

## Edinburgh Tram: Update

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City of Edinburgh Council

23 August 2007

### Purpose of report

- 1 This report advises Council of the recent developments with respect to the Edinburgh Tram Project and seeks a decision regarding appropriate future governance arrangements.

### Main Report

#### *External validation of the Project management arrangements*

- 2 On 4 June 2007, the Cabinet Secretary for Finance and Sustainable Growth asked the Auditor General for Scotland to carry out a high-level review of the arrangements in place for estimating the costs and managing the Edinburgh trams and Edinburgh Airport Rail Link (EARL) projects. The Auditor General published his findings on 20 June 2007.
- 3 These findings confirmed that tram project was being managed in a robust and effective manner. In particular, the Auditor General noted that arrangements in place to manage the project appeared sound with:
  - a clear corporate governance structure for the project which involves all key stakeholders;
  - clearly defined project management and organisation;
  - sound financial management and reporting;
  - procedures in place to actively manage risks associated with the project; and
  - a clear procurement strategy aimed at minimising risk and delivering successful project outcomes.

#### *Recent Developments with respect to Funding*

- 4 Following a vote in Parliament on 27 June, the Scottish Executive has confirmed that the Council should continue work on the Edinburgh Tram Project. While the Tram Project is proceeding, it is now subject to a caveat that funding from Transport Scotland is to be capped at an absolute level of £500 million, with no allowance for inflation. Any cost additional to that will need to be funded by the Council, which has previously agreed, on 21 December 2006, to provide a further sum of £45 million.

- 5 Approval for the project to proceed and the revised funding situation have highlighted the need to re-assess current governance arrangements associated with the project. These include the relationship between the Council, TEL (Transport Edinburgh Limited) and **tie** (Transport Initiatives Edinburgh), the role of the Tram Project Board and the necessity for the appropriate involvement of elected members in decisions associated with the project.
- 6 Transport Edinburgh Limited (TEL) is an arm's length company owned by the City of Edinburgh Council with responsibility for integrating bus and tram services in the city. It is intended that once the Edinburgh tram system is introduced, TEL will operate Lothian Buses and the tram system on behalf of the Council.
- 7 **tie** was established in May 2002 as a non-profit private limited company, wholly owned by the Council, to deliver major transport projects for the Council. **tie's** remit is to provide the procurement, project management and financial management capability to ensure that a number of major transport-related projects are delivered. It is currently project managing Edinburgh trams and promoting the EARL project. **tie** has managed the Edinburgh trams project throughout, from obtaining Parliamentary approval to designing and appointing contractors to deliver the tram system itself.
- 8 Both companies are directed by boards led by significant private sector figures and composed of a mix of elected members of the Council and other representatives with expertise and experience in relevant transportation areas.

#### ***Council Risk***

- 9 Against the background of the funding cap set by Transport Scotland and the greater financial risk that will now be borne by the Council, it is imperative that rigorous financial and governance controls are in place to manage the next crucial phases of the project.
- 10 Transport Scotland is grant funding the project in the ratio 91:9 with the Council. As noted above, this ratio applies only to the previously agreed funding of £545 million. Any overrun will require to be borne entirely by the Council. This is in contrast to the terms of the Funding Agreement which was submitted by Transport Scotland to Council officers prior to the election.
- 11 The Council is party to an annual grant funding agreement with Transport Scotland and is contractually bound to a number of specific obligations. Currently, all contracts have been procured by **tie** in its own name. **tie** has no assets of its own and also carries none of the grant obligations which are incumbent on the Council. The Council effectively stands behind **tie** for all practical purposes in respect of all risks and financial obligations in the various contracts and agreements associated with the Tram Project, including those of the diversion of utilities (MUDFA), the laying of the track and infrastructure (INFRACO) and the procurement of the vehicles (TRAMCO).

