices            1   Governance Diagram

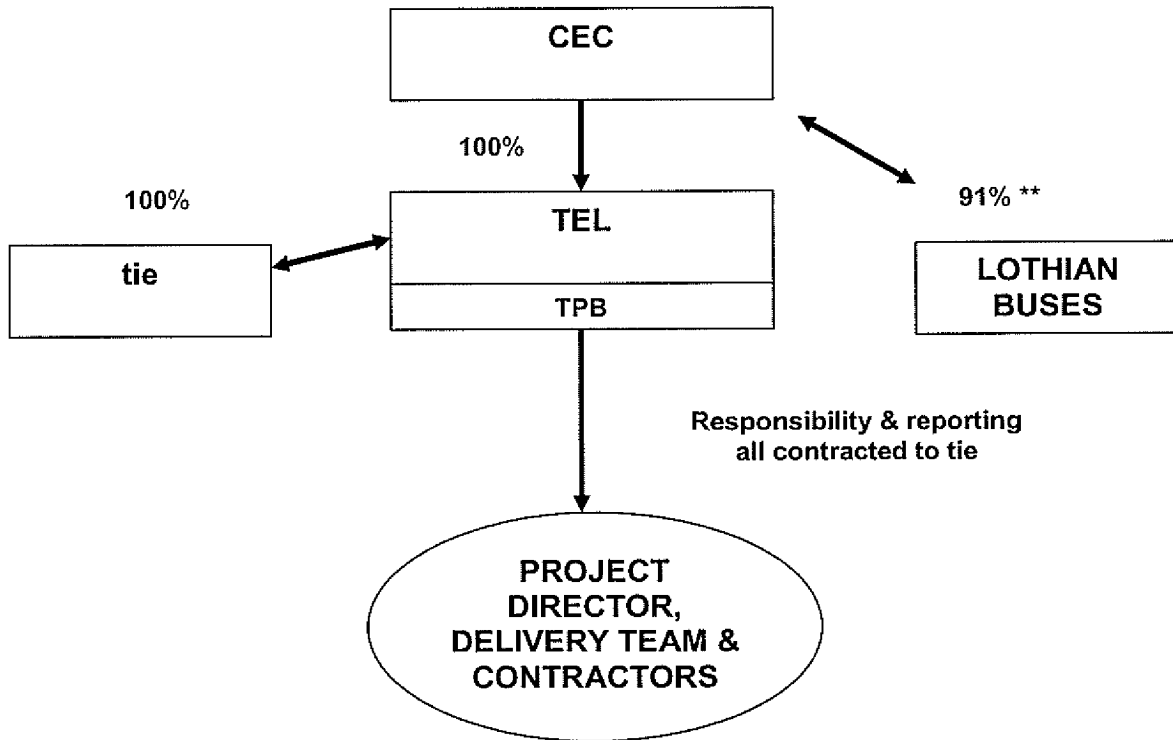
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Wards affected        City wide

Single Outcome  
Agreement

Background  
Papers

EDINBURGH TRANSPORT: INTEGRATION OF BUS AND TRAM INTERIM STRUCTURE



\*\* = Subject to ongoing discussions with minority shareholders