

**The City of Edinburgh Council
Edinburgh Tram Project
Lessons Learnt**

Background

In 2004, the City of Edinburgh Council (the Council) promoted two private bills in the Scottish Parliament for two tram routes. Both bills received Royal Assent in April/May 2006. Various contracts have been entered into in respect of the design of the system, construction of the infrastructure, the tram vehicles and the operation of the system.

It was always the intention of the Council to add to the two consented routes to create a network. Indeed as far back as 2003, Arups reviewed the potential routes being considered at that time and identified line 3 which would serve the south east of the city and beyond and would link into to the system currently being constructed. This line was previously developed to bill submission stage however it has not yet been promoted. If this was to be promoted now, or if other alternative routes were to be promoted, many aspects will now be influenced by the decisions made in relation to lines 1 and 2.

Accordingly, the Council considered that it would be prudent to consider what lessons can be learnt from the work done to date in relation to lines 1 and 2 and more importantly to consider how these could improve the delivery of any future tram routes.

This paper sets out our perspective of the lessons which should be learnt– we have considered this in our capacity as one of the legal advisers to the project and from Trudi's experience as a secondee to the project at Director level. It should be noted that Dundas & Wilson has not been involved in the procurement process and that while some comments have been made in that regard, these are made in the context of our limited knowledge of that process and the issues which have arisen.

Lessons Learnt

- **Pre-parliamentary stage/feasibility** – while we had limited involvement at this stage, it became apparent that some of the documents produced during the feasibility stage were not as robust as they needed to be and this became particularly apparent when they were subject to public scrutiny during the parliamentary process. We would suggest that any documents which will be subsequently relied on during the authorisation process should be subject to a legal audit. As a minimum we would suggest that the STAG appraisal, the ES, route options appraisals and the business case be audited/sense checked. In addition, depending on who is project managing this element of the project, the team need to also review the documentation being produced to ensure that it is fit for purpose. This was not done during the development of tram lines 1 and 2.

During this phase there will be an element of preliminary design – given some of the difficulties there have been in the implementation of certain aspects of lines 1 and 2 within the limits of deviation it may be prudent to take some aspects of the design further to ensure that the limits of deviation are sufficient. It will also be necessary to revisit the assumptions given to the designers – these will need to be updated to reflect the tram vehicle being procured for the network in particular the length of the tram, track form being used etc.

During this phase we would suggest that there is a period of consultation. Evidence of consultation will be required regardless of what authorisation process is subsequently chosen. During the parliamentary stage for lines 1 and 2, the

parliamentary committees were particularly critical of the consultation which had been undertaken and as a result the standing orders in respect of private bills were amended. In addition there has been a culture change in the planning system in relation to consultation – community engagement is now a statutory requirement – and there is now an expectation that there will be consultation in relation to major projects. Accordingly we would suggest that the consultation strategy is carefully considered, in particular who should be consulted – both key stakeholders and the public, the options which would be consulted on, how the consultation would take place eg public meeting, exhibitions, through community councils, online surveys etc and how the representations and actions/responses would be recorded. There needs to be sufficient time to consult so that it is not simply a box ticking exercise.

- **Parliamentary stage** – the type of authorisation process needs to be considered. Previously private bills were used however we now have the Transport and Works (Scotland) Act 2007 which provides an alternative statutory process for obtaining consent to transport infrastructure projects. The equivalent English Act has been used in respect of the recent tram schemes south of the border, however to date the Scottish Act has not been used and there will be pros and cons in being the first project to use this Act. That said the Council were the first (and to date the only) authority to use the road user charging provisions under the Transport (Scotland) Act 2001.

Accordingly the merits of using a private bill or a Transport and Works Order needs to be considered but it must be kept in mind that any new routes require to fit in with the current network and for ease of operation there needs to be some consistency with the terms of the Acts for tram lines 1 and 2.

