

Edinburgh Tram Project – Status Report (DRAFT Private and Confidential)

The City of Edinburgh Council

20th August 2009

1 Purpose of report

- 1.1 The purpose of this report is to update Council on the progress of key work streams within the Edinburgh Tram Project. The report provides updated information on: the budget and construction programme; the Council's funding strategy; revised corporate governance arrangements; the review of the Transport Edinburgh Limited (TEL) Business Plan; plans to mitigate the impact of tram works in Princes Street during the Edinburgh Festival, the Traffic Regulation Order process and seeks Council approval of the **tie Ltd** Business Plan.

2 Summary

- 2.1 An update report was provided to the Council meeting of 30 April on the work being undertaken by **tie Ltd** - through their commercial engagement with Bilfinger Siemens CAF (BSC) – to review tram programme base costs, assess programme risks and achieve a revised, commercially agreed programme. Since the last report to Council, there have been some changes to the estimated cost range for the project which will present significant challenges to its delivery within the approved funding envelope. This report gives a preliminary view of revised programme and cost estimates and the progress of the Dispute Resolution Process (DRP) and the Project Management Panel (PMP).
- 2.2 In light of the economic downturn, Council officers have also commissioned an external review into the Council's own £45m contribution to the tram project. The review confirms the robustness of the Council's financial modelling assumptions and shows that the Council can still achieve the required contributions from developers. However, it will take longer for the Council to achieve its target level of receipts. Fuller details are contained within the main report.
- 2.3 The planned integration of Bus and Tram was reported to Council on 12 March, 2009. The report described the approach to be taken to re-structure **tie Ltd** and TEL as the start of a process of revised governance arrangements that will be needed to deliver and operate an integrated tram and bus network. Revised

operating agreements have been prepared and are with the relevant Boards for consultation. These reflect the new governance arrangements and this report explains the key changes.

- 2.4 At its meeting of 30 April, 2009 the Council requested a review of TEL's Business Plan to assess the impact of the recession on future service viability. This report summarises the conclusions of that review.
- 2.5 Following the decision to continue tram construction work in the city centre throughout the Edinburgh Festival, a series of measures have been agreed to mitigate the impact of continuing construction work. The key measures are summarised in this report.
- 2.6 The Director of City Development must promote the suite of Traffic Regulation Orders (TROs) which are required to allow the Tram to operate in line with its business case. This report describes the procedures and timescales which will be followed.
- 2.7 The operating agreement between the Council and **tie Ltd** stipulates the need for the company to prepare an annual business plan setting out the company's activities, costs and funding, for approval by the Council. The company has now submitted its draft business plan for 2009/10 and the main details are summarised in this report.

3 Main report

Programme and Costs

- 3.1 The Tram Update report to Council on 30 April 2009 informed the Council about the work being undertaken between **tie Ltd** and the Infraco contractor to review the tram programme and timetable with a view of achieving a revised, commercially agreed programme by the end of June 2009.
- 3.2 The report explained that **tie Ltd** had entered a formal Dispute Resolution Process (DRP) on certain elements of the Infraco contract and explained the company's participation in Project Management Panel, (PMP) arrangements which will seek to resolve any points of operational disagreement between the parties in the most constructive manner possible.
- 3.3 The first practical outcome of this process was an agreement about the rates that BSC were applying for certain works (DRP1). The process also sought to achieve a revised commercial baseline for the tram programme to provide greater certainty about the timetable and projected outturn costs for Phase 1a.
- 3.4 Mediation on DRP1 was held on 29 May, 2009 and an acceptable solution was reached both for the disputed estimates in question and more broadly across the works.
- 3.5 While **tie Ltd** has fully supported the mediation process, attending several meetings of the PMP, key points of principle remain to be resolved. Some operational progress has been made but, in order to bring certainty to the process, **tie Ltd** sought the approval of the Tram Project Board (TPB) on 8 July 2009 to pursue a strategy of commencing the formal DRP.

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3.6 Given the lack of a commercially agreed programme, tie Ltd have now produced a document setting out their revised view on programme, risk and budget implications. *40*

3.7 tie Ltd's work has highlighted a range of scenarios from a best case final cost for the project of £560m with an open for revenue service date of February 2012 to a worst case scenario in excess of £600m. The Council has begun to prepare contingency planning arrangements given that there is an increase in the risks to completion of the whole of Phase 1a within the available funding envelope. There are several options that might be taken to deal with such a situation. These range from leasing the rolling stock; or, if necessary, delaying the construction of certain sections of the tramline.

