

Edinburgh Tram Update Report (Draft v1.5)

City of Edinburgh Council

14th October 2010

1 Purpose of report

- 1.1 The purpose of this report is to update the Council on the recent contractual negotiations on the Edinburgh Tram Project. ✓
- 1.2 The report also addresses the motion from 24th June 2010 Council which requested a separate report outlining a refreshed Business Case detailing the capital and revenue implications of all the options currently being investigated by **tie** and taking into account assumptions contained within the original plan (eg anticipated development) that either no longer apply or where the timescales were now substantially changed. ✓

2 Summary

- 2.1 In the period since the last report to Full Council on the 24th June, **tie** have continued to seek a resolution to the contractual dispute with the Bilfinger, Siemens, CAF consortium (BSC), including examination of incremental delivery options for the construction of the project. This report provides an update on these negotiations. ✓
- 2.2 In addition to the work to resolve the contractual dispute, a significant amount of work has been undertaken to refresh the Business Case. This refresh includes the impact of incremental delivery, an update on the economic case for tram and deals with funding and affordability issues. ✓

3 Main report

Tram Business Case Refresh

- 3.1 The refresh of the Business Case was requested by motion of Full Council on 24th June 2010. Its purpose is to refresh the assumptions made in the Final Business Case (FBC) for Phase 1a of the Edinburgh Tram Project, as approved by the Council in October 2007. ✓
- 3.2 The Council's request is set against a backdrop of commercial disputes with the infrastructure contractor, which have resulted in significant programme slippage and increasing project costs. In addition, the difficulties with the contractor have come at a time of economic recession. ✓

- 3.3 The outputs of the refresh of the Business Case result from a significant amount of work which has been carried out to reassess the assumptions underlying the FBC put together with the recent commercial experience of Lothian Buses. ✓
- 3.4 The Council's Planning function has had input to the development assumptions that underpin the economic case for tram. Furthermore, the Council's Finance function has had visibility of, and input to, a number of the key work streams. ✓
- 3.5 In addition to the key input of **tie**, Lothian Buses have been closely involved in the input and assumptions made to the refresh of the TEL Business Plan. There has also been considerable work on the refresh from Steer Davies Gleeve and Colin Buchanans, providing independent key consultancy input to model the revised patronage assumptions. ✓
- 3.6 The refresh of the Business Case has primarily focused on the consideration and assessment of incremental delivery; updating the economic case for Phase 1a; updating of the TEL Business Plan (taking into account the revenue impacts of incremental delivery); investment to date; and funding and affordability. ✓

Consideration and Assessment of Incremental Delivery

- 3.7 Due to the cost and programme difficulties experienced on Phase 1a there has been a requirement to consider completion of Phase 1a in incremental stages. The main focus of incremental delivery has been on delivering Airport to St Andrew Square as the first phase.
- 3.8 Delivery of the project on a phased basis addresses the imperative to manage the affordability risks of the project by examining flexible incremental delivery of the on-street sections. This approach aims to ensure the investment in the project is realised by the delivery of a viable tram service integrated with bus services whilst preserving the entire scope of Phase 1a, as detailed in the FBC.
- 3.9 Incremental delivery allows the whole of Phase 1a to be delivered in stages and over a flexible timescale under the Council's control. The Council can then ensure that the infrastructure being delivered at any point in time is matched with available funding.
- 3.10 A first incremental opening of tram services from Airport to St Andrew Square yields near-term benefits and provides a fixed transport link between the city and Airport. It also provides a rail link to other areas of Scotland as a result of the interface with the Edinburgh Gateway Project. A tram operating from the Airport to St Andrew Square also secures a high proportion of the economic benefits anticipated in the FBC and is capable of being integrated with Lothian Buses successfully.
- 3.11 One of the key considerations under the incremental delivery option is to evaluate whether the potential first phase of construction to St Andrew Square is capable of delivering a positive contribution to the TEL business.
- 3.12 The evaluation of incremental delivery has shown that the TEL business as a whole is stronger in the medium to long term with tram added to the existing

bus business even if the tram is only operated between the Airport and St. Andrew Square. The key outputs from the TEL Business Plan are highlighted later in this report.

