

Edinburgh Tram Project: Status Report

City of Edinburgh Council

12 March 2009

1 Purpose of report

- 1.1 The purpose of this report is to inform members of the current position of the Edinburgh tram project in the light of the contractual difficulties between **tie** and BSC, the tram infrastructure consortium.

2 Background

- 2.1 On 24 February 2009 I submitted a progress report on the (then) current position to the Policy and Strategy Committee. That report was considered as a "B" agenda item. The interim Chairman of **tie** was present at the meeting to provide an update and to answer questions from members.
- 2.2 In my report to the Policy and Strategy Committee I pointed out that in May 2008 **tie** concluded a fixed price contract for the delivery of Edinburgh's tram project with BSC, a consortium of three companies; Bilfinger Berger (Construction and Civil Engineering contractor); Siemens (power systems) and CAF (rolling stock). Members will recall that I reported to Council on 1 May 2008 on financial close and notification of contract award.
- 2.3 Prior to financial close of the contract negotiations **tie** agreed an additional sum with BSC for completion of the tram project and, in so doing, cemented the risk allocation position agreed by client and consortium, whose three members are jointly and severally liable for its successful completion within the terms of the fixed price contract.
- 2.4 In the first phase of the tram project work has been underway under the multi utilities diversion framework agreement (Mudfa) to divert gas and water pipes and electricity and telecommunications cables away from the route of the tram lines. This has also enabled the city to update and upgrade a significant amount of its utilities infrastructure. This work is now well underway and on target to be substantially completed by July 2009.
- 2.5 A central part of the next phase of the tram project involves preparation for the laying of tram track. This involves digging a trench along the route of the tram and laying a bed on which to place the tram rails.

3 Update

- 3.1 As members of Council are aware, work to begin the track laying operation on Princes Street had been scheduled to commence on 21 February 2009. In the preceding days it became clear that work might not start as planned. Following a **tie** Board meeting on 19 February 2009, and with the full support of the Board, the interim Chairman of **tie** wrote to BSC insisting that they should commit to enter Princes Street and to execute works within the contract agreement. This instruction was not complied with and on Friday 20 February 2009 **tie** was obliged to announce that the works could not proceed. A copy of the statement issued that day by **tie**, with the full support of the Council, is attached as Appendix 1.
- 3.2 Set out below is an update on what has taken place over the three week period since 20 February 2009. I recognise that there is extensive public and media interest in the Edinburgh tram project but I hope that members will appreciate that I am restricted on what I can say while commercially confidential negotiations are taking place.

Policy Principles

- 3.3 It is important that I state at the outset that:
- the Council's policy position is clear, and that is to build the tramline from Newhaven to the Airport within the agreed funding envelope
 - it is critically important that **tie**, in attempting to resolve the current contractual difficulties, is supported by the Council in its determination to do so within the terms of the contract. Departing from the contract which exists between the various parties could result in delays and significant financial demands, both now and at later stages; and
 - the current contract impasse involves matters where **tie** has a clear, consistent and determined approach to what was agreed after tough negotiation before the contract was signed. The Consortium does not share **tie**'s view and interpretation. The Dispute Resolution Procedures (DRP) within the contract have been implemented. The associated legal processes currently offer the best opportunity for an objective outcome reached in private as the contract requires. **tie** is reviewing all available options in depth.

Contractual Negotiations

- 3.4 **tie** has put a huge effort into resolving the current contractual difficulties with BSC. They are in daily contact with the consortium and many meetings have been held, several including senior representatives of the respective organisations. **tie**'s position, which is fully supported by the Council, is that BSC should commence work on Princes Street as required under the terms of the contract. The **tie** central tenet is that an agreed contract is in place and solutions lie within the contract.

- 3.5 As noted above, the DRP provisions within the contract have been invoked. Currently, the initial focus is on two items, both related to Princes Street. As required within the DRP process, position papers have been exchanged between **tie** and BSC. This was done on 2 March 2009. If a satisfactory resolution is not reached there is a requirement upon the most senior representatives of the two sides to try to resolve matters before 19 March 2009. If agreement is still not forthcoming an external resolution mechanism is activated.

Communications

- 3.6 A detailed communications plan was put into place by **tie** and the Council to communicate to city centre businesses and the public why work on Princes Street had not started as originally planned. Feedback from businesses has been generally supportive of **tie**'s and the Council's stance on the need for tight financial control over the project. Understandably, the business community and the public wish to know when work on Princes Street will begin.

Governance

- 3.7 Although the Council is not a party to the main suite of contracts between **tie** and BSC it does, however, carry major obligations through its guarantee of **tie**'s obligations and, also, reputationally. To ensure that proper procedures and good governance arrangements are maintained between **tie** and the Council during the current situation I have agreed with the interim Chairman of **tie** a set of measures which, inter-alia, include:

- daily and weekly reviews of progress;
- an evaluation of the timelines arising from the DRP and a categorisation of the matters under review;
- an examination of the strategic options open to **tie** and the Council; and
- an external and independently conducted "Peer Review", focusing on the DRP issues.

