

Edinburgh Tram: Further Update

City of Edinburgh Council

20 September 2007

Purpose of report

- 1 This report advises Council of progress with respect to clarifying the governance arrangements for the Edinburgh Tram Project that were detailed in my report to Council on 23 August. Robust Operating Agreements for the Tram Project are in preparation, clearly setting out the respective roles of the Council, *tie* (Transport Initiatives Edinburgh) and Transport Edinburgh Limited (TEL).

Main Report

Background

- 2 On 23 August I reported to Council regarding recent developments with respect to the Edinburgh Tram Project and highlighted a number of issues to be resolved relating to the future governance of the project. In my report I placed these issues in the context of the revised funding arrangements for the Tram Project and the implications for the transfer of financial risk to the Council. This required an enhanced governance structure for the project and revision to of the relationships between the various companies and agencies promoting it.
- 3 At that meeting of Council these matters were noted and I identified several workstreams to be progressed. These issues are dealt with below.

Operating Agreements with tie and TEL

- 4 On 23 August Council instructed and delegated to the Council Solicitor to conclude Operating Agreements with tie and TEL.
- 5 With respect to the *tie* Operating Agreement, detailed discussions are underway between the Council Solicitor and officers from the City Development and Finance Departments. These discussions are focussing on the next stage of the project to identify the role to be undertaken by *tie* during construction and delivery. The first draft of the agreement should be achieved by early October, with conclusion in December.

- 6 The TEL Operating Agreement has progressed further and is expected to be concluded within the same time frame as that for *tie*. Both agreements are being informed by the ongoing development of the funding agreement with Transport Scotland and the project business case. The final main contracts for the project, INFRACO (tram infrastructure) and TRAMCO (tram vehicles), may also influence the detailed terms of these respective Operating Agreements.

The Executive Chairman of tie and Chief Executive of TEL

- 7 In my August report I noted that the roles of the Executive Chairman of *tie* and Chief Executive of TEL were being reviewed with a view to clarifying the contracts and responsibilities of each post.
- 8 On 21 December 2006, the Council agreed that the contract for the existing interim Executive Chairman of *tie* should be extended for a further period until Autumn 2007. The arrangements for this contract extension and for the future role of the Executive Chairman have been considered in detail and are the subject of ongoing discussion. The final proposed remuneration package will be determined by the *tie* Board, based upon advice from the *tie* Remuneration Committee.
- 9 The role of the Chief Executive of TEL together with the future direction of TEL and its relationship with Lothian Buses are the subject of ongoing consideration and are referred to in paragraphs 18 and 19 below.

Tram Project Subcommittee and Delegation of Powers

- 10 A Tram Project Board (TPB) has been established and currently, except for the matters reserved by respectively Transport Scotland (TS) and the City of Edinburgh Council, and set out in Appendix 1, has full delegated responsibility for the delivery of an integrated Edinburgh Tram and Bus Network on behalf of the Council and TS. The precise remit of the TPB is stated in Appendix 2
- 11 While the TPB continues to operate, Council decided at their 23 August 2007 meeting to establish a subcommittee of the Transport, Infrastructure and Environment Committee with a remit to review and oversee decisions with respect to the Tram Project. As I noted in my August report, the changed risk dynamics following the funding cap from Transport Scotland make it appropriate to establish such a dedicated subcommittee to enhance elected members' role oversight of the project.
- 12 Consideration has now been given to the delegation of powers to this subcommittee, to the related powers to be delegated to officers and to the reporting arrangements between the TPB and the Tram subcommittee.
- 13 I recommend that this subcommittee be chaired by the chair of the Transport, Infrastructure and Environment Committee and meet every six to eight weeks, with the following remit:
- to receive reports and recommendations on the progress of the Edinburgh Tram Project from officers, the TPB, *tie* and TEL;
 - to monitor the spending profile throughout the life of the project;
 - to monitor the project's compliance with the grant conditions set by Transport Scotland;
 - to monitor the financial contributions received from developers through Section 75 planning agreements;

