



**EDINBURGH TRAM
Highlight Report to the
Chief Executive's
Internal Planning Group
17 November 2010**

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.

The normal format has been suspended to ensure that key decisions are made that allow the Council report for 16 December to be drafted.

2 Matters Arising

2.1 Matters to Note or for a Decision
 The following issues are being brought forward to the IPG for discussion/decision:

- **Project Providence Update,**
- **Update on Legal Issues**
- **Finance Update**
- **Council Report**

3 Project Providence Update (Presented by Bob McCafferty)

The Project Providence team have continued the activities outlined in the PID.

Meetings have taken place with **tie ltd** in the last week examining the issues highlighted in the key workstreams list included in Appendix 1.

This report does not require any decisions to be taken at this stage and the topics that are being updated are for information and discussion purposes.

4 Update on Legal Issues (Presented by Nick Smith/Carol Campbell)

The table below provides an update on the ongoing legal issues and the current status of the various matters.

Issue	Current Status
Ability of TMA/TSA to be novated	tie have confirmed that DLA have admitted that CEC's interpretation does have merit. Accordingly it is not certain that the TSA and TMA can be novated or transferred to tie as of right. There is an additional potential difficulty in that the purported right of novation only applies on termination, and we presently have advice from Richard Keen to the effect that the contract is only terminated when determined in court.

Issue	Current Status
Taking title to the trams	tie have the right to take title to some of the trams prior to termination. This is a commercial decision which will be taken by IPG.
What happens re contract if tie fail to prove Infraco default	This is still under analysis but the initial QC view is that the contract may then still be extant until Infraco serve notice of tie Default.
Timescales for advice	<p>tie asked to provide advice by 25 November. This will mean that McGrigors' advice will be heavily caveated to the extent that it will not be able to be relied upon.</p> <p>McGrigors have yet to confirm when they estimate they can provide advice but 3 December is the current estimate. This will likely make 16 December reporting impossible to meet.</p>
At what point can tie enter the sites, etc?	Subject to legal analysis. ie what can CEC/tie do until/after a 1 st judgement pending appeal?
Adjudications review	tie's note is currently with S&W for review.
Procurement issues post termination	With CEC legal for a view. Note that the problems in treating the contract as ended are relevant here.
Phase 2 – LB transfer	With CEC legal to be put out to externals for signoff on process from a TA/State Aid/Competition perspective
Comms protocol	Now agreed with Lynn McMath and tie that CEC Legal will review all tie comms.
SDS transfer	Awaiting tie recommendation – we need to check the position re transfer pre/post termination.
Legal process for recommendation	Tie board, TPB, TEL board, TMO, Full Council decision
McGrigors' report	Currently awaited
Recovery of sums due	<p>Subject to legal analysis but in terms of the Infraco contract, if Infraco are in default then tie can recover the difference between what it actually costs to complete the project and what Infraco would have been paid. This itself requires many matters (eg BDDI to IFC issues) to be resolved to allow the calculation.</p> <p>However, in theory tie could terminate and incur cost and ultimately recover little or nothing as a re-procure could cost the same as BSC were entitled to be paid.</p> <p>tie will need to provide financial analysis re this.</p> <p>Query what the position is if BSC are actually due an amount which is unaffordable for the whole route and</p>

		therefore we cannot complete the project. ie is our right to recover dependent upon completion of the entire project. Analysis required.
Sub-contracts		Tie have advised that there are very few fully executed sub-contracts therefore the ability to 'step in' to sub contracts is extremely limited.
Judicial Implement/Interdict issues	Review/Specific	Issues and potential defences

5 Finance Update (Presented by Alan Coyle)

A range of cost estimates are currently being put together to support the decision making process for the next report to Council. The numbers are currently in draft form and are in the process of being fine tuned with input from the commercial and engineering team.

