

## SUPPLEMENTARY PAPER GOVERNANCE ARRANGEMENTS FOR TIE LIMITED

This paper should be read along with the first draft paper dealing with the factual background to existing governance arrangements among the Council, TIE, TEL and Lothian Buses.

Following the 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.

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 the risks and financial obligations in MUDFA, Infraco and Tramco contracts, and all other agreements.

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.

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.

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.

Against the background of the funding cap set by TS, 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.

### **Options**

1. 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.

2. 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.
3. 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.

These are three possible scenarios 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.

18<sup>th</sup> July 2007