Updating the Economic Case for Phase 1a

- 3.13 An update of the economic case for tram has addressed both the full scope of Phase 1a and incremental delivery.
- 3.14 The economic case for tram refreshes the patronage sources and growth drivers in the city, taking into account a review of development profiles for Leith, the City Centre and West Edinburgh and assesses the impact of the development of the Airport and the broader regional drivers such as the Edinburgh Gateway project and the Edinburgh-Glasgow Improvement Plan. The update also looks at the longer term context of the Council's Transport 2030 vision and modal shift away from private car that is a key policy driver for the Council and Transport Scotland.
- 3.15 The need for tram has been examined against the wider context of Edinburgh's long term strategic position.
- 3.16 Edinburgh's population is currently expanding by around 1% per annum and is forecast to reach 514,000 by 2020 and 543,000 by 2030. As significant, the volume of commuters coming into the city to work from the surrounding city region and further afield was estimated at 85,000 per day at the 2001 census and is now around 100,000 per day and growing.
- 3.17 The city's growth has led to rapidly increasing demand for road use and increasing demand for public transport. Between 2000 and 2009, Lothian Buses patronage growth has been 18.9% in total, which equates to 2.1% per annum.
- 3.18 Tram is, in itself, considered to be a key stimulant to economic regeneration and new development. The extent of new development forecast is lower than was anticipated when the FBC was prepared in 2007 as a result of the economic downturn. With the key input of Council planning officers, an update of the likely timing of committed new development has been undertaken.
- 3.19 Whilst the actual residential development in the North of the city and in Leith completed at commencement of tram operations is projected to be significantly lower than was originally anticipated, the Council is forecasting a recovery such that by 2012 30% of the original forecast will be completed, 80% of the original forecast will be completed by 2020, and by 2031 the residential development in North Edinburgh will have recovered and the original development forecast will apply. The forecasts broadly anticipate a 4-5 year period of very slow development as a result the economic downturn, following which a return to growth will prevail.
- 3.20 It should be noted that the revised development profile only comprises committed developments or developments that have achieved outline planning consent.

- 3.21 It is clear that whilst the impact of the recession on the pace and size of development in the city has been significant, most notably at the Waterfront, it is important to consider the longer term view. The tram remains an important stimulant to development and regeneration in the West and North of Edinburgh.

The TEL Business Plan

- 3.22 The update of the TEL Business Plan is the key output that is derived from the updated economic case for tram. The key area under examination is the revised patronage and profitability forecasts for Phase 1a in total and the assessment of the impact of incremental delivery on TEL. In addition to the revised development assumptions, the updated forecasts for TEL are also built on the recent experience of Lothian Buses and further patronage modelling by external consultants, Steer Davis Gleeve and Colin Buchannan. These forecasts have been profiled against incremental delivery to St Andrew Square to assess the impact on the TEL business.
- 3.23 As part of the preparation of this refresh, a review of the key assumptions and projections for the TEL Business Plan has been undertaken. This review has confirmed that the outputs from the previous work remain valid for the whole of Phase 1a. It has also confirmed that the operation of incremental delivery of Phase 1a from Airport to St. Andrew Square is sustainable and has a positive impact on the TEL forecasts in the medium to long term.
- 3.24 The approach to integration of the key local public transport modes, bus and tram, sets Edinburgh apart from other UK tram schemes. The integration of high quality bus and tram services will improve the attractiveness of the combined network to something greater than the sum of its constituent parts. The levels of demand projected by the ~~JRC~~ transport modelling, undertaken by Steer Davies Gleave and Colin Buchanan, indicate a significant profit potential for TEL operating with the tram in the medium to long term over the period from opening and 2031.
- 3.25 Following a short initial period of tram patronage build up, partial opening of Airport to St. Andrew Square will be profitable and will experience significant growth in profits in the longer term.
- 3.26 In addition, significant work has been undertaken to assess the positive and negative sensitivities in the business plan assumptions in the early years of tram operation. This analysis will allow management action to be taken to ensure the profitability of the tram remains intact. The main sensitivities examined were in relation to patronage, electricity, fuel, labour and yield. It should be noted that another key sensitivity is in relation to the application of the Concessionary Fares Scheme. Discussions with Transport Scotland have indicated that the business planning assumption should continue to be that the Concessionary Scheme should apply to tram.

