

Transport Edinburgh Limited Memorandum and Articles of Association

The City of Edinburgh Council

16 September 2004

Purpose of report

- 1 On 29 April 2004 Council noted the progress that had been made in developing a framework for future transport integration and that further reports would be submitted at key stages of the process.
- 2 Since then there have been a series of meetings involving Council officials, **tie**, Lothian Buses and Transdev. This has resulted in a framework agreement for a company to be known as 'Transport Edinburgh Limited'. This report describes the objectives and structure of this company. Full details of the company are contained within the Memorandum of Association (See Appendix).

Main report

- 3 The main objectives of 'Transport Edinburgh Limited' are as follows:
 - a to promote, support and/or effect the development, procurement and implementation of projects defined or referred to in the Council's integrated transport strategy.
 - b to carry on, promote or develop any trade or business in the field of transport required in connection with the Council's integrated transport strategy and;
 - c the promotion of the integration of all modes of public transport in Edinburgh including but not limited to buses, trams and heavy rail.
- 4 The Company's share capital is £1000 divided into 1000 shares of £1 each. This capital would be 100% held by the Council. The number of Directors are not limited to any maximum or minimum. The Council may approach any person to be a Director or remove any Director from office at any time and has a veto over the identity of these appointments. A quorum of 3 Directors, including the Chairman and the other Director nominated by the Council, is required for the conduct of business.

5 Each of the following entities shall have the right to nominate the following number of individuals as Directors.

The City of Edinburgh Council	-	two
Lothian Buses plc	-	two
Transdev	-	one
tie Ltd	-	one

In the first instance the Council will be able to appoint 2 Independent Directors. The Chairman will have a casting vote.

6 It shall be noted that:

- a a Director nominated by Transdev cannot vote on any issue solely related to buses and:
- b a Director nominated by Lothian Buses plc cannot vote on any issue solely related to trams

7 It is proposed that the Board of Directors would be Chaired by Councillor A Burns and that the remaining CEC Director would be the Director of City Development, or his nominee.

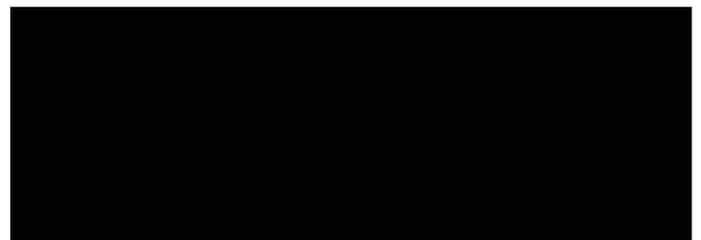
Financial Implications

8 There are no direct financial implications arising from this report.

Recommendations

9 The Council is requested to

- a approve the make up of the Board of Directors of Transport Edinburgh Limited as described in 5 above and Councillor Andrew Burns as its Chair
- b delegate responsibility to the Chief Executive and Director of City Development in consultation with the Council Solicitor to agree the Memorandum and Articles of Association of the Company
- c to note that the Chief Executive of the Council has powers to appoint non executive Directors and
- d to note that there will be a further report on this in six months which will review the composition of the board.



Andrew Holmes
Director of City Development

Appendices Draft Memorandum and Articles of Association

Contact/tel Brian Sharkie – 0131 [REDACTED]

Wards affected All

Background Papers None.

THE COMPANIES ACTS 1985 AND 1989
PRIVATE COMPANY LIMITED BY SHARES
MEMORANDUM OF ASSOCIATION
of
TRANSPORT EDINBURGH LIMITED