- to receive regular reports from the Director of City Development on the performance of *tie* with respect to the Operating Agreement;
 - to consider, as a standing agenda item, the minute of meetings of the TPB;
 - to take the final decision with respect to the settlement of any financial claims that may arise against *tie*/the Council; and
 - to review regularly the risk profile for the Council.
- 14 In pursuance of these duties, the subcommittee may delegate powers as appropriate to Directors, including the following:
- the oversight of the dispute resolution mechanism within the major contracts, to the Director of City Development; and
 - approval of variations in the design of the vehicles and the infrastructure to the Director of City Development.
- 15 The TPB will report to this subcommittee and its remit will remain that identified in Appendix 2. The subcommittee will make regular reports to the Transport, Infrastructure and Environment Committee.
- 16 Given that the subcommittee is to meet every six to eight weeks, where pressing decisions require to be taken in the interim, those decisions should be delegated to me and subsequently ratified by the subcommittee its next meeting.

TEL and Lothian Buses

- 17 As noted above a comprehensive Operating Agreement between the Council and TEL is at an advanced stage of preparation by the Council Solicitor. TEL will play a significant role in the future integrated bus and tram network for Edinburgh and the relationship between these agencies and the management of them needs to be considered in detail.
- 18 Having dealt above with the contractual issues associated with the Executive Chairman of *tie*, my August report also intimated that I would deal in this current report with the relationship between TEL and Lothian Buses and the related matter of the role and responsibilities of the Chief Executive of TEL and of other associated posts.
- 19 The outcome of these considerations will be presented to Council in future reports early in 2008.

Recommendations

- 20 It is recommended that Council:
- (i) note the contents of this report with respect to the revised governance structure for the project and for the relationships between the various companies and agencies promoting it;
 - (ii) note that the Council Solicitor is finalising and will shortly conclude Operating Agreements with *tie* and TEL;
 - (iii) note that the role of Executive Chairman of *tie* is being reviewed by the *tie* Board and its remuneration committee and that the contract and responsibilities of the post are being revised;

- (iv) agree the proposed remit for the Tram subcommittee, a subcommittee of the Transport, Infrastructure and Environment Committee; and
- (v) note that work on reviewing the relationship between TEL and Lothian Buses and the role of the TEL Chief Executive, continues and agree to receive a further report on these areas at a future meeting.



TOM AITCHISON
Chief Executive

Appendices

Appendix 1 – Reserved Matters
Appendix 2 – Remit of the Tram Project Board

12/09/07.

Contact/tel

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Wards affected

**Background
Papers**

Edinburgh Tram Update – Report to Council 23 August 2007
Edinburgh Transport Projects Review – Audit Scotland 20 June 2007
Edinburgh Tram Draft Final Business Case – Report to Council 21 December 2006

Appendix 1 – Reserved Matters with respect to the Tram Project Board

Scottish Ministers' Reserved Matters

The following matters cannot be determined by the Transport Scotland Senior Representative on the TPB without further consultation within Transport Scotland and the Scottish Executive.

1. Those of City of Edinburgh Council's reserved matters set out in Appendix 2 which may be referred to the Scottish Ministers for determination.
2. Approval of the business case.
3. Commencement of physical works under the Multi Utilities Diversion Framework Agreement
4. Entering into contracts for the delivery of tram vehicles (Tramco) or system infrastructure (Infraco)
5. Increases in Scottish Ministers' funding beyond the total of grant already offered to City of Edinburgh Council
6. Decisions in relation to the application of concessionary fares to the Edinburgh Trams scheme

CEC Reserved Matters

The following matters cannot be determined by the CEC Senior Representative on the TPB without further consultation within CEC:

1. Those of Transport Scotland's reserved matters set out above which may be referred to the Council for additional determination.
2. Approval of the Business Case.
3. Commencement of physical works under the Multi Utilities Diversion Framework Agreement
4. Commencement of physical works for Infraco
5. Entering into contracts for the delivery of tram vehicles (Tramco) or system infrastructure (Infraco)
6. Changes to contractual costs or budgets from that previously agreed by the TPB. The formal mechanism for informing the Council will be through the TPB on which the CEC Director of City Development (or his delegate) sits. Depending upon the scope and scale of financial change, it may be necessary to seek approval from the Council Executive or full Council.