Council Funding

3.8 A report was submitted to Council on 21 December 2006 explaining the Council's funding strategy. This was subsequently reviewed by DTZ Pieda to check that the funding assumptions were robust. A further report was provided to the Council on 20 December 2007.

3.9 In light of the economic downturn, Council officers recently asked DTZ to undertake a further review given the Council's significant reliance on developer contributions to achieve £25m of the £45m which the Council has committed to fund. The purpose of DTZ's report was to assess whether the Council's strategy for delivering its contribution to the tram project remains competent and achievable. The brief given to DTZ Pieda was to:

- review the assumptions underpinning the contributions identified by the Council;
- review the Council's funding model;
- assess the risks associated with each element of the funding stream;
- review the Council's approach in dealing with the various risks including risk management and minimisation; and,
- draw conclusions on the overall funding strategy and approach to risk.

3.10 The main focus of DTZ's work has been on short-to-medium term financing requirements and their impact on project cashflow. However, their work supports the view that there remains scope for new planning applications in future to provide some additional contributions to tram funding

3.11 DTZ has reviewed the Council's financial model. The key assumptions within the model cover the scale and timing of construction outflows, set against the scale and timing of inflows from developers' contributions, capital receipts from land sales, and the costs of borrowing to cover any short-term deficits.

3.12 DTZ conclude that the model is robust. But that, as with any development-related funding, there are still risks surrounding specific contributions. Given a depressed development market and the consequent challenges to developer contributions a more piecemeal approach is likely to be taken to the development of the Leith Docks area and this could impact on the availability of funding.

DTZ -> full report

- 3.13 To address these challenges the Council has taken steps to prepare for the lean period over the next few years by ring fencing £3.2m of developers contributions received to cover interest payments, sale of a windfall site of £2m and by being prudent in the assumptions about the collection of developers contributions in each of the next four years.
- 3.14 Interest in development in Edinburgh remains encouragingly strong and these steps should enable the project to come through the current recession with the expectation that the higher level of contributions will return beyond 2014.
- 3.15 The DTZ report concludes that, despite the economic downturn, the Council can continue to meet its obligations to the tram project, funding loan costs and interest payments through the economic downturn and repaying the capital once the level of developer contributions and capital receipts recovers.
- 3.16 The Council had always expected developer contributions to be realised well beyond the construction of Phase 1a. However, the current downturn will require t borrowing through the prudential framework and repayment once contributions begin to recover.

Governance

- 3.17 A report on the future integration of tram and bus was presented to Council on 12 March 2009. The report gained approval of a two-stage approach in the revised governance arrangements between the Council, **tie Ltd**, TEL and Lothian Buses and gave the Council Chief Executive delegated authority to take the necessary steps to implement this.
- 3.18 The first stage of revised governance centred on the transfer of **tie Ltd's** shares to TEL. The work required to complete this stage of the process is well underway. However, prior to implementing the transfer new governance agreements will be put into place between **tie Ltd**, TEL and the Council. Some of the proposed changes will require amendments to control mechanisms which were previously approved by the Council. It is therefore appropriate that these changes are highlighted, in full, for Council approval.
- 3.19 In order to streamline reporting and avoid any duplication of work between tie and TEL it is proposed that, as part of the first stage transfer of tie's shares from the Council to TEL, more decision making power should be devolved to TEL and the TPB. It is proposed that, whilst day to day management of the project will remain with **tie Ltd**, the tie board will be reduced in number and all strategic project decisions will be taken by the TPB. In summary, it is proposed that the following changes be made to existing arrangements [*Query whether new agreements to be attached/available?*]:
- The existing agreement[s] between **tie Ltd** and the Council will remain in place;
 - The **tie Ltd** board will be reduced as and when **tie Ltd** director's contracts come to an end; no further appointments will be made.
 - TPB will be empowered, by TEL, to take all decisions with regard to the project, save for certain matters which will remain reserved to the Council.

- A new tripartite Memorandum of Understanding will be signed to deal with the interplay between the **tie Ltd** and TEL operating agreements and also certain ancillary organisational matters.
- The TEL board will be [*include details of constitution etc*].
- There will be no requirement for **tie Ltd** to produce an annual business plan. TEL will include **tie Ltd's** operations within its business plan.
- New bonus arrangements will be effected to give the Council proper oversight and control over any bonus payments being made in response to the achievement of previously approved project milestones. In addition it is proposed that no bonuses for senior employees will be payable until the project has been completed and only then if agreed milestones have been achieved.