1 The Company's name is "TRANSPORT EDINBURGH LIMITED"

2 The Company's registered office is to be situated in Scotland.

3 The Company's objects are:

- 3.1
- (a) to promote, support and/or effect the development, procurement and implementation of projects defined or referred to in an integrated transport strategy as determined and varied from time to time by The City of Edinburgh Council (a local authority constituted in terms of the Local Government etc (Scotland) Act 1994 and its statutory successors whomsoever));
 - (b) to carry on, promote or develop any trade or business in the field of transport required in connection with the aforementioned integrated transport strategy;
 - (c) the promotion of the integration of all modes of public transport (including but not limited to buses, trams and heavy rail));
 - (d) to promote a local transport strategy for [Edinburgh] and the [Integrated Transport Initiative [(in terms of the Transport Act 1985)]]; and
 - (e) to pursue sustained growth in the use of public transport generally and forge and strengthen relationships between [Edinburgh] and regional transport networks;
 - (f) to carry on for profit, directly or indirectly, whether by itself or through subsidiary, associated or allied companies or firms in the United Kingdom or elsewhere in all or any of its branches any business, undertaking, project or enterprise of any description whether of a private or public character and all or any trades, processes and activities connected therewith or ancillary or complementary thereto; and
 - (g) to promote the interests of any company which is for the time being a subsidiary, holding company or subsidiary of any holding company of the Company or any undertaking which is for the time being a subsidiary undertaking of the Company or of any holding company of the Company in

any manner whatever and, in particular, by paying or discharging the liabilities thereof or giving any undertaking to do so, by giving any indemnity or guarantee in respect of such liabilities and by giving any security or charge for any such indemnity or guarantee or for the payment of money or performance of obligations by any such company or undertaking as aforesaid, either with or without consideration and whether or not any benefit flows to the Company other than the promotion of such interests as aforesaid to the intent that the promotion of the interests of any such company or undertaking as aforesaid shall be an object and not a power of the Company,

provided always that the terms of sub-paragraphs 3.1(a) to ([e]) above shall be without prejudice to the generality of the terms of sub-paragraphs 3.1([f] and [g] above).

- 3.2 to become a party to the Development Partnering and Operating Franchise entered into between Transport Initiatives Edinburgh Limited (Company Number SC230949) and [TransDev] dated [] in relation to the development of a tram network in Edinburgh;
- 3.3 to be a party to the construction, equipment, supply and funding arrangements (whether contractual or otherwise) relative to the aforementioned tram network (including, without prejudice, to receive revenue in relation thereto);
- 3.4 to manufacture, develop, process, refine, repair, purchase, sell, export, import, deal in or let on hire all kinds of goods, substances, articles, services and material (tangible or intangible) of any kind;
- 3.5 to purchase, feu, take on lease, hire or otherwise acquire, and to sell, let or otherwise dispose of in whole or in part, any lands, interests in lands, buildings, plant and machinery, stock-in-trade, business concerns and any other heritable or moveable, real or personal property and to construct, alter, demolish, manage and maintain any of the foregoing;
- 3.6 to borrow or raise money or accept money on deposit and to secure the payment of money or the observance of obligations in such manner as the Directors shall think fit and for such purposes as to mortgage or otherwise charge in any manner whatsoever permitted in any jurisdiction in which the Company has assets or carries on business and in particular by way of fixed charge or floating charge over the whole or part of the undertaking and all or any of the property and assets (both present and future), and the uncalled capital of the Company and to create, issue and accept securities;
- 3.7 to draw, make, accept, endorse, discount, execute, issue, negotiate and deal in promissory notes, bills of exchange, shipping documents, documentary credits and other negotiable or transferable instruments and to buy, sell and deal in currencies, commodities, options, traded options (financial or commodity) and other financial instruments;
- 3.8 to lend or advance money or give credit to such persons and companies and on such terms (including as to security) as may be thought fit and to deposit money with any bank, deposit taker or other financial organisation;
- 3.9 to guarantee and/or give security for the payment of money by, or the performance of contracts and obligations by, or the payment or repayment of principal, interest,