Traffic Diversions

- 3.8 The traffic diversions which were implemented to facilitate the commencement of works on Princes Street have gone well. Monitoring arrangements are in place to measure the number of people shopping in and visiting the city centre. While care has to be taken in interpreting trends the initial results show that "footfall" is holding up well.

Ministerial Contact

- 3.9 The Minister for Transport, Infrastructure and Climate Change and the Council Leader have exchanged letters on the Edinburgh tram project. These are attached as Appendices 2 and 3. The Council Leader had reassured the Minister that all reasonable steps are being taken to bring the current contractual difficulties to a satisfactory conclusion. Regular contact is also being maintained between **tie**, the Council and Transport Scotland.

4. Recommendations

4.1 It is recommended that the Council:

- notes this report;
- continues to strongly support the **tie** Board in its efforts to reach a satisfactory outcome to the current dispute with BSC; and
- reaffirms to **tie** its support for their insistence on the terms of the current contract being adhered to.

Tom Aitchison
Chief Executive

Appendices 1. Press statement issued by **tie** – 20 February 2009
 2. Letter from Minister for Transport, Infrastructure and Climate
 Change to Council Leader – 26 February 2009
 3. Letter from Council Leader to Minister for Transport, Infrastructure
 and Climate Change – 27 February 2009

Contact/tel/Email Tom Aitchison – [REDACTED]

Wards affected

Single Outcome
Agreement

Background
Papers

The Edinburgh Tram Corporation has announced today [09:30] that the planned tram infrastructure work due to commence on Princes Street cannot start as planned this weekend. The ongoing utility diversion work will, however, continue and the diversion of traffic from Princes Street will still take effect from 5am on Saturday 21st February.

The decision was brought about because the Project was given 48 hours notice before the commencement of Princes Street works that the tram project consortium, BSC, comprising Bilfinger Berger, Siemens and CAF wished to impose unacceptable conditions as a requirement to start in Princes Street.

This announcement is supported by the City of Edinburgh Council, the project client, and Transport Scotland, the principal funder, is fully aware of this situation.

We will issue a further update in due course. Meantime, we will continue to work with all stakeholders over the coming days.

JOHN STURT
COUNCIL SECRETARY

City Chambers High Street Edinburgh EH1 1YJ Tel 0131 [REDACTED] Fax [REDACTED]

Minister for Transport, Infrastructure and Climate Change
Stewart Stevenson MSP



The Scottish
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Councillor Jenny Dawe
Leader of The City of Edinburgh Council
City Chambers
High Street
EDINBURGH
EH1 1YJ

26 February 2009

Dear Jenny,

As you know, the Scottish Government has agreed to provide maximum of £500 million support for the Edinburgh tram project. You will recall that the Scottish Government made these resources available only after a parliamentary vote in which the Government's proposal to conclude the trams project was defeated by the Labour, Conservative, Liberal Democrat, Green and Independent MSPs. The Scottish Government is committed to ensuring that all major transport projects represent value for money, delivering real benefit to the travelling public and the Scottish economy.

In the case of the Edinburgh trams we need to ensure that Edinburgh and Scotland will be able to realise the benefits from the tram system. However, there is an obvious concern about the clear difficulties that exist with Bilfinger, one of the major contractors within the BSC consortium contracted to delivering this project.

I would welcome your reassurance that we can expect an early settlement of this dispute to ensure progress can be delivered on this project.

I also take this opportunity to make clear the Scottish Government will, under no circumstances, provide any further funds beyond the £500m commitment we made in June 2007.

Kind regards,

[REDACTED]

STEWART STEVENSON

Cc David Mackay, Chairman, tie ltd

Victoria Quay, Edinburgh EH6 6QQ
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◆ EDINBURGH ◆
THE CITY OF EDINBURGH COUNCIL

Councillor Jenny Dawe
Leader of The City of Edinburgh Council

27 February 2009

OUR REF: S STEVENSON

Stewart Stevenson MSP
Minister for Transport, Infrastructure and Climate Change
The Scottish Government
Victoria Quay
EDINBURGH EH6 6QQ

Dear Stewart

Thank you for your telephone call and subsequent letter of 26th February.

We enthusiastically share your commitment to ensuring that the Edinburgh tram project represents value for money, delivering real benefit to the travelling public and the Scottish economy. We also welcome your recognition that "clear difficulties" exist with Bilfinger Berger, one of the major contractors within the BSC consortium.

tie are actively working to resolve the dispute. In doing so however, I am sure that you recognise that we must not be held to ransom by Bilfinger Berger, or for that matter anyone else. For the avoidance of doubt, we very much recognise that The Scottish Government is providing £500 million for trams in Edinburgh and that no further funds can be made available. You have my assurance that we, and **tie**, are taking all reasonable steps to reach a sensible and proper early settlement without unnecessary or unjustified call on the public purse. In that, I hope we have your full support.

Meanwhile, we will, of course, continue to keep you closely informed through the usual channels.

Yours sincerely


COUNCILLOR JENNY DAWE
LEADER - THE CITY OF EDINBURGH COUNCIL

cc. David Mackay, Chairman, **tie** ltd
Tom Aitchison, Chief Executive, The City of Edinburgh Council

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