

## Private & Confidential

### Edinburgh Trams: Note of 3<sup>rd</sup> Quarterly Review 18 June 2009

Attendees-			
<b>Donald McGougan</b> <b>Andy Conway</b> <b>Alan Coyle</b>  <b>Steven Bell,</b> <b>Stewart McGarrity</b>	City of Edinburgh Council City of Edinburgh Council City of Edinburgh Council  Tie Tie	<b>Bill Reeve</b> <b>Jerry Morrissey</b> <b>John Ramsay</b>	Transport Scotland Transport Scotland Transport Scotland
Apologies-			
<b>Richard Jeffrey</b>	Tie		

Item	Notes
<b>Purpose of meeting</b>	<ol style="list-style-type: none"> <li>1. To follow on from the second Quarterly Review held on 3 March 2009 under the terms of the formal Financial Agreement between City of Edinburgh Council and Transport Scotland This review continued previous discussions regarding the impacts on project costs and programme arising from the ongoing contractual dispute between tie and the Infraco consortium .</li> <li>2. CEC / Tie were advised of sustained Ministerial concern regarding the current contractual dispute and its potentially damaging impact on the project. An update on this dispute, together with an appraisal of implications for Edinburgh Council Finances were requested.</li> </ol>
<b>Matters Arising from 2<sup>nd</sup> Quarterly Review</b>	<ul style="list-style-type: none"> <li>• Transport Scotland recognised that manoeuvring BB out of Consortium was not the most attractive option on future contract strategy</li> <li>• Transport Scotland also confirmed that whilst the quality of reports had improved, it again stressed the need to improve profiles and forecasts, so that funding benefit to the project could be maximised. Previous “optimistic” outturn forecasts had particularly caused problems for Transport Scotland</li> <li>• In addition to the monthly Progress Reports Tie offered to meet and brief Transport Scotland. However it is expected to remain difficult to give any meaningful detail over next few months until all DRP negotiations are complete.</li> </ul>

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<b>Key Headlines</b>	<ul style="list-style-type: none"><li>• Good progress has been made on Princes St under the Supplemental Agreement and track works have just commenced.</li><li>• The Project Management panel (PMP) has met 7 times and is a more constructive engagement between tie and BSC. Some successes are being achieved through the PMP albeit these are significant issues to resolve. The next meeting is scheduled for 25 June.</li><li>• Delivery Impetus by BSC at some other worksites has improved e.g. Depot re excavation but starting to slow again pending resolution of further anticipated changes.</li><li>• Tie no longer confident about securing a commercially agreed full recovery programme by 20 August as per previous reports A further meeting between Richard Jeffrey and Dr Keysberg of BB is set for 22 June – it's expected to be very robust.</li><li>• Mediation for the 1<sup>st</sup> dispute resolution process on 29 May was successful with agreement reached avoiding need for adjudication. A further 4 DRP's are under preparation should the PMP route prove to be unsuccessful. These will be informed by QC opinion</li><li>• The Tram Project Board intend to meet on 8 July and again before full Council on 20 August. However before then, tie needs to see more movement to free up some of the current work packages that are blocking progress.</li><li>• Siemens are known to be working to ensure constructive engagement from BSC.</li><li>• CEC firmly of the view that quoting another AFC figure at this juncture isn't going to be helpful. More concerned about growing confidence within the current funding envelope; However, in terms of the £533m previously advised, this continues to be driven by the main impacts of core costs, delays and other costs. tie are currently estimating that they are liable for circa 33% of the current disputed quantum with BSC another 33% and the remainder open for decision.</li><li>• Further additional advice on raising capital receipts through TEL Business Plan and other sources of council funding to facilitate further borrowing would also be incorporated. The way in which City of Edinburgh Council will deal with tram assets will ultimately be driven by confidence levels on the £545m affordability ceiling.</li><li>• CEC advised that a report was intended for full council on 20 August on;<ul style="list-style-type: none"><li>○ the revised contract dispute strategy,</li><li>○ potential impact on Council finances,</li><li>○ updated developer income situation.</li></ul></li></ul>
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<p><b>Strategic Options</b></p>	<ul style="list-style-type: none"> <li>• Ahead of the 20 August Council meeting the Tram Project Board will develop the strategic options through;</li> <li>• On 8 July Tram Project Board will consider;             <ul style="list-style-type: none"> <li>○ Consolidated Review of outputs from this 3 month engagement;</li> <li>○ Inclusion of options on incremental solutions / agreement as a twin track approach along with work stream A</li> </ul> </li> <li>• on 29<sup>th</sup> July Tram Project Board will consider;             <ul style="list-style-type: none"> <li>○ Further consolidation and reduction of uncertainty</li> <li>○ Recalibrated programme for approvals with commercial input assessed.</li> </ul> </li> <li>• on 20<sup>th</sup> August Tram Project Board will consider;             <ul style="list-style-type: none"> <li>○ Recalibrated programme for approvals along with commercial input assessed /agreed</li> <li>○ Formal consideration of recommendations regarding scope truncation, incremental funding sources and stop/go decision on project</li> </ul> </li> </ul>
<p><b>Current programme status</b></p>	<ul style="list-style-type: none"> <li>• Delivery of BSC's "Entitlement" programme (unmitigated and with January 2013 opening milestone) was followed by their mitigated "Revision 2" (October 2012 opening) programme on 20 May. Tie has responded to both seeking additional information to substantiate the programmes under the contract. To date the mitigated programme has neither been accepted nor rejected.</li> <li>• Forensic planning Stage 1 was completed in early June.</li> <li>• The programme element isn't yet certain so tie can't say what impact this will have on the £533m. tie is continuing an Open for Service milestone date of February 2012 against Bilfinger Berger's estimation of another year – February 2013 but tie consider there are trade-offs and sensible differences which can be made to drive the Oct 2012 back to Feb 2012 through multiple working, key resource teams (straightforward and relatively low cost) and challenging any embargos constraints</li> </ul> <p><b>Key section progress</b></p>
<p><b>Princes Street</b></p>	<ul style="list-style-type: none"> <li>• CEC agreement reached on working through festival embargo</li> <li>• Festival mitigation / summer welcome arrangements planning commenced</li> <li>• OHL bases being installed</li> <li>• Traffic management switched on 6<sup>th</sup> June to give access between South St David St and Waverley Bridge</li> <li>• 1<sup>st</sup> rail installation – 2<sup>nd</sup> week in June</li> </ul>
<p><b>Depot</b></p>	<ul style="list-style-type: none"> <li>• Good progress – 94,495m3 vs planned 76,800m3 on 16 June;</li> </ul>