- dividends and premiums on, and any other monies due in respect of, securities or obligations by, the Company or by any other person or company, including any company which shall at the time be the holding company of the Company or another subsidiary of such holding company or a subsidiary of the Company and any undertaking which shall at the time be a subsidiary undertaking of the Company or of any holding company of the Company or of any subsidiary of the Company or any holding company of the Company notwithstanding the fact that the Company may not receive any consideration or benefit from entering into any such guarantee or security;
- 3.10 to invest and deal with the funds of the Company not immediately required in such investments or securities and in such manner as may from time to time be determined by the Directors;
- 3.11 to subscribe for, underwrite, purchase or otherwise acquire securities of any company, fund or trust and to deal with and dispose of the same;
- 3.12 to acquire and hold all or any part of the undertaking, property, business or assets of any person or company, to undertake, whether as part of the consideration for such acquisition or otherwise, all or any of the liabilities of such person or company and to deal with and dispose of all or any of the foregoing as the Directors may consider appropriate;
- 3.13 to amalgamate or enter into partnership or joint venture or profit and/or loss sharing arrangement with any person or company;
- 3.14 to make experiments in connection with any business or proposed business of the Company, and to apply for or otherwise acquire and protect, prolong, renew, experiment upon, test and improve in any part of the world any inventions, patents, patent rights, brevets d'invention, trade marks, service marks, trade or brand names, designs, industrial designs, copyright, moral rights, licences, concessions, protections or similar rights which may appear likely to be advantageous or useful to the Company, and to use and manufacture under or grant licences or privileges in respect of the same, and to expend money thereon;
- 3.15 to insure against losses, damages, risks and liabilities of all kinds which may affect the Company and to purchase and maintain for any officer of the Company or the auditors of the Company insurance against any liability as is mentioned in section 310 of the Companies Act 1985;
- 3.16 to issue and allot securities of the Company for cash or in payment or part payment for any property purchased or otherwise acquired by the Company or any services rendered to the Company or as security for any obligation or amount or for any other purpose;
- 3.17 to payout of funds of the Company all expenses which the Company may lawfully pay of, or incidental to, the formation and registration of or the raising of money for the Company or the issue of any securities, or the application to any recognised investment exchange for listing for, or dealing in, any or all of its securities, including brokerage and commissions for obtaining applications for or taking, placing or underwriting or procuring the underwriting of securities or rights of the Company;
- 3.18 to grant or procure the grant of donations, gratuities, pensions, annuities, allowances, or other benefits, including benefits on death, to any directors, officers or employees

or former directors, officers or employees of the Company or any company which at any time is or was a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company or otherwise associated with the Company or of any predecessor in business of any of them, and to the relations or dependants of any such persons, and to other persons whose service or services have directly or indirectly been of benefit to the Company or whom the Directors of the Company consider have any moral claim on the Company or to their relations, connections or dependants, and to establish or support any funds, trusts, insurances or schemes (including in particular but without detracting from the generality of the foregoing any trust or scheme relating to the grant of any option over, or other interest in, any share in the capital of the Company or of any other company, or in any debenture or security of any corporation or company (including the Company) and including the provision of financial assistance as described in section 153(4)(b) and (bb) of the Companies Act 1985) or any associations, institutions, clubs or schools, or to do any other thing likely to benefit any such persons or otherwise to advance the interests of such persons or the Company or its members, and to subscribe, guarantee or pay money for any purpose likely, directly or indirectly, to further the interests of such persons or the Company or its members or for any national, charitable, benevolent, education, social, public, general use object;

- 3.19 to compensate for loss of office any directors or other officers of the Company and to make payments to any persons whose office, employment or duties may be terminated by virtue of any transaction in which the Company is engaged
- 3.20 to promote or establish or concur in promoting or establishing any other company for the purpose of purchasing or taking over all or any of the properties, rights and liabilities of the Company or carrying on any business or operations which the Company is authorised to carry on or for any other purpose which may, directly or indirectly, benefit or advance the objects or interests of the Company and to acquire and hold as investments of the Company or otherwise deal with as may be considered fit any securities of any such company;
- 3.21 to sell or otherwise dispose of the whole or any part of the undertaking, property and assets of the Company either together or in portions;
- 3.22 to distribute among the members in specie any property of the Company, or any proceeds of sale or disposal of any property of the Company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law;
- 3.23 to do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees, subsidiaries or otherwise;
- 3.24 to carry on any other activity and do anything of any nature which may seem to the Directors capable of being conveniently carried on or done by the Company in connection with the above, or may seem to the Company calculated directly or indirectly to benefit the Company;
- 3.25 to exercise all powers which would be available to the Company under section 3A of the Companies Act 1985 if its object was to carry on business as a general commercial company;