~~3.27 The patronage assumptions for the incremental opening stage of Airport to St Andrew Square predict that 27% of tram passengers will be new to public transport. By way of sensitivity analysis, if only 50% of the assumed patronage were to be achieved, this would reduce revenue by circa £1.2m in year one of operations.~~

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Investment to Date

- 3.283.27 A large infrastructure project such as the Tram Project requires a substantial amount of work to be undertaken in advance of construction works.
- 3.293.28 The budget for tram infrastructure represents 46% of the overall project budget with the most significant construction elements within this expenditure to date related to Gogar Depot, the structures along the off-street section of the railway corridor and tram works along Princes Street.
- 3.303.29 Significant progress has been made on the construction of the 27 tram vehicles. This element of the project represents 11% of the original project budget.
- 3.313.30 The diversion of utilities has resulted in a significant enhancement of the utility assets in the City including faster broadband services and enhanced water supplies.
- 3.323.31 As previously reported, the scope for the utilities diversions has gone from 27,000 linear metres to around 48,000 linear metres. This represents an increase of some 78%. There has also been an increase in cost relating to this scope increase of around 30%.
- 3.333.32 A further area of expenditure relates to the costs of the design and purchase of the land that is required for the project. This accounts for 12% of the project budget expenditure to date.
- 3.343.33 In summary, while there has clearly been significant delay to the infrastructure works, a vast amount of work and investment has gone into the tram project to date.

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Funding and Affordability

- 3.353.34 Given the increasing project costs, it is critical to assess the current committed funding and affordability constraints of the project.
- 3.363.35 As set out in the Council report of 24th June 2010, contingency planning has been undertaken up to a level of 10% above the current funding and consideration given to incremental delivery options.
- 3.373.36 The Council has made an allowance of £2m per annum within its long-term Financial Plan to cover additional infrastructure development costs. This provision would allow the Council to borrow £24m under the Prudential Framework. Headroom within the existing budget for loan charges may also allow future investment in infrastructure beyond this sum if required.
- 3.383.37 Further borrowing, should it be necessary, can potentially be financed from the future profits of Transport Edinburgh Limited (TEL).
- 3.393.38 Of the current funding, the Council has committed £45m to the project, of which £25m is anticipated from developers' contributions. The slow down in

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development has impacted on the pace of developers' contributions expected to be received by the Council. However, over the 20 year period set out in the Tram Developers contribution guideline, it remains possible to achieve the £25m total.

3.403.39 The current impact on developers' contributions from incremental delivery is £7m if the route were to be curtailed at St Andrew Square. This means that if the full route of Phase 1a is not delivered then the Council would have to fund this additional £7m as part of their £45m commitment.

3.413.40 Whilst commitment remains to deliver the full scope of Phase 1a, affordability remains the primary consideration given the current level of funding and the forthcoming constraints on public sector spending.

3.423.41 The tram project has faced many challenges since the start of construction. This has resulted in increased costs and significant delay. This has required options to be considered for delivering Phase 1a incrementally.

3.433.42 While a tram operating from the Airport to St Andrew Square can deliver significant benefits, and importantly can be profitable, further benefits would accrue from the full scope of Phase 1a. Therefore, an important assessment will be required at the appropriate time to appraise the benefits gained from constructing the full route of Phase 1a versus the capital cost and available funding.

