

2009/17

Trams for Edinburgh
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EDINBURGH TRAM
Highlight Report to the
Chief Executive's
Internal Planning Group
19 August 2009



1 Background

This 'highlight report' is an update to the Chief Executive's Internal Planning Group (IPG) on the Edinburgh Tram Project to inform on the progress on this project and any decisions required.

A version of this report (with commercially sensitive and confidential material removed) is also to be circulated within the Council as a means of communicating progress with the Tram project.

2 Executive Summary

2.1 Matters Arising

Council Reports to the Tram Sub Committee and Council meeting on 20 August

A summary of the reports presented is provided, which includes updated information on budget, construction programme, funding and governance.

Evaluation of Financial Contingency Measures and Strategic Options

An update is provided on the funding contingency considerations and Strategic Options being developed.

Tram Monitoring Officer Update

Two new DRPs have commenced by tie ltd and consideration is being given to commencing a further DRP on Monday 17 August.

Communications Update

An update is provided on the tram mitigation measures and other Festival news.

Update from the TOG Meeting on 10 August

Following the TOG meeting city centre retailers have raised serious concerns about buses not being returned to Princes Street before their busy Christmas shopping period.

Tram Legal Agreement with Forth Ports

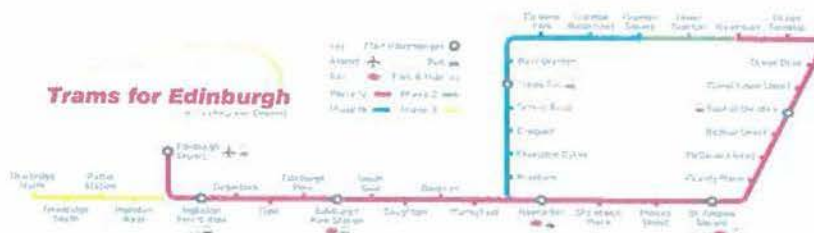
tie ltd have been unable to resolve the tram legal agreement with Forth Ports (FP) and it requires to resolve the outstanding matter directly with FP.

Statutory Council Approvals and Consents

As the detailed design continues, there are several statutory consents that the Council must provide. These include Planning Prior Approvals, Building Warrants, Roads and Structures Technical Approvals.

Building Fixings

Limited progress has been made with the legal work associated with the tram building fixings and prioritisation is required to resolve this.



2.2 Matters to Note or for a Decision

- To note the tram related Council Reports
- To note the position with the Evaluation of Financial Contingency Measures and Strategic Options being considered, including an update on the Council's contributions.
- To note the Tram Monitoring Officers update on DRP.
- To note the communications update.
- To note update from the TOG Group meeting
- To note the position with regard to the legal agreement with Forth Ports and to **decide what action will be taken to resolve this**
- To note the progress with the Statutory Approvals and consents
- To note the limited progress with building fixings and to **decide what action is taken to progress this.**

3 Council Reports (Presented by Dave Anderson/Donald McGougan)

Tram Sub Committee on 10 August 2009

A report was presented to the Tram Sub Committee that detailed the following:

- Summer Festival tram mitigation measures (with buses returned to Princes Street in January 2010)
- Winter Festival planning and opportunities to animate Princes Street in December.
- Tram Traffic Regulation Orders (TROs).

Council meeting on 20 August 2009

Two reports will be considered at the Council meeting that cover the following:

- **Changes in the governance arrangements within tie Ltd and TEL and Lothian Buses.**
- **Updated information on budget, construction programme, the Council's funding strategy, tie Ltd and TEL's business plans.**

4 Evaluation of Financial Contingency Measures & Strategic Options (Presented by Donald McGougan)

Following the lack of progress through the Project Management Panel and informal mediation between tie Ltd and the BSC consortium to agree programme and a revised cost, tie Ltd are now pursuing formal legal and contractual processes to resolve outstanding issues. tie Ltd have now officially launched the first two DRP's and have written to BSC to invoke an audit into certain valuations they have received from BSC. It is likely that the outcome of the contractual and legal process will not be known until early 2010. It is vitally important that during the intervening period that the Council and tie Ltd work together to develop the contingency measures that can be put in place should cost forecasts exceed the funding envelope.



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As the legal process proceeds and the results of areas of dispute become known, uncertainty will be reduced as to the possible cost range for the project. This will allow the Council to have a better understanding of the likely outturn and the amount of additional funding that may be required.

Following discussions with tie Ltd it seems highly unlikely that scope truncation or phased delivery is a viable option with the following issues seen as barriers to this;

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- Termination at York Place would have a huge impact on the TEL Business Case, any Capital saving would be greatly offset by the revenue impact.
- Termination at either Ocean Terminal or the Foot of the Walk would deliver a minimal saving in construction costs.
- Either of the above options would likely present problems with Transport Scotland, would likely result in claims from BSC for loss of profit or breach of contract not to mention the resulting reputational damage.