- 12 The Council has all the statutory powers to deliver this project. It is the authorised undertaker by virtue of the two Tram Acts. It is also the roads and planning authority. **tie** is effectively an agent of the Council in addition to being a wholly owned Council company. In addition to a general agreement dealing with various transport projects, a dedicated Tram Operating Agreement between the Council and **tie** has been in preparation for some time and can now be completed. The transfer of additional risk to the Council has increased the importance of finalising and implementing this agreement, ensuring satisfactory direction and control over **tie** and its activities as agent for the Council in matters such as procurement, contracting and the incurring of expenditure.
- 13 Following the change in the risk profile for the Council, the role of the Tram Project Board requires to be considered afresh. This Board, one of the requirements previously set by Transport Scotland, exists to take forward the project, although it is not itself a legal entity. It also has no direct delegated authority from the Council to take decisions regarding the project.
- 14 A consultative group of senior officers has been established within the Council, the Tram Internal Planning Group, to ensure that there is adequate internal coordination with respect to the project. This is chaired by me and also involves the Directors of City Development, Corporate Services, Finance and Services for Communities, with support from the Council Solicitor, Communications and the Tram Project team.

#### ***Issues arising***

- 15 Senior Council officers have met with their counterparts in **tie** to agree, in principle, a range of measures designed to clarify the relationship between the two parties in the next phase of the project. **tie** will have a continuing role in the procurement and construction stages of the project. That role, assuming it is one of agency for the Council, will be set out in clear written terms, recognising the role of the Council as authorised undertaker and its other statutory functions as roads authority/planning authority. It is important to understand that Council cannot delegate these latter two functions to **tie**. As noted above, the Council Solicitor is preparing a Tram Operating Agreement in consultation with the Directors of Finance and City Development.
- 16 The role of elected members in project decision-making also needs to be defined. The dynamics of the project have changed following the creation of the cap on funding from Transport Scotland. As a result, it is now appropriate to establish a dedicated Tram Sub-Committee. I will report in September on what powers should be delegated to this sub committee and what powers should be delegated to officers. In the meantime Council is requested to delegate powers to me with respect to any decisions that may require to be taken. Consideration is also being given to the requirements for the Tram Project Board to report to the Tram Sub-Committee.
- 17 On 21 December 2006, the Council agreed that the contract for the existing interim Executive Chairman of **tie** should be extended for a further period until Autumn 2007. This will also be covered in my report to Council in September.
- 18 In addition to consideration of **tie**, TEL will also play a significant role in the future integrated bus and tram network for Edinburgh. A comprehensive Operating Agreement between the Council and TEL is also at an advanced stage of preparation by the Council Solicitor. This will be finalised and concluded and further consideration given to the role of Chief Executive of TEL.

19 In summary, robust Operating Agreements for the Tram Project are in preparation, clearly setting out the respective roles of the Council, **tie** and TEL. I will bring a further report to Council in September, making recommendations regarding the relationship between TEL and Lothian Buses, the role of the Chief Executive of TEL and the post of the Executive Chairman of **tie**.

### Recommendations

20 It is recommended that Council:

- (i) note the contents of this report with respect to the revised funding arrangements for the Tram Project and the implications for the transfer of financial risk to the Council;
- (ii) note that this position requires revised governance structure for the project and for the relationships between the various companies and agencies promoting it;
- (iii) instruct and delegate to the Council Solicitor to conclude Operating Agreements with **tie** and TEL;
- (iv) note that the roles of Executive Chairman of **tie** and Chief Executive of TEL are being reviewed with a view to clarifying the contracts and responsibilities of each post;
- (v) agree to the establishment of a subcommittee of the Environmental and Infrastructure Committee with a remit to review and oversee decisions with respect to the Tram Project;
- (vi) to note that I will report further to Council in September on a detailed scheme of delegation of powers to the various parties mentioned and that in the meantime Council agrees to delegate responsibility to me for any decisions that may require to be taken; and
- (vii) agrees that my report in September will also deal with the relationship between TEL and Lothian Buses and the post of the Executive Chairman of **tie**.



**TOM AITCHISON**  
Chief Executive

**Appendices**

Appendix 1 – Further Project Milestones

15/08/07.

**Contact/tel**

**Wards affected**

**Background Papers**

Edinburgh Transport Projects Review – Audit Scotland 20 June 2007  
Edinburgh Tram Draft Final Business Case – Report to Council 21 December 2006

**Appendix 1 Edinburgh Tram – Further Milestones**