A full range of cost estimates will be presented to the IPG in the coming weeks; however, some draft estimates for each of the scenarios are included in the table below;

Financial Comparison of Core Possible Outcomes

	COWD	Continue as is		Carlisle		Terminate & Reprocure Now			Terminate & Postpone	
	to P7 9 Oct 10	w/Silver Bullet (P'fork 3C) B	BSC Obstnacy C	Carlisle tie price D	Carlisle BSC price E	Win litigation F	Lose litigation G	Settle out of court H	Reprocure after winning Litigation J	Cancel after losing litigation K
	A									
Infrastructure ready to operate:										
Airport to Haymarket		Oct-12	Dec-13	Oct-12	Jun-13	Dec-12	Dec-12	Dec-12	Dec-14	n/a
Haymarket to St A Sq		Oct-12	Dec-15	Dec-13	Dec-13	Dec-13	Dec-13	Dec-13	Dec-15	n/a
St A Sq to FOW		Oct-12	Dec-15	Dec-15	Dec-15	Dec-15	Dec-15	Dec-15	Dec-17	n/a
FOW to Newhaven		Oct-12	Dec-15	Dec-17	Dec-17	Dec-17	Dec-17	Dec-17	Dec-19	n/a
Gross Outturn Costs	387.2	639.9	821.1	662.6	817.9	758.3	823.3	763.3	813.2	514.9
Recovery 75% of Costs from BSC						(88.8)			(88.8)	
Net Outturn Costs	387.2	639.9	821.1	662.6	817.9	669.5	823.3	763.3	724.4	514.9

It should be noted that these estimates are for the full scheme. The cost estimates as they current stand indicate delivery of the project to St Andrew Square could be delivered for between £545m-£600m. These estimates assume full depth road reconstruction across the site.

Indicative cost for St Andrew Square is included in the table below;

Profile for Termination and Reprocurement								
					End Litig		OFRS to SAS	
	to P7 9 Oct 10	Jun-11	Dec-11	Jun-12	Dec-12	Jun-13	Dec-13	Win litigation
Infrastructure (BB+S)	110.0	(16.6)	0.0	0.0	0.0	0.0	0.0	93.4
Vehicles (CAF)	46.4	12.1						58.5
Design Post Novation (SDS)	5.0							5.0
Total BSC	161.4	(4.5)	0.0	0.0	0.0	0.0	0.0	156.9
Interim Works & Reinstatement								
Interim Works during Reprocure		20.0						20.0
Reinstate/remedials during Reprocure		3.0						3.0
Reinstatement following cancellation								
Total	0.0	23.0	0.0	0.0	0.0	0.0	0.0	23.0
Total New Procurement	0.0	9.3	4.3	19.3	49.3	74.3	59.3	215.5
Total Infrastructure & vehicles	161.4	27.8	4.3	19.3	49.3	74.3	59.3	395.4
Total Termination Costs	0.0	14.5	12.5	7.5	7.5	0.0	0.0	42.0
Other Costs	225.8	5.9	2.7	1.7	1.7	3.4	3.4	244.5
Gross Outturn Costs	387.2	48.2	19.4	28.5	58.5	77.6	62.6	681.9
Recovery 75% of Costs from BSC					(88.8)			(88.8)
Net Outturn Costs	387.2	48.2	19.4	28.5	(30.3)	77.6	62.6	593.1
Cumulative Funding Req	387.2	435.4	454.8	483.2	452.9	530.5	593.1	

Sensitivity analysis is currently being drawn up to look at the savings that can be made based on a more cost effective design solution on street. While the cost estimates require further work, they do provide a relative assessment of the core assumptions.

In order to fine tune the cost estimates and ensure they are as robust as possible there are weekly cost meetings. Prior to eventual sign off of the numbers a robust challenge session will be set up to ensure the commercial and engineering professionals have full ownership of the cost estimates. This challenge session will include CEC engineering input.

6 Council Report (Presented by Alan Coyle)

A current draft of the Council report is included in Appendix 2 of this report.

