

## **TIE – Governance Arrangements Briefing Paper for the Chief Executive**

### **1 Terms of Reference**

- 1.1 This paper has been prepared in response to your memorandum dated 28 June 2007 which requested my views on the most appropriate governance arrangements for TIE in the longer term.
- 1.2 To meet this remit, I have provided a brief context to the issues, an outline of the current arrangements, and some suggestions for the future development of TIE governance.

### **2 Current Context**

- 2.1 Following the recent parliamentary debate, the Tram Project is proceeding, subject to the caveat that funding from Transport Scotland is understood to be capped at £500 million. Any cost beyond that is to be met by the Council.
- 2.2 The current arrangement is that Transport Scotland is grant funding the project in the ratio 91:9 with the Council. The Council is party to the annual grant funding agreement with Transport Scotland, and becomes contractually bound to a number of onerous obligations. However, most, if not all contracts and agreements have been procured by TIE in its own name, with little or no Council input to these documents. The reality is that TIE has no assets of its own, and the Council effectively stands behind TIE for all practical purposes in respect of all risks and financial obligations in the MUDFA, Infraco and Tramco contracts, and, indeed, in all other agreements.
- 2.3 There is currently no “Tram Operating Agreement” between the Council and TIE, merely a general agreement dealing with various transport projects. The consequence of this is that there is no satisfactory detailed level of control over TIE and its activities as “agent” for the Council in matters such as procurement, contracting and incurring expenditure.
- 2.4 When the respective roles of the Council and TIE were identified it appeared that the Council would merely be exercising an approval function in respect of statutory matters such as Planning Prior Approvals and Traffic Regulation. All other matters were to be undertaken by TIE. Increasingly, officials have found it necessary to take a much closer and proactive role in seeking to protect the Council’s interests. It cannot always be said that TIE’s close focus on the Tram project, and the Council’s wider interests, are at one.

- 2.5 The next consideration relates to the Tram Project Board which purports to have “full delegated authority from CEC (through TEL) and Transport Scotland to execute the project.” It should be noted that TPB is not a legal entity, and there must be some doubt as to whether the Council can competently delegate its functions to said Board.
- 2.6 Against the background of the funding cap set by Transport Scotland, and a greater financial risk to be borne by the Council, it is imperative that far more rigorous financial and governance controls are put in place by the Council.

### **3 Current Governance Arrangements**

- 3.1 The current governance arrangements for TIE are complex and reflect the complex relationships with respect to governance within each company and between the City of Edinburgh Council and these companies.
- 3.2 The diagram attached as appendix 1 clearly exposes this complexity. The table below provides a narrative on these relationships and the associated governance issues.

**(a) Governance within each company**

<b>TIE Limited</b>	<p>TIE is a private company limited by shares. (The sole shareholder is The City of Edinburgh Council). The company has a board of nine directors. Four of these directors are elected members appointed by the Council. There are four independent non-executive directors. The other director is the executive chairman appointed by the Council. The chairman does <u>not</u> have a casting vote.</p> <p>TIE currently has an executive chair as it does not have a Chief Executive. Combining the roles of chair and Chief Executive was seen as a stopgap measure: an arrangement which has been in place for nearly two years. One of the main thrusts of the Cadbury Code was the separation of the roles of Chief Executive and chair. It was considered that a board would not be well served if both these functions were vested either in the same person; or if one or other person filling the role was dominated by the other.</p>
<b>Transport Edinburgh Limited (TEL)</b>	<p>TEL is a private company limited by shares. The sole shareholder is The City of Edinburgh Council. The TEL board currently has eight directors. Four appointed by the Council (Councillors Alan Jackson, Phil Wheeler, Ricky Henderson and The Director of Finance), two Lothian Buses directors (Neil Renilson and Bill Campbell), one TIE director (Willie Gallagher) and an independent non-executive chair, David MacKay.</p> <p>The Council has the right to appoint the chair. The chair has a casting vote.</p> <p>Neil Renilson (who is also the Chief Executive of Lothian Buses), is Chief Executive of TEL. As far as I am aware there is no service contract with Neil Renilson as the board do not feel that this is necessary. The Council has not pressed for one to be put in place.</p> <p>It has been agreed that a proportion of the Tram funding finds its way to Lothian Buses as compensation for the time taken by their Chief Executive to do the Chief Executive work of TEL. I understand that Lothian Buses use this money to pay a managing director.</p>

<p><b>Lothian Buses Plc (LB)</b></p>	<p>This is a public liability company formed under the Transport (Scotland) Act 1985. This Act insisted upon independence of the newly formed transport companies from the Local Authorities which they once belonged.</p> <p>The current board is made up of 14 directors. The Council approves the appointment of the directors. There are no councillors or council chief officers on the board. Under the Transport Act there is one worker director. The chair is Pilmar Smith.</p> <p>LB is a commercial company which provides a dividend to the Council divided between money and social benefit.</p>
<p><b>Summary</b></p>	<ul style="list-style-type: none"> <li>• William Gallagher is on the TIE board as executive chair, on TEL's board as a TIE director and is also on LB's board.</li> <li>• Neil Renilson is Chief Executive of both LB and TEL.</li> <li>• Bill Campbell is a Lothian Buses director and the representative of Lothian Buses as a director on TEL.</li> <li>• Brian Cox is a non-executive director on Lothian Buses and a non-executive director on TIE.</li> </ul>