3.26 to do all such things as in the opinion of the Directors are or may be incidental or conducive to the above objects or any of them;

3.27 And it is hereby declared that for the purposes of this Clause:

- (a) the word "company" in this clause shall (except where referring) to the Company) be deemed to include any person or partnership or other body of persons, whether incorporated or not incorporated, and whether formed, incorporated, resident or domiciled in the United Kingdom or elsewhere;
- (b) "Directors" shall mean the directors of the Company from time to time;
- (c) "associated companies" shall mean any two or more companies if one has control of the other or others, or any person has control of both or all of them;
- (d) "securities" shall include any fully, partly or nil paid or no par value share, stock, unit, debenture or loan stock, deposit receipt, bill, note, warrant, coupon, right to subscribe or convert, or similar right or obligation;
- (e) "and" and "or" shall mean "and/or";
- (f) "other" and "otherwise" shall not be construed eiusdem generis where a wider construction is not possible;
- (g) words importing the singular only shall include the plural and vice versa; words importing any gender shall include the other genders; and words importing natural persons shall include corporations and vice versa; and
- (h) the objects specified in each paragraph of this clause shall, except if at all where otherwise expressed, be in no way limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company or the nature of any business carried on by the Company or the order in which such objects are stated, but may be carried out in as full and ample a manner and shall be construed in as wide a sense as if each of the said paragraphs defined the objects of a separate and independent company.

4. The liability of the members is limited.

5. The Company's share capital is £100 divided into 100 Shares of £1 each.

WE, the subscribers to this Memorandum of Association, wish to be formed into a company pursuant to this Memorandum; and we agree to take the number of shares shown opposite our respective names.

NAMES AND ADDRESSES OF SUBSCRIBERS	NUMBER OF SHARES TAKEN BY EACH SUBSCRIBER
Jordans (Scotland) Limited 24 Great King Street	1

THE COMPANIES ACT 1985 AND 1989
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
of
TRANSPORT EDINBURGH LIMITED
PRELIMINARY

1. The Regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 ("Table A") so far as not excluded or modified by the following Articles shall apply to the Company.
2. Regulations 5, 8, 33, 64, 73 to 80 inclusive, 94, 95 and 118 of Table A shall not apply to the Company and the following Regulations thereof shall be modified:

Regulation 6 by the deletion of the words "sealed with the seal" and the substitution of the words "executed in terms of section 36B of the Act";

Regulation 24 by the addition of the words "(in their absolute discretion and without assigning any reason therefor)" between the words "may" and "refuse" and the deletion of the words "which is not" and the substitution of the words "whether or not it is";

Regulation 32 by the deletion of paragraph (a) and the consequential re-lettering of the subsequent paragraphs and the addition to the original paragraph (b) of the words "but so that any such consolidation and/or division shall not result in any member becoming entitled to fractions of a share";

Regulation 40 by the addition at the end of the second sentence of the words "provided that if the Company shall have only one member, one member present in person or by proxy shall be a quorum";

Regulation 46 by the deletion of paragraphs (a) to (d) inclusive and the substitution of the words "by the chairman or by any person present entitled to vote upon the business to be transacted";

Regulation 54 by the addition of the words "or by proxy" between the words "vote", and "shall" and the words "fully paid" between the words "every" and "share";

Regulation 66 by the addition of the words "(subject to his giving the Company an address within the United Kingdom at which notice may be served upon him)" between the words "shall" and "be";

Regulation 67 by the deletion of the words from "but" until the end;

Regulation 72 by the addition of the words "Any committee shall have power, unless the Directors direct otherwise, to co-opt as a member or members of the committee for any specific purposes any person, or persons, not being a Director of the Company" at the end;

Regulation 81 by the addition of a new paragraph (f) stating "he shall be removed pursuant to

any power of removal contained in Articles 11 of the Company's Articles of Association";

Regulation 82 by the addition of the words "by way of Directors' fees" shall be inserted between the words "remuneration" and "as";

Regulation 84 by the addition of the words "Unless the contrary shall be provided in the terms of his appointment" at the beginning of the third sentence and the deletion of the fourth sentence;