List of Appendices:

- 1 Key issues that need to be determined
- 2 Draft Council Report – 16 December 2010

APPENDIX 1



Question	Information Required to inform decision	Answer	Estimated Date	Date decision made	Comments	Responsible Officer(CEC/TIE)
1 Do we want to terminate the Infraco Contract	Legal opinion on termination Financial implications of termination options Total Project Cost estimates required for the following scenarios :- (1) Continue with contract (2) Carlisle (tie/BSC) (3) Terminate and continue 'with cause' (4) Terminate and continue 'without cause' (5) Terminate and cancel 'with cause' (6) Terminate and cancel 'without cause'		7/12/2010 (CEC) 25/11/2010 (tie) 12/11/2010		Dependant on Counsel opinion All project continue scenarios to consider construction to Haymarket, construction to SAS, construction to FOLW, construction to NH. Each scenario to include tram set costs Work currently being undertaken in conjunction with tie to establish these cost bases	CC ACo/SMG

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					12/11/2010			Siemens are a direct party to the Infracore Contract. Caf joined the consortium via a MoV. There is an ability to novate the TMA and TSA contracts back to tie upon termination. This means that Caf could be novated back. No such facility exists for Siemens. Risk remains due to CEC legal opinion on contract	AC/SC
					12/11/2010			Provided	AC/SC
					12/11/2010			Initial Discussions have taken place regarding the 30 day notification period in the Grant Letter. TS willing to waive this subject to establishment of briefings to the Minister. Do we have this in writing?	ACo
1a	What is the status of the contractor's obligations under CDM if we terminate?	CDM Coordinators Report			05/11/2010			Provided	AC/SC

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2	If we terminate the Infraco Contract - do you want to cancel the project	Establish all implications/risks	19/11/2010		Working assumption is that we put a paper to Full council seeking delegated approval to carry on with interim, re-instatement, remedial works, design and re-procurement and come back to council in mid 2011 with further recommendation	BM/SC
3a	If we terminate the Infraco Contract - do you want to carry on with the project straight away but re-procure	Establish all implications/risks	19/11/2010		Risk Registers being established	BM/SC (Mark Hamill)
3b	What do we carry on with and what do we re-procure	Business Case Implications	19/11/2010			ACo
		Options for re-procurement for Construction and associated timescales	19/11/2010		Workstream set up to look at all options in terms of packaing and contract types. Expect completion by end of year.	BM/SC (Alasdair Sim)
		Status of consents	11/11/2010		Bob to speak to planning about stratgey on consents which will expire. Paper to be produced for IPG on compulsory purchase powers	AC/SC
		Status of PU diversions				AC
		Programming restrictions				AC
		Third Party requirements which will influence decisions	11/11/2010			AC

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	Delivery programme for tram sets currently under construction.					Delivery schedule for remaining 10 trams to be provided	SC
3c	How do we rectify any existing defects and what should be re-instated for the interim period	Identify extent of interim work required to secure/complete existing construction and estimate costs	19/11/2010			Propose survey with CEC and joint report produced. When? Surveys complete	AC
3d	If we re-procure what type of contract and delivery method do we use	Subject to workshop	19/11/2010			Workstream set up to look at all options in terms of packaging and contract types. Expect completion by end of year.	BM/SC
3e	What degree of site supervision/governance should be deployed	Subject to workshop	19/11/2010			tie evaluating for interim etc works. Longer terms will depend on re-procurement packaging options.	BM/SC
4	If we terminate the Infraco Contract - do you want to a 6 month break to decision on the future of the project		19/11/2010			Working assumption is that we put a paper to Full council seeking delegated approval to carry on with interim, re-instatement, remedial works, design and re-procurement and come back to council in mid 2011 with further recommendation	
5	Do we want to novate CAF back to tie , in effect still purchase the trams	Pro's/con's & involvement of CAF in bigger role	05/11/2010			DLA advice given to CEC and recommendation is to novate, take title and look at leasing options	