Current Position

3.443.43 In the report to Council on 24 June, Council was provided with an updated position on the dispute between **tie** and the BSC consortium. ✓

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3.453.44 Over the intervening months **tie** have been pursuing a twin track approach to try to break the impasse that exists with BSC. ?

3.463.45 It is important to acknowledge that there has been progress on-site whilst **tie** has been pursuing this twin track approach. Work on-site has been progressing in the West of the city, albeit at a slower rate than would be expected. This progress off-street is considerable and includes bridges, viaducts and the well progressed construction of the depot.

3.473.46 There have also been some recent developments in relation to BSC demobilising a certain element of their workforce claiming that they will not continue to work on certain parts of the project.

3.483.47 The twin track approach adopted has been;

- To seek to agree a revised scope, price and programme, with the outcome of a tram operating to at least St Andrew Square, with a very high degree of cost and programme certainty.
- To continue to administer the project in a robust manner; including compiling evidence of ~~BSC's~~ ^{any} breaches of contract ~~where they are perceived to exist~~; ^{by BSC} clarifying contractual principles regarding contractual changes; and bringing the design to completion.

3.493.48 Despite intensive and detailed negotiations having taken place over the last few months, the parties have to date been unable to reach agreement which would achieve a revised scope, price and programme acceptable to both parties. Whilst negotiations have not been formally suspended, an acceptable commercial settlement now appears unlikely in the short term.

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3.49 To date 15 matters have been referred to the formal Dispute Resolution Process (DRP) under the contract. 9 of these have been resolved by adjudication (not all 15 as erroneously reported in the press), 4 by mutual agreement, and 2 at mediation. Of the 9 decided at adjudication 7 involved financial matters, one was a claim for extension of time and one involved a principle of progressing the works under one specific sub-clause of the contract in particular circumstances.

Too detailed.
Tie

3.493.50 The claim for extension of time was substantially rejected by the adjudicator. On the dispute over the use of the particular sub clause to instruct progress the adjudicator preferred BSC's interpretation.

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3.493.51 Of the 7 adjudications which involve issues of value BSC's claims have been reduced (in aggregate) by approximately £5.2m to less than half of the original claims.

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3.493.52 Of the 15 disputes (including the 9 adjudications) where issues of value have been involved, BSC claims have been reduced in aggregate by approximately £12.4m, again to less than half the amount originally claimed. Reports in the press that tie has 'lost 11 of the 15 adjudications' need to be viewed in light of the above facts.

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3.513.53 To date tie has served nine remediable termination breach notices upon the BSC consortium detailing alleged breaches of contract. Under the terms of the contract the Infraco has to respond to these notices within a specified timescale with proposals to remedy the alleged breaches. The consortium have responded to the first of these two notices by refuting the allegation of a breach but also providing outline rectification remediation plans proposals on a strictly without prejudice basis. tie have reviewed and considered the remediation plans and have rejected the remediation plans proposals put forward by the consortium.

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3.513.54 Any decision to terminate Terminating the contract would clearly have significant consequences and therefore recommending this option will only be considered after taking into account extensive further robust legal advice. These matters are already in hand and the available legal issues options are being considered, together with the commercial and other consequences. It is vital that proper time is allowed for due and proper legal process and that the outcome of that process is not pre-judged to protect the interests of tie and the Council.

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3.523.55 In the meantime, tie will continue to enforce the terms of the existing contract.

3.533.56 In terms of the governance arrangements in place, a Any recommendation from tie to terminate the contract will require to be presented

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to date tie has been exercising its
rights under the contract
but the detail of that needs to remain
confidential at this stage. However the law
should be aware that all options are being considered

~~as a formalised as a~~ request for approval from the Council ~~prior to any~~
~~commitment.~~ Transport Scotland will also need to be informed of the position.