Regulation 85(c) by the addition of the words ", subject to the terms of any contract of (employment between the Company and the Director," between the words "shall" and "not";

Regulation 88 by the addition of the words "CEC Holdings Limited (Company Number SC135444) shall be entitled to appoint the chairman by notice to the Company in writing signed on its behalf, and shall take effect upon receipt of said notice at the registered office of the Company [or by the Company Secretary]";

Regulation 89 by the deletion of the first sentence;

Regulation 98 by deletion of the words "other than himself"; and

Regulation 115 by the deletion of the number "48" and the substitution of the number "24".

Unless otherwise required by the context of the Articles, words of expressions which are defined in Table A shall have the same meaning in the Articles.

Unless otherwise required by the context of the Articles, words importing the singular only shall include the plural and vice versa; words importing any gender shall include the other genders; and words importing natural persons shall include corporations and vice versa.

SHARE CAPITAL

- 3.1 The Directors are generally and unconditionally authorised to allot relevant securities (within the meaning of section 80(2) of the Act) on such terms and at such time or times as they may in their discretion think fit; provided that:
- (a) the maximum nominal amount of relevant securities to be allotted in pursuance of such authority shall be the aggregate nominal amount of the unissued shares in the capital of the Company from time to time while this authority is in force; and
 - (b) this authority shall expire, unless sooner revoked or altered by the Company in general meeting, on the expiry of the period of five years from the date of incorporation of the Company provided that the Company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the Directors may allot relevant securities in pursuance of such offer or agreement as if the power conferred hereby had not expired.
- 3.2 Section 89(1) of the Act shall not apply to any allotment of shares in the Company.
- 3.3 The Company may by Special Resolution increase its share capital by new shares of such amount as the resolution prescribes.

- 4 The Company shall be entitled, but shall not be bound, to recognise in such manner and to such extent as it may think fit any trusts in respect of any of the shares of the Company. Notwithstanding any such recognition, the Company shall not be bound to see to the execution, administration or observance of any trust (whether express, implied or constructive) in respect of any shares of the Company and shall be entitled to recognise and give effect to the acts and deeds of the holders of such shares as if they were the absolute owners thereof. For the purposes of this Article, "trust" includes any right in respect of any shares of the Company other than an absolute right thereto in the holder thereof for the time being or such other rights in case of transmission thereof as are mentioned in Table A.

LIEN

- 5 The Company shall have a first and paramount lien on every share for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares registered in the name of any person (whether solely or jointly with others) for all moneys owing to the Company from him or his estate either alone or jointly with any other person whether as a member or not and whether such moneys are presently payable or not. The Directors may at any time declare any share to be wholly or partly exempt from the provisions of this Article. The Company's lien on a share shall extend to all dividends and other payments or distributions payable or distributable thereon or in respect thereof.

ISSUE OF SHARES

- 6.1 Except with the consent in writing of all the holders of the fully paid shares of the Company, any shares in the capital of the Company which are from time to time unissued shall before issue, be offered by the Directors in the first instance to an holders of fully paid shares of the Company at the date of the offer. Every such offer shall be in writing, shall be in identical terms for each holder, shall state the number of the shares to be issued, the terms of issue, the aggregate number of shares in issue in the capital of the Company (differentiating between fully paid and partly or nil paid shares), the number of shares held by the holder to whom the offer is addressed (differentiating between fully paid and partly or nil paid shares) and shall be subject to the following conditions, which shall be incorporated in such offer:
- (a) that any acceptance thereof (which may be as regards all or any of the shares offered) shall be in writing and be delivered to the office within a period of 14 days from the date of service of the said offer;
 - (b) that in the event of the aggregate number of shares accepted exceeding the number of shares included in such offer, the holders accepting shall be entitled to receive, and bound to accept, an allocation of either the number of shares accepted by them respectively or a proportionate number of the shares offered according to the proportion which the number of fully paid shares held by the accepting holder bears to the aggregate number of fully paid shares held by all the accepting holders at the date of the offer, whichever number be less; and
 - (c) that any holders to whom such offer shall have been made and whose requirements shall not have been fully met by such allocation shall further be entitled to receive, and bound to accept, an allocation among them of any surplus shares in proportion, as nearly as may be, to the

number of shares accepted by them respectively in excess of the number of shares to which they may respectively be entitled on the first allocation thereof as aforesaid.