3.20 The Council previously indicated its desire to exercise tight control over tram project expenditure. To this end, the current TEL operating agreement specifies that all claims over £500,000 have to be approved by Council. In addition there are further controls covering overall project cost and the cost of delays beyond certain thresholds. Given the difficulties with the contractors in recent months, it has become more difficult to exercise these controls, in practice. It is therefore proposed that an amended and more robust control mechanism be adopted. TEL and **tie Ltd** have sought greater flexibility with regard to taking management decisions within the Council approved project funding. However, the Council will need to retain enough control to ensure its previous decisions on budget are adhered to. The current estimate for overall project funding is [*tbc*] (as specified above). Part of this estimate is a risk contingency budget, comprising a variety of specified risk allowances. It is proposed that TEL should be given full autonomy for necessary management decisions within the overall funding envelope, subject to all items it authorises for payment having been previously specifically identified in the programme budget or sitting within an allocated risk budget. Any expenditure beyond the overall approved budget (or in excess of a specific risk allowance) or delay beyond [*tbc*] would trigger a requirement for further Council approval. As a further control mechanism, the Tram Monitoring Officer, the Council's Head of Transport, will be asked to approve any changes to the composition of the risk contingency or any drawdown on any unallocated risk funds within the overall budget. It is anticipated that this solution will give TEL the managerial flexibility the project needs, whilst enabling the Council to retain a robust degree of control. In addition to the above proposals, the Council would retain decision making powers with regard to any substantial changes to the project from the approved Final Business Case.

TEL Business Plan

- 3.21 Following the Edinburgh Tram report to Council on 30 April a Council motion was presented requesting an update of the TEL Business Plan.
- 3.22 In the intervening period work has been undertaken on a review of the TEL Business Plan and the update includes:
- Lothian Buses 3 year plan up to and including 2011 incorporated into the TEL financial model.
 - Re-calibrated Bus costs using 2009 Lothian Bus forecasts.

- Patronage forecasts from the 2008 update reduced by 10% in the initial years of tram operations.
- Tram revenue commencement moved to 2012
- A prudent approach to operating costs

3.23 A number of scenarios have also been introduced to the financial model to take account of areas of sensitivity such as:

- Reduced/no concessionary fares on tram (depending on a ruling by the Scottish Government);
- Phasing construction of the route in North Edinburgh;
- Flexing of inflation and yield.

3.24 The results of the sensitivity test indicated the following [to be fleshed out]

3.25 [Operating Costs – revised TEL Business plan and financial model has been provided by tie, this section will be updated on Monday 27th July]

3.26 The results of the recent review are illustrated in the table below and demonstrate the robustness and profitability of the TEL Business Plan [update per latest financial model].

TEL Business Plan 2006

FBC December 2007

TEL Business Plan 2009

*patronage trips based

Tram In Service	Phase 1a + b			
Tram service pattern	6/12	8/16	8/16	8/16
Year	2012	2016	2021	2031
Total TEL revenues £m	128	168	216	357
Total TEL operating costs £m	127	157	195	312
Pre tax operating profit/(loss) £m	1	11	21	45

Phase 1a + b			
6/12	8/16	8/16	8/16
2012	2016	2021	2031
128	167	216	356
126	156	194	312
2	11	22	44

Phase 1a + b			
8/16	8/16	8/16	8/16
2012	2016	2021	2031
127	172.5	237.4	408.3
122.9	148.8	208	372.4
4.1	23.7	29.4	35.9

Summer and Winter Festivals

- 3.27 On 9 June, 2009 the Policy and Strategy Committee agreed the measures and communications to be implemented to mitigate the impact of the tram construction work in the city during the busy August festival period.
- 3.28 Following that decision, a series of measures have been implemented to ensure the Festivals can proceed as smoothly as possible in the circumstances. Further details of the package and the lessons learned will be reported to a future meeting of the Tram Sub-Committee. However, measures that have been implemented include:
- alternative venue for Festival Cavalcade and revised arrangements for the Festival Fireworks;
 - production and distribution of a Festival venues map with routes for pedestrians;
 - an advertisement campaign at major transport hubs and key gateways to the city;
 - improved pedestrian signage and space management around the Mound precinct;
 - improve tidiness and refreshed city promotion and information around the construction site.
- 3.29 The tram infrastructure construction work on Princes Street is well underway and good progress has been made. **tie ltd** have confirmed that those works will be substantially complete by (date) and before the busy Christmas shopping period.
- 3.30 Planning for the Winter Festival is being undertaken with the event organisers and [need to decide when buses are being returned to Princes Street as this has an impact on the events on Market Street (for traffic management reasons related to the Mound). Need to also confirm what has been agreed regarding funding as this would impact of the scale of the events].

