

1 Purpose of report

- 1.1 The purpose of this report is to brief the Director of Finance and the Director of City Development on the Governance framework set out at the Financial Close of the contracts for the Infraco and Tramco and issues that Council Officers have over how the Governance arrangements are working in practice.

2 Summary

- 2.1 A number of documents produced, outlining the governance arrangements for Phase 1a of the Edinburgh Tram Network came into effect when contracts for Infraco and Tramco were signed.
- 2.2 This report attempts to highlight issues where the governance framework set out and approved by Council differs from what is actually happening in practice. The report also makes recommendations to address the issues and seeks guidance on how other governance issues can be taken forward.

3 Main report

- 3.1 The proposed tram governance structure was approved by Council on 20th December 2007 and highlighted the role of the Tram Project Board (TPB), the Tram Monitoring Officer (TMO) and the Tram Sub Committee (TSC).
- 3.2 These roles were detailed further in Appendix 2 of the Close Report, which forms Appendix 1 of this report, showing the Governance and Management model for the construction period of the project. This document was sent from tie Ltd to the tie Board, TPB, TEL Board and the Council.
- 3.3 Further documents have been used as reference for this report including the CEC/tie Tram Operating Agreement, The Grant Letter from Transport Scotland (TS), Council Reports and The Code of Construction Practice for the tram project.

CEC/tie Tram Operating Agreement

- 3.4 The tie/CEC operating agreement for Tram came into effect when the contracts were signed on 15th May 2008.
- 3.5 The operating agreement regulates the relationship between the Council and tie for the procurement and delivery of the tram project and defines the services tie will provide to the Council.
- 3.6 Following examination of the operating agreement by Council officers the following issues have emerged.
- 3.7 The Council report of 20th December 2007, the Tram Operating Agreement and the Close Report governance paper highlight the role of TMO and that this should be the Director of City Development or his nominated deputy. ***It has been assumed that Marshall Poulton has been nominated as the TMO,***

however, this arrangement should be formalised by way of a letter from the Council to tie.

- 3.8 Clause 2.2 of the operating agreement states that tie must ensure that all third party advisers and contractors engaged by it shall provide a direct duty of care to the Council in terms that are acceptable to the Council prior to carrying out any work in relation to the project, failing which the appointment of any such third party will require that written approval of the TMO. **Clarification should be sought from tie that this procedure is being followed.**
- 3.9 Clause 2.22 of the operating agreement states; Immediately that tie becomes aware of the likelihood of delay to, or overspend in, the Project it shall notify the Tram Monitoring Officer at the earliest opportunity, informing them of the reasons for the potential delay or overspend and detailing any measures (together with costs) which may mitigate such potential delay or overspend. **The sensitivity of the date in commencement of revenue generating services has formed part of the report to Transport Scotland and the TPB. This potential delay should have been reported to the TMO at the earliest opportunity. Furthermore, as part of tie's period review circa £1.5m has been documented as a variation submitted by Infraco. While this figure has not been approved by tie there is potential.**
- 3.10 Clause 2.25 of the operating agreement states that tie should confirm to the TMO that bonuses are linked to project milestones. **Clarification should be sought that this process should/will happen. It is suggested that this should happen at least annually from the date of signing the operating agreement.**
- 3.11 Clause 2.30 of the operating agreement states that tie must have a communications protocol and that it should be approved quarterly in writing by the TMO. **This report seeks to establish if such a protocol is in place and whether this is approved in writing by the TMO.**
- 3.12 Clause 2.31 of the operating agreement states that tie will be subject to an independent peer review panel concerning the management of the Project (including all the contract documentation) and will implement all reasonable recommendations of the panel once approved under the governance arrangements set out on schedule 2 of the operating agreement. **Recent press reports suggest a peer review group has been set up by the Council Leader with representation of Senior Transport Officials. Guidance is sought as to whether this addresses Clause 2.31.**
- 3.13 Clause 3.4 of the operating agreement state that the Council must appoint a liaison officer. **It is assumed that this role is currently filled by Duncan Fraser, however, this arrangement should be formalised in writing to tie.**
- 3.14 Clause 3.5 of the operating agreement states that the Council shall use all reasonable endeavours that the TMO is a Director of TEL. **Guidance is sought on this matter and whether this will be established.**

- 3.15 Clause 3.8 of the operating agreement states that the TMO must authorise tie to work on any other project. ***Given the current preparatory work being undertaken on Tram Line 3 it would be appropriate that this arrangement is formalised.***

Legal Affairs Committee

- 3.16 In the lead up to Financial Close the Legal Affairs Committee (LAC) played an important part in ensuring the Councils interests in the project throughout the procurement process and formed part of the governance framework in the pre-construction phase of the project.
- 3.17 An email from Graeme Bissett to establish the constitution of LAC post contract close was circulated on 1st June 2008 with a view of re-establishing LAC, meeting 4 weekly to fit with the project reporting cycle.
- 3.18 The aim was to review LAC operation pre Financial Close and assess what worked and what could be improved.
- 3.19 There would also be a review of the benefit of LAC in the construction period regarding purpose, membership, agenda and frequency of meetings.
- 3.20 The recent issue of objections to Building Fixings which will require court action is a good example of the need for LAC. ***The current recommendation would be to have the initial meeting of LAC to establish the constitution of the group going forward.***