Again notwithstanding what authorisation process is used, the supporting documents to accompany any Bill or order need to be robust. The needs case or justification for the tram needs to be have been careful thought out; there needs to be consistency in the documents and they need to support whatever the justification is for the project. For example for tram line 2, one of the justifications was that the tram would reduce congestion. However according to the STAG the reduction in congestion was only 0.3% which hardly seemed to make the project worthwhile. However if the justification was rephrased so that what tram did was (1) allow development sites and areas to be opened up by providing access by alternatives to the car; (2) helped to stabilise the growth in congestion and (3) helped to get existing car users out of their cars, then the figure of 0.3% is out into context and the justification is not discredited or diluted. It is important to get this right as if the need for the project cannot be demonstrated the bill could fall at the first stage.

It is also important to consider what documents need to be submitted with the Bill or order – the STAG was submitted as a supporting document for tram lines 1 and 2, although there does not appear to be an requirement to do so, and this was not always helpful to our case.

It is important to deal with objections are quickly as possible once they have been made. If the consultation process has been successful then hopefully the number of objections can be minimised. However there will always be those who object. From the experience of tram lines 1 and 2, business objections can usually be removed through negotiation and the entering into a side agreement. Residential objections are more difficult. However to minimise the time during the consideration stage/any inquiry it is important to start these negotiations as soon as possible. During the parliamentary process for lines 1 and 2 very little meaningful negotiation took place from the receipt of objections to the start of the consideration stage – this meant that

we had to produce written evidence in relation to each objection even if they were subsequently removed which was a huge task. It also meant that the parliamentary committees had to schedule committee time to deal with all of the objections so notwithstanding that the objections were subsequently removed which meant that the committee didn't need to sit or consider the evidence, the process took longer than if the objections had been removed by the start of the consideration stage when the removal of the objections would have been able to have a positive impact on the timetabling.

- **Procurement** – The Council need to consider who is delivering the project and who will be contracting. These may be different but may have an impact on the identity of the authorised undertaker and the need to delegate powers going forward. In addition the Council may have other powers that could be used other than those secure by the Bill/order.

The procurement strategy also needs careful consideration particular as there may be, depending on timing, an incumbent operator, maintainer and vehicle supplier/maintainer.

The type of contract needs to be considered. In addition the authorisation process and procurement processes need to be dovetailed and are interlinked – the knowledge from the authorisation process needs to be feed in to the procurement process in particular the design contract to minimise the need for changes to the scope of that contract.

- **Governance** – this needs to be set out at the outset of the project so that the parties' roles are clear as is the decision making process. This should avoid delays or disputes later in the project. Of equal importance is the need to be clear who the client is.
- **Engagement** – There should have been greater engagement with the Council and key stakeholders from the outset of tram lines 1 and 2. In the Council's mind, tie was delivering the project however the project lacked strategic guidance and input from the Council throughout the parliamentary stage and the preliminary design stage. The contractual framework did not help as all of the contracts were with tie, who in turn were not engaging with the Council.

In our view this lack of engagement may have cost the project 9 – 12 months during the design stage – had the Council agreed design objectives/principles with the designers at the requirements definition stage this would have informed the preliminary design. As it was the majority of the preliminary roads design was not acceptable to the Council and much of it had to be re-designed adding delay and cost to the project.

- **Programme** - this needs to be realistic and not based on bonuses if milestones are reached (this impacts on quality as the need to meet the deadline outweighs the need to get it right).

Conclusion

Any project which is of a similar scale and complexity to the tram project will have problems – it would more worrying if there were no issues!

However it is prudent to consider what lessons have been learnt from the process to date. We have identified at a high level some of the issues which have arisen and what can be taken from them should further tram routes be developed. In our view these are issues which require to be considered at the outset of the project. Clearly there are other lessons and experiences which will help to inform the more detailed aspects of any future routes. It may be prudent to have a brainstorming session with those closest to the tram project to understand their views on what could have been done differently.

It is also important to recognise that some aspects of the project have been done extremely well – for example the interaction between the Council and the design team since the Council have been co-located and the benefits this has brought to the project cannot be underestimated; the effectiveness of the tram design working group has also informed the project and helped with the prior approvals process. The Council should consider whether these processes would be of benefit to any further project.

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