The regulations regarding the service of notices contained in Table A shall apply to any offers made by the Directors in terms of this Article.

- 6.2 If any such offer shall not be accepted in full, the Directors may within three months after the date of such offer dispose of any shares comprised therein and not accepted as aforesaid to such person or persons as they may think fit but only at the same price and upon the same terms as to payment, if any, as were specified in such offer.

NUMBER OF DIRECTORS

- 7 The number of Directors (other than alternate Directors) shall not be subject to any maximum or minimum. In the event of there being a sole Director the Articles shall be construed accordingly.

POWER OF DIRECTORS

- 8 The Directors may exercise the voting power conferred by the shares in any other company held or owned by the company in such manner as they think fit, including the exercise thereof in favour of any resolution appointing them or any of their number directors or officers of such other company or voting or providing for the payment of remuneration to the directors or officers of such other company.

PROCEEDINGS OF DIRECTORS

- 9 A Director may as a Director vote and be counted as one of a quorum upon a motion in respect of any contract, matter or arrangement which he shall make with the Company or in which he shall be in any way interested provided that he shall first have disclosed the nature of his interest to the Directors.
- 10 Any Director (including an alternate Director), or member of a committee of the Directors, may participate in a meeting of the Directors, or such committee, by means of a conference telephone or similar communicating equipment whereby all persons participating in the meeting can hear each other and participation in a meeting in this manner shall be deemed to constitute presence in person at such meeting.
- 11.1 Each of the following entities shall have the right to nominate (by notice in writing to the Company) for appointment the following number of individuals as Directors:-
- (a) CEC Holdings Limited (Company Number SC135444) (“Holdings”) – two
 - (b) Lothian Buses plc (Company Number SC096849) – two
 - (c) [TransDev] (Company Number []) – one
 - (d) Transport Initiatives Edinburgh Limited (Company Number SC230949) – one
- 11.2 Notwithstanding the remaining provisions of these Articles, Holdings may appoint any

person to be a Director or remove any Director from office at any time. Any appointment may be on such conditions and terms of office as Holdings thinks fit. Every appointment or removal shall be by notice to the Company in writing and signed on behalf of Holdings and shall take effect upon receipt of said notice at the registered office of the Company [or by the Company Secretary]. Directors may only be appointed pursuant to the provisions of this Article.

- 12 The quorum necessary for the transaction of business of the Directors shall be no fewer than three, including the chairman and the other Director nominated by Holdings.
- 13 Notwithstanding the remaining provisions of these Articles:-
 - (a) a Director nominated by [TransDev] cannot vote on any issue specifically related to [buses]; and
 - (b) a Director nominated [Lothian Buses plc] cannot vote on any issue specifically related to [trams].

SPECIAL ARTICLE

- 14 If a poll be demanded on any resolution to delete or amend or affect the import of the provision of Article 6 or this Article, then any member voting against such resolution shall have on a poll four times the number of votes of all the other members and Regulation 54 of Table A shall be modified accordingly.

INDEMNITY

- 15 Subject to the provisions of the Act, every Director or other officer of the company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses and liabilities which he may sustain or incur:
 - (c) in defending any proceedings, whether civil or criminal, in which decree is given in his favour or in which he is acquitted or which are otherwise disposed of without any finding or admission of any material breach of duty in his part; or
 - (d) in connection with any application under section 144(3) or (4) or section 727 of the Act in which relief is granted to him by the court from liability in respect of any act or omission done or alleged to be done by him as an officer or employee of the Company.

NAMES AND ADDRESSES OF SUBSCRIBERS

Jordans (Scotland) Limited
24 Great King Street
Edinburgh
EH3 6QN

Oswalds of Edinburgh Limited
24 Great King Street
Edinburgh
EH3 6QN

Dated []

Witness to the above signatures: - []