Therefore, as highlighted in the 20 August 2009 Council report, the only strategic option that remains is to follow the legal and contractual process.

The Council report on 20 August 2009 also highlighted the contingency options that are available to the Council should additional funding over £545m be required. Each of these items is taken in turn.

Prudential Borrowing with debt repayments financed from TEL profits

This would likely be the most favourable option open to the Council. The TEL Business Plan demonstrates a good level of profit following "ramp-up" of patronage in the early years. Over the 20 year planning horizon TEL's forecast net profits are in the region of £166m. Under the prudential framework £25m of Capital would result in revenue costs of £2m per annum, £50m costing £4m per annum. Based on forecast profit levels this amount would be affordable under the TEL Business Plan and would still allow for the Council's dividend to be paid.

Potential Leasing Arrangements

Under the terms of the grant agreement with Transport Scotland the Council will receive circa £200m of assets for the tram. Initial work suggests around £73m of assets could be included under a lease arrangement.

A number of scenarios have been subject to tax planning evaluation such as sale of assets to TEL, rental charge to TEL of the assets or a leasing arrangement to TEL. Under the tax advice received the best option for the Council is to lease the assets to TEL, this approach has also been given approval by HMRC.

The assets would have to be leased at an arms length rate but would provide tax shelter to TEL by reducing the company's exposure to corporation tax and would also allow TEL to benefit from tax relief on lease payments.

This would also provide income to the Council that would potentially fund prudential borrowing costs. The structure of the lease could provide flexibility by ensuring that payments were affordable early in the life of tram operations but increased in line with profit levels.

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DTZ

Prudential Borrowing with debt funded through Council revenue budgets

The Council could fund any additional expenditure on the tram through Prudential borrowing through identification of future capital spending when considering the roll forward of the Council's Capital programme. The debt costs associated with this borrowing would have to be serviced through the Council's revenue budget and would result in a further pressure in this area; this would have to be factored into the Council's long term financial plan.

Discussion with Transport Scotland

While Transport Scotland have, to date stood firm on "not a penny more than £500m", further high level discussions should take place with Transport Scotland around funding and the current restrictions within the grant award letter governing the use of the assets acquired from the tram project.

During the period from now until early 2010 work will progress on each of these scenarios. This work will be informed by the results of the legal and contractual process currently underway which will provide greater certainty on the likely outturn cost of the project and the amount of additional funding required. Contingency planning will remain as a standing item on the agenda and progress on this work stream will be reported back to the group every period.

Council's £45m Contribution

This section updates the group on the Council's funding for its £45m contribution to Phase 1a of the tram project. The detail of the Council's contribution secured to date excluding prudential borrowing to date is highlighted in the table below. There is a substantial degree of risk now relating to the planned contributions from developers and from capital receipts due to the economic downturn. A meeting is being arranged between the Director of Finance and the Director of City Development to discuss the risks around developers contributions, principally in relation to Forth Ports. The Council's contribution has been reviewed by DTZ, this provided a positive view to the Council's funding strategy in the long term and the robustness of the Council's financial modelling. There will be ongoing review of the Council's funding strategy and this will continue to be reported to this group. It should be noted that there are still risks around developers contributions and this should be an area of particular focus.

CEC Contribution Breakdown	Planned Contribution	Achieved Contribution
Council Cash	£2.5m	£2.5m
Council Land	£6.2m	£6.2m
Developer Contributions – Cash	£25.4m	£3.2m
Developer Contributions – Land	£1.2m	£1.2m
Capital Receipts (Development Gains)	£2.8m	£0.0m
Capital Receipts	£6.9m	£2.0m
TOTAL	£45.0m	£15.1m



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Breakdown of Phase 1a Contributions	
Tram Cash	Value (£m)
Amount received	£3.20
Amount in concluded legal agreements (where development has commenced)	£1.62
Amount in concluded legal agreements (where development has not commenced)	£3.54
Minded to grant/Pending Consideration	£7.70
Potential Total	£16.06

5 Tram Monitoring Officer (TMO) Update (Presented by Marshall Poulton)

It was agreed at tie ltd's Financial, Commercial and Legal (FCL) committee on 10 August 2009 that two new DRP's (Dispute Resolution Process) would be commenced for the following:

DRP (3) – Hilton Car Park – in summary this relates to the issue of whether these works need to be instructed by tie ltd and form part of the Accommodation Works which are additional to the core Infraco works or whether they form part of the core Infraco works to be carried out by BSC as originally envisaged.