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<b>Edinburgh Park</b>	<ul style="list-style-type: none"> <li>• 100% bridge beams lifted into position at Edinburgh Park viaduct</li> </ul>
<b>Carricknowe Bridge / Haymarket Viaduct</b>	<ul style="list-style-type: none"> <li>• Continued slow progress</li> </ul>
<b>Utilities</b>	<ul style="list-style-type: none"> <li>• Overall 77% of all diversions now complete ( Sections 2a, 5a 5b and 6)</li> <li>• Mound diversions progressing well and main section of Princes St completion expected by 14 June when site will be handed over for tram works. Gas / Bt work in Hanover St necessary till August</li> </ul>
<b>Carillion</b>	<ul style="list-style-type: none"> <li>• Process for dealing with Carillion delay and disruption application likely to be challenging due to their poor records / substantiation of claims.</li> <li>• Strategy developed to close down MUDFA contract (anticipated for September) implemented and sections 1a (Forth Ports) and 7 (Airport) out to tender</li> </ul>
<b>Other Issues</b>	<ul style="list-style-type: none"> <li>• Picardy Place – design ongoing but traffic flow issues remain to be resolved</li> <li>• Embargos – CEC has lifted City Centre Festival embargo for 2009</li> <li>• TRO – comments from internal consultation being incorporated into final designs</li> <li>• Building fixings – only 9 outstanding fixings where referral to the Sheriff Court is likely</li> <li>• Fastlink road modifications – TRO made</li> <li>• Haymarket war Memorial removal completed</li> <li>• Leith walk – work progressed on more sweeping traffic management allowing greater construction opportunities with civils work intended for mid September</li> </ul>
<b>Key Commercial &amp; Legal Dispute Status:</b>	<ul style="list-style-type: none"> <li>• Tie continuing to try and resolve issues through the PMP</li> <li>• QC opinion sought on key contractual / legal issues and briefing held on 1 June with written opinion expected 18 June. No radical differences highlighted informally.</li> <li>• Continued development of commercial cases to address the above items.</li> </ul> <p>1.</p> <ul style="list-style-type: none"> <li>• 5 key areas of disagreement were reported to the recent Tram Project Board;             <ul style="list-style-type: none"> <li>○ Responsibility for design management and evolution</li> <li>○ Liability for delays to date and risk of future delays</li> <li>○ Preliminaries – resolved for Civils based on DRP1 conclusion (agreed via mediation = 17.5% against BSC’s 30-70% estimate)</li> <li>○ Unforeseen ground conditions – independent geotechnical specialist supporting analysis</li> <li>○ Failure to provide estimates – improvement in delivery of number however historical liability and quality is not fully there yet</li> </ul> </li> </ul>