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	Financial implications if CEC does not take ownership of the completed tram sets What will financial loss be?		05/11/2010		Paper has been provided to CEC on the pro's and con's of taking title to the assets and the issues around novation of CAF. Further work is required and we should be in a place to make a decision by the 12th November.	AR/ACo
	What is cost and timescale for re-procurement		05/11/2010			AR/ACo
	How do we ensure compatibility of new procurement with the tram systems/track		05/11/2010		This will form part of the overall procurement strategy and design integration process	AR
	Contractual status relating to remaining tram sets.		05/11/2010		???	CC/AR
	Market options for leasing of CEC tram sets		05/11/2010		Propose that PwC appointed to provide specialist advice	AR/ACo
	Details of market research for leasing or resale and costings		05/11/2010		Propose that PwC appointed to provide specialist advice	AR/ACo
	Options for location for interim storage of completed tram sets and costs associated with options		05/11/2010			AR
	Number of sets required for operation to SAS	17	05/11/2010			AR
6	What about Siemens materials off site				Paper expected to CEC Meeting on 18/11	
	Extent of materials/equipment already purchased via the project.		24/11/2010		Paper expected to CEC Meeting on 18/12	AC/SC
	Options for retention/disposal		24/11/2010		Paper expected to CEC Meeting on 18/13	AC/SC
	Location for interim storage of retained materials/equipment		24/11/2010		Paper expected to CEC Meeting on 18/14	AC/SC

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7a	What do we do about design	Extent of outstanding design	18/11/2010			Paper expected to CEC meeting on 18/11/10	AC/SC
		Liability for all design	18/11/2010			Paper expected to CEC meeting on 18/11/11	AC/SC
7b	How do we complete	Options to complete outstanding design	18/11/2010			Paper expected to CEC meeting on 18/11/12	AC/SC
7c	Who					Paper expected to CEC meeting on 18/11/13	
7d	How long	Programme for completion of outstanding design	18/11/2010			Paper expected to CEC meeting on 18/11/14	AC/SC
7e	How much	Fee to complete outstanding design	18/11/2010			Paper expected to CEC meeting on 18/11/15	AC/SC
8	When can we come up with a reliable revised cost and programme estimate for Airport - at Andrews Sq		Jun-11				
9a	Do CEC still wish to administer the project	Pro's and con's of changing project management agencies at this point	05/11/2010	tie	27/10/2010	Richard Jeffrey currently determining the scope and size of the organisation for the procurement period. Budget and programme implications will require to be established. Working assumption that tie carry on in menatime.	BM/ACo
9b	If not, then who?						
10	If the Infraco contract is terminated, what physical works do we need to complete in the short term		12/11/2010			Under discussion between CEC/tie. Need legal view on procurement. Tie/CEC meeting on 10/11 to categorise in 4 ways - public safety, prevent deterioration of asset, mitigates disputation to city of Edinburgh, commercially sensible	BM/CN

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11	Who should provide future legal advice on the project		05/11/2010		McGrigor appointed by tie for T. Competition being run for future procurement advice	CC/RJ
12	What are the funding implications	Cashflow and Funding requirements to be established for next 12 months for various scenarios.	26/11/2010		Cashflow implications currently being worked on by tie. Engagement with Transport Scotland will be required in addition to CEC cash planning	ACo/GR
13	Should there be an enquiry at this stage/Should there be a lessons learned exercise at this stage		05/11/2010	No	It is felt that an interim enquiry at this time is the wrong thing to do as it would divert valuable resource. The big issues such as completion of the design and the form of contract would in effect be lessons learned for a re-procurement.	BM
14	How will we manage and keep control of the information contained within the report to ensure we are leading any media relations (ie preventing leaks)	IPG to decide on timing of Member briefings and when report will be put into public domain.			LM/IR will produce a Communications Plan on the recommended approach to the release of information and include key messages	LM