Traffic Regulation Orders

- 3.31 The Traffic Regulation Order (TRO) process is governed by The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999. It is a two-stage process involving consultation with Statutory Consultees in the first instance, followed by public consultation.
- 3.32 The Orders will define the extent of waiting and loading restrictions, banned manoeuvres, tram and/or bus-only lanes and times of operation, etc, which are required to allow the Tram to operate efficiently in conjunction with other public transport operations and while maintaining access for all road users.
- 3.33 The draft Order drawings are being finalised with a view to undertaking the Statutory Consultation in October 2009. The TRO regulations define "statutory consultees" as the emergency services, transport operators, bus operators, etc, but as with all such Orders the Council extend the consultee list to include local community groups, interest groups, etc.

- 3.34 The draft Orders will be reviewed in light of comments received and they may be modified, if appropriate and where possible, in line with those comments. The outcome of the statutory consultation will be reported to Council in January 2010 at which time approval will be sought to place the final draft Orders on public deposit in February/March 2010.
- 3.35 Any comments and/or objections received will be reviewed and the Orders may again be modified, if appropriate and where possible, in line with those comments or objections. The outcome of the public consultation will then be reported to Council in September 2010. The report will include a comprehensive explanation of and justification for the required Orders and will seek approval to make the Orders. If approved, the Orders would then be made in October 2010, or thereby.

tie Ltd Business Plan

- 3.36 The operating agreement between the Council and **tie Ltd** requires the company to supply the Council with an annual Business Plan setting out the company's activities, costs and funding for the year. This Business Plan requires approval by the Council.
- 3.37 **tie Ltd** has supplied its draft Business Plan for 2009/10 and this appears as a background paper to this report.
- 3.38 In contrast to last year's report, **tie Ltd's** activities are now almost exclusively aimed at delivery of the Tram project. **tie Ltd's** only other significant activities involve continued administration of the One-Ticket, multi operator travel ticket; an ongoing role as Authorised Undertaker in the winding up of the EARL rail project; participation in European commission funded research projects on road user charging issues and intelligent vehicles; and participation in steering group meetings exploring possible cross Forth ferry and hovercraft developments.
- 3.39 In their delivery of the Edinburgh Tram project over the course of 2009/10, **tie Ltd** aim to achieve:
- Continuance of track installation;
 - Completion of the MUDFA utilities diversion contract;
 - Lodging of the TRO documents required for the permanent tram operation and for these to have Orders to have been made by the Council;
 - The completion of Design assurance;
 - The completion of all drawings issued for construction (IFC);
 - The completion of all consents and granting of approvals for the Edinburgh Park Viaduct;
 - Princes Street tramway construction complete;
 - A8 Underpass Complete;
 - First tram off-site testing complete, and tram ready for deliver.
- 3.40 On-going engagement with the main tram construction consortium around a commercially agreed programme will determine when these milestones can be expected.

- 3.41 The contractual dispute with the construction consortium earlier this year which preceded the start of work on Princes Street resulted in **tie Ltd** signing a Supplemental Agreement which allowed the work on Princes Street to proceed on a demonstrable cost basis. This has enabled good progress to be made on Princes Street completion of which is scheduled for November 2009. The Supplemental Agreement also established a PMP to address and process all other commercial issues surrounding the contract. Whilst the PMP has allowed greater understanding of the issues that exist, **tie Ltd** anticipate that 2009/10 will see further recourse to the contract's DRP to achieve formal resolution of some outstanding issues.
- 3.42 **tie Ltd** anticipate a total of £153.3m for tram expenditure in 2009/10. This is in addition to cumulative actual expenditure on the project of £234m to 31 March 2009.
- 3.43 Experience gained during the initial closure in October 2008 of the Mound to effect MUDFA works, resulted in the establishment of a new multi-stakeholder Traffic Management Review Group being chaired by the Tram Monitoring Officer (the Head of Transport). This approach helped achieve the successful implementation of the Princes Street traffic diversions, in early 2009 and this group will consider all remaining major temporary traffic management issues arising from the delivery of Tram.

4 Financial Implications

4.1

5 Environmental Impact

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6 Conclusions

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7 Recommendations

7.1

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Appendices 1

Contact/tel/Email

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Wards affected

Single Outcome
Agreement

Background
Papers

tie Ltd draft business plan for 2009/10