3.543.57 In the event approval for the termination of the contract is sought
the contract is terminated, tie will also bring forward ~~are examining the~~ options for
delivering the project in an alternative manner. It is proposed that ~~the above~~
matters would form part of a further comprehensive report ~~to be~~ brought to the
December Council meeting (or an earlier Special Meeting of the Council)
outlining the recommended available options. This would consider all
implications and proposals for the project going forward.

3.553.58 In the meantime, discussions will continue with the consortium to
attempt to reach an agreed solution as outlined above.

Governance of Bus and Tram Integration

3.563.59 It has long been a policy aim of the City of Edinburgh Council to develop
an integrated public transport network delivering high quality bus and tram
services in the city. Over the last two years the Chief Executive has submitted
a number of reports to Council on the steps necessary to bring this about.

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3.573.60 Work on the final phase of the agreed integration of **tie**, TEL and Lothian
Buses has been underway for some time. A number of complex and inter-
related actions need to be taken to prepare the way for the revised governance
arrangements that the advent of trams will require. As previously reported, a
work programme embracing the following key issues is proceeding:

- legal and contractual matters;
- finance (including tax planning);
- employment; and
- communications and reporting.

It is anticipated that these work streams will be completed by the middle of
2011.

3.583.61 To direct and oversee the work programme on bus and tram integration
it is essential that senior management arrangements, with clearly specified
roles and responsibilities, are in place. Having completed the appropriate HR
procedures, based on those used by the Council and involving a "matching
process," the Board of TEL has agreed that Richard Jeffrey will take on the role
of Chief Executive (Designate) and Ian Craig will take on the role of Chief
Operating Officer (Designate). There will be no change meantime to existing
remuneration arrangements or any additional contractual liabilities.

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3.593.62 These appointments are an essential foundation for the new
arrangements. It gives Richard Jeffrey and Ian Craig the full authority, under
the direction of the Boards of TEL and Lothian Buses, to lead the demanding
work programme associated with public transport integration over the next nine

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months and beyond. It will be an early priority for the two senior postholders to establish a shared vision, values and brand for the future; establishing a common IT platform; devise and implement management and organisational structures and recruit/appoint to them; business planning; training and the like.

4 Financial Implications

- 4.1 As previously reported, the contingency planning work that has been undertaken by the Council and **tie** has identified funding options which could address project costs of up to £600m. Due to the current uncertainty it is not possible to provide an update at this time on the ultimate capital cost of the project.

5 Environmental Impact

- 5.1 The Edinburgh Tram Project will make a positive contribution towards the vehicular emissions and air quality in the city centre and the transport corridor to the West of the city and the airport. This will have a positive impact on current pollution levels and provide a quieter mode of public transport.

6 Conclusions

- 6.1 Following the recent refresh, the Business Case remains positive even with incremental delivery only to St Andrew Square.
- 6.2 Whilst negotiations have not been formally suspended, an acceptable commercial settlement now appears unlikely to be achieved in the short term.
- 6.3 Contract enforcement continues with the due legal process needing to be followed prior to an early report back to Council.

7 Recommendations

- 7.1 The Council;

- a) Note the disappointing lack of progress in relation to the negotiations and progress of physical works.
- b) Note that following the refresh of the Business Case, which included the update of the economic case for tram, the first phase of construction to deliver an operating tram to St Andrew Square delivers a profitable tram following the initial year of patronage build up.
- c) Endorse rigorous application of the contract by **tie**.
- d) Note that in the absence of robust remediation plans from the consortium and a change of behaviour in relation to progressing the works, serious consideration may ~~need to be given~~ to termination of the contract in the event that **Infracore** are considered to be in breach of contract. ~~Reprocurement~~ and alternative delivery strategies will also require to be considered and executed.
- e) Note the recent Governance developments and future work streams.

If the contract is terminated,

- f) Note that a report will be prepared for the December Council or and earlier Special Meeting if required on the next steps.

Director's Name
Director of (Dept title but not using "Department")

Appendices 1

Contact/tel/Email

Wards affected

Single Outcome
Agreement

Background
Papers