7. Matters of substantive public interest which require political involvement, as are determined by the CEC Senior Representative.
8. Decisions in relation to the application of concessionary fares to the Edinburgh Trams scheme
9. *Statutory processes :*

Prior Approvals

All Prior Approvals are to be approved by CEC, through the planning process.

Land Acquisition

The land acquisition process where it depends upon Council agreement or use of powers must be authorised by the Council either under delegated or direct Council approval procedures (i.e. GVD, CAAD etc).

Traffic Management

Traffic Management will be facilitated by the production of both TROs and TTROs that will emerge from the approved roads design. Both TRO's and TTROs will need to be approved and made by the Council.

Roads and Structures design

Facilitated through the design approval process.

Roads Demarcation Agreement

The Roads Demarcation Agreement will detail the ownership and maintenance liabilities for future operation of the tram and its associated infrastructure. It will also detail the agreed associated financial arrangements between the operator, the maintenance contractor, tie and CEC, and may include a transfer of obligations/risks.

Appendix 2 Remit of the Tram Project Board

Except for the matters reserved by respectively TS and CEC and set out in Appendix 1, the TPB has full delegated responsibility for the delivery of an integrated Edinburgh Tram and Bus Network on behalf of CEC and TS, in particular:

1. To oversee the execution of all matters relevant to the delivery of an integrated Edinburgh Tram and Bus Network, with the following delegations :
 - a. Changes above the following thresholds
 - i. Delays to key milestones of > 1 month
 - ii. Increases in capital cost of > £1m
 - iii. Adversely affects annual operational profitability by >£100k
 - iv. is (or is likely to) materially affect economic viability, measured by BCR impact of > 0.1
 - b. Changes to project design which significantly and adversely affect prospective service quality, physical presentation or have material impact on other aspects of activity in the city
 - c. Delegate authority for execution of changes to TEL CEO with a cumulative impact as follows:
 - i. Delays to key milestones of up to 1 month
 - ii. Increases in capital cost of up to £1m
 - iii. Adversely affects annual operational profitability by <£100k pa
 - iv. is (or is likely to) materially affect economic viability, measured by BCR impact of <0.1

The TEL CEO will delegate similar authority to the leaders of the BPIC and DPD workstreams respectively. Changes within this level of delegation require the approval of both the workstream leader and the TEL CEO.

2. To appoint the Senior Responsible Owner for the project and to receive reports from the SRO on project progress
3. To receive reports from sub-committees established to oversee 1) Business Planning, Integration and Commercials ("BPIC") ; and 2) Design, Procurement and Delivery ("DPD").
4. To ensure BPIC and DPD workstreams are executed according to robust programmes under the leadership of Project Directors appointed by the TPB.
5. To approve the release of procurement documentation to the market, to approve procurement selection decisions and to recommend to the TEL and tie Boards (as appropriate) that they enter into contractual commitments.
6. To approve the submission of funding requests and to recommend approval of funding terms to the TEL and tie Boards (as appropriate). The TPB will also confirm to TS compliance that all relevant aspects of the grant award letter.
7. To ensure proper reporting through the TPB Chairman to the TEL Board, CEC or TS (as appropriate) of decisions made and reserved power compliance. .

All papers seeking decisions from the TPB shall have been circulated to Transport Scotland, City of Edinburgh Council, TEL, **tie** and Transdev for comment before formal submission to the TPB.