**(b) Governance As Exercised Between The Council And Each Company**

<p><b>TIE and CEC</b></p>	<p>The operating agreement revolves around TIE's business plan and business plan preparation and lays out timescales for the receipt of key information.</p> <p>It also deals with funding. At paragraph SIXTH it provides that the company shall be responsible for ensuring that its future capital and revenue funding requirements to finance the Council's sponsored projects, strategies or schemes as required by the Council are met.</p> <p>However, as TIE has no assets the Council has had to provide Letters of Comfort to TIE's bank to allow TIE to borrow up to £6m (from the Bank of Scotland).</p> <p>The Company Monitoring Officer under the relevant updated Code is the Director of City Development. The Director of City Development sits on the Tram Project Board.</p> <p>In terms of corporate governance it could be suggested that the roles of Company Monitoring Officer and Director of City Development should be separated.</p> <p>The Liaison Officer is Jim Grieve, Interim Head of Transport, City Development.</p>
<p><b>TEL and CEC</b></p>	<p>There is a draft operating agreement currently being discussed between Legal and City Development. I attach the most recent draft.</p> <p>TEL receives no direct funding of itself, but obtains a proportion of the funding received by TIE from Transport Scotland.</p> <p>TEL is envisaged as TIE's monitor. However the fact of not having any money of its own and being paid by TIE undermines TEL's position.</p> <p>I understand TEL receives no funds from any other source.</p> <p>I am not aware as to the progress of the business plan for TEL. Finance/City Development would be attending to this.</p> <p>The Liaison Officer is Jim Grieve, Interim Head of Transport, City Development.</p>

<b>LB and CEC</b>	<p>The Council has a majority shareholder agreement (which is akin to an operating agreement) and I attach a copy to this paper.</p> <p>Historically the main focus of discussion has been the size of the dividend payable to the Council and the particulars regarding the social dividend.</p> <p>The Liaison Officer is Jim Grieve, Interim Head of Transport, City Development.</p>
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**(c) GOVERNANCE WITHN CEC FOR TRANSPORT COMPANIES AND TRANSPORT MATTERS**

<b>Funding TIE and TEL</b>	<p>TIE's funding comes from Transport Scotland (Scottish Executive) and is now understood to be capped at £500m.</p> <p>The timing of the funding payments means that the Council pay TIE before it receives reimbursement from the Scottish Executive. There is always therefore a delay where money has been spent and grant comes in.</p> <p>Under the Conditions of Grant set by Transport Scotland the Council are responsible for compliance with the grant conditions. These obligations are not passed on to TIE.</p> <p>As indicated earlier TEL does not have a budget of its own. TEL obtains money through TIE. It is not known how much of the Tram budget is passed to TEL.</p>
<b>Tram Project Board</b>	<p>The Tram Project Board is not a legal entity. It is not able to enter into contracts as it has no capacity. Further, there is doubt as to whether the Council can competently delegate its powers to the TPB since it does not fall within the category of bodies recognised in the legislation.</p> <p>TEL is a legal entity and has the power to enter into agreements/contracts. TEL's remit is to integrate the bus and the tram networks. However the Tram Project Board which sits outside TEL and TEL in fact has no control over, makes the decisions.</p> <p>The governance of having a company that is not itself integrated to the decision making process is very inefficient. The flow charts and explanations presented to the Council before the election and approved by the Council show the problems. I refer to the ETN Draft Final Business Case November 2006, paragraph 6 "Governance" 6.2 –</p>

	<p>Governance to Financial Close – Project Execution Level.</p> <p>It is seen there that the TEL team are not part of the Tram Project Board and feed into the Tram Project Board via the BPIC Sub-Committee</p> <p>There is no question that a “Tram Project Board” is pivotal in the project delivery process. How that body is legally constituted must be the subject of very careful consideration. It is strongly recommended that any such body is a body to which the Council can competently delegate the relevant decision making powers.</p>
<b>TIE’s Contracts</b>	<p>It has been accepted that TIE will enter contracts which they will not be responsible for as they will be novated to TEL.</p>

**(d) Shareholding**

<b>Shareholding Of Companies</b>	<p>TIE is wholly owned by The City of Edinburgh Council. However it was incorporated at the insistence of the Scottish Executive as the only means by which funding would be obtained for the Tram Project.</p>
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## 4 Options for Future Governance

- 4.1 As noted above, it is now vital that more rigorous financial and governance controls are put in place by the Council given the funding cap that has been placed on the project and the greater financial risks that are to be borne by the Council.
- 4.2 A number of options have been identified to achieve these enhanced controls.
- **Winding-up of TIE and bringing the relevant and necessary staff into the employment of the Council.** The Council then contracts directly with consultants and other external suppliers. This would be contingent upon TS no longer insisting upon an arms –length company being required to deliver the project.
  - **TIE continues to progress the project on the basis of a fully documented principal/agent agreement with the Council.** This would cover all aspects of its day-to-day activities and operation. TS have previously urged the Council to implement a more robust monitoring of TIE’s activities in delivering the project.
  - **The Council to set up a Tram Committee, meeting on a four-weekly cycle, to replace the TPB, essentially performing the current TPB functions.** Council officers would report and make recommendations to this committee, as distinct from TIE officials reporting to the TPB on “the Council’s project”, as it has recently been described by the Project Director.
- 4.3 These are three possible scenarios that have been identified in the time available. There may well be other options, or permutations of these options. Such matters will require to be considered and discussed at the very highest levels within the Council.

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