Further Committees/Sub-Committees in Governance Framework

- 3.21 The Governance and Management Framework for the construction phase of the project highlights TPB sub-committees for Engineering and Delivery (E&D), Financial, Commercial and Legal (FCL), Benefits Realisation and Operations (BRO) and Communications Committee.
- 3.22 It was anticipated that the BRO and Communications committees would not meet early in the construction period in the absence of any material issues.
- 3.23 ***Confirmation from tie that these committees are in existence is required from tie. The confirmation could be in the form of a letter from tie or sight of minutes of the sub-committee meetings.***

General Governance

- 3.24 Appendix 2 of the Close Report highlights the governance arrangements and roles of the various committees and sub-committees. There is also reference to the various companies and their roles and responsibilities.
- 3.25 The report states that the tie board maintain its Audit (AC) and Remuneration (RC) committees, the membership of which is restricted to Non Executive Directors. This statement is contradictory to the contents of the tie business

plan, approved by Council that states that Willie Gallagher, Executive Chairman of tie, sits on both the AC and RC. ***It is recommended that clarification from tie is sought on this issue and if the Executive Chairman sits on the AC and RC then this practice should cease.***

Code of Construction Practice

- 3.26 [Andy Conway to provide feedback and comments on how the COCP is being followed in practice. Improved governance via the COCP may address concerns over tie's ability to manage work on site.]

Change Control

- 3.27 [Throughout the project tie have maintained a Change Control process to assess, authorise, monitor and record changes within the project. It is acknowledged that this is something the Council should adopt as we proceed through the project to record changes in design or budget for example. This procedure should tie in with a review of tie's change control procedure to ensure best practice.]
- 3.28 [A new change control process will be put in place and management to ensure a clear log of changes is apparent.]

Grant Award Letter

- 3.29 Clause 18.2 of the Grant Agreement states; The Council shall maintain and shall procure that tie and or TEL shall maintain register or registers of Funded Assets and the Scottish Ministers shall be entitled to inspect, and take copies of such registers of Funded Assets at any time. ***tie do not maintain an asset register. The issue of asset registers was raised when discussing the possibility of leasing tram assets to TEL. Stewart McGarrity said at that point tie did not maintain an asset register.***
- 3.30 A further point to note is permission must be granted by TS to use the grant award funding for other tramlines. ***tie have now initiated the feasibility work of Tram Line 3 (TL3). This work is at the point where quotes are being received from the traffic modelers. This work will not be taken any further unless there is a positive response from the Minister for Finance and Sustainable Growth at a meeting with Dave McKay and Willie Gallagher on the 19th October regarding the feasibility study for TL3.***

Peer Review

- 3.31 One of the recommendations of the OGC to tie was the establishment of a peer review process. ***Paragraph 3.12 refers to a peer review led by the Council Leader. This has resulted from necessity given the traffic management problems following The Mound closure rather than from the OGC recommendation. Feedback from tie is necessary to establish progress on this matter.***

Project Assurance – Board Members

- 3.32 The TPB have a duty to carry out their own project assurance rather than rely on tie to tell them that the project is being delivered to the satisfaction of board members.
- 3.33 The role of the board could be helped by focusing on Establishing the vision, mission and values of the company, by setting strategy and structure, delegation to management and exercise accountability and be responsible to the relevant stakeholders.
- 3.34 Board members should determine the values to be promoted throughout tie and actively monitor and review company goals and policies.
- 3.35 In particular the board members have a duty to review and evaluate present and future opportunities, threats and risks to the project and assess the weaknesses and strengths of tie and the project as a whole.
- 3.36 The board members also have a role to ensure and assess tie's organisational structure and their capability to deliver the project.
- 3.37 Board members also have a duty to ensure, through delegation if necessary, that the internal controls within tie are appropriate and effective.
- 3.38 Board members should ensure that communications from tie to stakeholders are effective. They must also ensure that take into account the interests of various stakeholders of the project and that they monitor relationships with key stakeholders.

4 Conclusions

- 4.1 The information above highlights a number of key areas of governance that Council officers have assessed and believe need to be addressed to ensure the sound governance of the project going forward and.

5 Recommendations

- 5.1 It is recommended that the above areas are recognised by Senior Officers and provide guidance to Council Officers where appropriate.

List of Appendices

Appendix 1 - Close Report

Appendix 2 – CEC/tie Tram Operating Agreement

Appendix 3 – TS Grant Award Letter

Appendix 4 – Council Report on Edinburgh Tram Contracts Acceptance

Appendix 5 – Code of Construction Practice