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<b>Claim Notice Analysis</b>	The current INTC status was reported as;			
	<b>Position at end of P1 2009/10</b>	<b>P13</b>	<b>P1</b>	<b>P2</b>
	INTC's received from BSC	334	341	370
	INTC's with estimates / information outstanding	241	242	235
	Change Orders issued by tie	24	27	54
	Change Orders pending agreement on preliminaries	3	15	27
	Disputed in principle	5	5	13
	Tie reported that currently the breakdown of Estimates / Agreed totalled £45m at 15 May 2009, broken down as;			
	<b>Analysis of Outstanding Estimates</b>	<b>£m</b>	<b>Nos</b>	
	Estimates submitted within 15 days	9.6	34	
Overdue by 20 Business	12.7m	25		
Overdue by 40 Business Days	4.9	34		
Overdue by 40+ Business Days	17.8	42		
<b>Cost Implications:</b>	<ul style="list-style-type: none"> <li>• No change to the forecast expenditure of £150m on Phase 1a in 2009/10 (£22m in the 1<sup>st</sup> quarter) . - £5m ahead of the budget to date due to short-term timing. The latter half of the year will see the start of more expensive works at Depot and Princes Street.</li> <li>• Following Council's decision to postpone Phase 1b, tie has additional liability to pay BSC £3.2m in the 2<sup>nd</sup> quarter – maybe subject to negotiation.</li> <li>• Current cost profile is based on the "Re-baselined" programme to commence revenue service in February 2012.</li> <li>• Tie continues to report an as yet unapproved outturn estimate for Phase 1a of £527.1m -including risk allowance of £35.7m for Infracore and based on the re baselined opening date of Feb 2012.</li> <li>• After allowing for the Phase 1b postponement costs of £6.2m (includes the sunk £3m SDS design cost) there is headroom of £11.7m against the total approved funding of £545m.</li> <li>• Cost outturn confidence will build with Strategic Options Workstreams</li> </ul>			

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<b>Matters Arising</b>	<p><b>Gogar Station</b> CEC advised that NR is looking at a Sept / October completion but Tie hasn't validated the final design. Transport Scotland confirmed that the NR Planning Application would be the 1<sup>st</sup> under the new TAWS process and it will be necessary to be clear that it mustn't get bogged down and become an issue as part of the wider EGIP project portfolio.</p> <p><b>Partial Operations</b> CEC confirmed that not a huge amount of further consideration had been given to this matter. Any further work will depend on the outcome of the Gogar design timescale. Transport Scotland confirmed that an Edinburgh Park to the Airport commissioning would be perceived as helpful by ministers.</p> <p><b>Bridge Agreements:</b> CEC advised that they had reached an impasse with Network Rail to agree and secure Bridge Agreements required for the trams at key crossing points.. The concerns relate to the core issue of reasonable long-term liability – an issue with implications for all local authorities in Scotland facing similar situations.</p> <p>Transport Scotland advised that the ORR is there to assist all 3<sup>rd</sup> parties dealing with NR. The ORR has already asked NR to consider revising such Agreements. All Transport Scotland can do is secure BA's for road projects but offered to help where possible.</p> <p><b>Concessionary Fares:</b> CEC raised the issue of outstanding confirmation that the project would be included in the ongoing revision of the National Concessionary Fares Scheme. In response Transport Scotland commented that they understood the importance of the NCFS to the Trams Business Plan and that was why it had been included in the review but underlined that there has not yet been any announcement on the outcome.</p> <p><b>TAWS / Waverley Station Roof</b> CEC advised that an issue had arisen regarding the new TAWS regulations and the Waverley Roof replacement project being undertaken by Network Rail. Apparently the new legislation will no longer permit the regulatory Roads Authority (the local authority) to be engaged, particularly if it impacts on other approved projects. Transport Scotland emphasised that this doesn't need to end up as a formal issue for the Appeal Hearing scheduled for 22 July and remained hopeful that an agreement would be reached between CEC and Network Rail via side agreements.</p>
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<b>Actions required from the Review Meeting:</b>	<p><b>City of Edinburgh Council</b> agreed to provide Transport Scotland with;</p> <ul style="list-style-type: none"><li>• Re-profiled cash flows for the coming 3 years</li><li>• Appraisal of implications for Edinburgh Council Finances</li><li>• A request for assistance in progressing their impasse with NR over the Bridge Agreements</li></ul> <p><b>Tie</b> agreed to;</p> <ul style="list-style-type: none"><li>• meet and brief Transport Scotland more regularly in addition to the monthly Progress Reports</li></ul> <p><b>Transport Scotland</b> agreed to</p> <ul style="list-style-type: none"><li>• Consider the above request and advise what the correct protocols and procedures might be in approaching ORR:</li></ul>
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