DRP (4) – Extension of Time 1 – in summary this is a dispute about the methodology of valuing the quantum of additional costs to which BSC are entitled as a result of the agreed 7.6 week delay period resulting from the change of design from version 26 to version 31. **There is a difference between the parties of approximately £4.7 million in respect of the valuations (tie ltd's £1.8m versus BSC's £6.5m).**

tie ltd commenced the formal legal and contractual process for these on 11 August. The outcome of these DRP's will not be known until the end of this year.

DRP (5a and 5b) – Which relates to changes in base date design and design development for Carrick Knowe and Gogarburn Bridges, will be considered by the FCL committee on Monday 1 August 2009. A verbal update on this DRP will be provided at the IPG meeting.

6 Communications Update (Presented by Isobel Reid)

Tram mitigation measures

140,000 copies of a special festival navigator pocket map produced are being given out by tram helpers throughout the city centre. The maps are also available at tourist information centres and many other key locations in the city. The fringe also adapted their map to include pedestrian crossings and key tram information.



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A successful promotional campaign was also launched to promote use of the maps with positive messaging about the festivals and Edinburgh. This included a poster campaign, adverts in the Edinburgh Festivals Daily Guide every day and adverts on trains from London and throughout central Scotland coming into Edinburgh.

A Bluetooth campaign has also been set up as a trial in conjunction with Festivals Edinburgh and DEMA. This carries the same positive messaging and users will receive an edited version of the map showing the pedestrian crossings in use on Princes Street.

A PR group was set involving the Council, tie ltd and all of the festivals to ensure a joined up approach to stories appearing in the media at this time. This has been very successful and the campaign received positive coverage in several newspapers including the Scotsman and the Evening News.

Other festivals news

This PR group also worked well rebutting negative coverage received on Edinburgh regarding the bin dispute and the tram works during the festivals and letters have gone from the Council Leader to the Herald and the Telegraph defending the reputation of the city. The Council Leader has also been interviewed by the BBC on this issue and Good Morning Scotland gave a lot of airtime to taking about our navigator map.

7 Update from the Tram Operations Group (TOG) Meeting (Presented by Marshall Poulton)

At the Tram Operations Group meeting on 10 August the city centre businesses were very concerned about the timing of the proposed return of buses to Princes Street (it was reported to the tram sub that buses would be returned in January 2010). The businesses united to state that if buses were not returned to Princes Street at the end of November, then the impact on their Christmas sales could mean that many may not survive.

The timing of the return of buses to Princes Street has an impact of the planning for the Winter Festival and it is therefore essential that this is resolved quickly to enable event organisers adequate time to plan the event.

It was agreed that Dave Anderson would meet with the traders in early September to resolve this.

8 Tram Legal Agreement with Forth Ports

tie ltd have not been able to resolve the Forth Ports (FP) agreement on behalf of the Council in relation to the tram works because of new conditions FP are now insisting on. FP are now requesting that the tram agreement is linked to the Planning Application for their development and payment of associated S75 payments. FP also insist on delayed payments for tram related work requested by them.

It is recommended that a meeting is held at a senior level with FP to resolve this.

9 Statutory Council Approvals and Consents (Presented by Andy Conway)

The table below provides an updated summary position on all the necessary approvals required from the Council for the tram project. A further detailed breakdown is attached as Appendix 1.



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CEC Statutory Council Approvals and Consents	Total Number of Submissions	Total number of Approvals	% Complete
Prior Approval	63	61	97%
Full Planning Permission	9	7	70%
Listed Building Consent	11	11	100%
Scheduled Monument Consent	1	1	100%
Building Warrant	18	14	78%
Technical Approvals (including Structures, Roads and Drainage)	122	105	87%
Total	225	199	88%

An approvals tracker that identifies each of the approvals and their status has been developed. An extract from that tracker is also included as Appendix 2. The status of the approvals relates to the Issue for Construction drawings which is on the critical path for the project construction. However, there remains many 'conditioned matters' that need to be closed out. **A programme is awaited from tie ltd.**

10 **Building Fixings (Presented by Colin Mackenzie)**

Progress with the applications to the Sheriff Court have not progressed since the last IPG, with legal support being diverted away from the tram project despite several assurances that the Summary Court Applications would be lodged. To ensure the Council does not frustrate and delay the tram project it is essential that resources are prioritised accordingly to ensure that this work is completed as a matter of urgency.

It is recommended that tram related legal work is prioritised to ensure that the Council does not delay the tram delivery programme.

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List of Appendices:

- 1 Statutory Council Approvals – Tables 1 and 2
- 2 Statutory Council Approvals – Tracker
- 3 Copies of the Council reports cover in item 3