Susan Clark (SC)	Carol Campbell (CC)
Tom Aitchison (TA)	Alan Coyle (ACo)
Richard Jeffrey (RJ)	Andy Conway (AC)
Stewart McGarrity (SMG)	Bob McCafferty (BM)
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Edinburgh Tram

Note: Confidential internal draft only: not for publication v1.5

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INTERNAL REPORT

1 Purpose of report

- 1.1 The purpose of this report is:-
- 1.2 to seek Council's decisions on a number of strategic options in relation to the tram project.
- 1.3 to seek Council's decision on the recommendation from tie Limited ("tie") in relation to the Infraco contract;
- 1.4 to respond to the members' request at the October meeting to provide further detail in relation to the tram business case, and
- 1.5 to address concerns raised at the Council meeting in October about Lothian Buses;

2 Lothian Buses

- 2.1 The Council have always emphatically supported the role of Lothian Buses and have always ensured that Lothian Buses remain in public ownership. This commitment remains absolute. Integration with tram was a key plank of the Final Business Case (FBC) for tram and this continues to be the case in the refresh of the Business Case. Lothian Buses continues to be key in delivering a modern transport system for Edinburgh.

3 TEL

- 3.1 Rationale for TEL

- 3.2 Experience gained from a wide range of tram schemes has shown that integration with other modes of public transport, particularly bus, will greatly contribute to the success of trams and buses both as part of an integrated transport network.
- 3.3 The Council has charged TEL with the delivery and management of an integrated bus / tram network that optimises service provision while maximising operational synergies. With the establishment of TEL, the Council are implementing their commitment to continuing to provide first class public transport in Edinburgh.
- 3.4 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.
- 3.5 This places TEL in a unique position of strength to capture and provide for the predicted overall growth in the travel market.
- 3.6 The rationale for TEL has been well documented since the inception of the tram project. The Final Business Case for the project was built around the opportunity Edinburgh has to integrate the extremely successful bus company with the trams. In addition, integration of the buses and trams was a key condition of the grant funding awarded by Transport Scotland for the project.
- 3.7 Integration of public transport modes remains a key objective of transport planning for national and local government in Scotland. Effective integration providing the public with a seamless multi-mode journey, with minimised connection times, is a key factor in improving satisfaction and building patronage on sustainable public transport. The objective is to create patronage growth not just on the routes covered by the tram but also demand for current and additional feeder services to the overall network.
- 3.8 The integration of bus and tram in Edinburgh under the umbrella of TEL is a unique opportunity to design the service patterns for Lothian Buses' services and trams in a way which best fits demand, makes use of tram on the high demand corridor through the centre of the city and provides effective interchange between bus, rail and tram at key points. An important advantage for TEL is that integration can be planned before the start of services.
- 3.9 In addition to the conceptual rationale for TEL, there is a very real practical requirement to bring together the organisations running the buses and building the tram to prepare for operational readiness, to ensure that through the design and construction process that the organisation that will be charged with running the trams is involved in the detailed planning and to achieve synergies between the various organisations by making best use of the resources available and that there is no "man marking" within the organisations.
- 3.10 An important aspect of planning for operations is to ensure that issues such as ICT and integrated ticketing solutions are pursued, to ensure that the best possible service can be provided for the customer.
- 3.11 The Council are fully committed to ensuring that TEL are in the best possible place to plan for operations and to ensure that route and profit maximisation can be achieved. The only way that this can be achieved is by committing to TEL and ensuring that proper planning is in place to allow the seamless transition between tram construction and operations.

- 3.12 Validity of assumptions and strategic need for TEL needs set out.
- 3.13 Declaration of support for TEL

4 Business Case and the Strategic Case for Tram

- 4.1 All of the factors set out in this section of the report continue to support the strategic case for tram even taking into account incremental delivery.
- 4.2 By way of further background to the case for tram, it will be helpful to consider the chronology of key events in the tram project to date. These key decisions and events are set out in Appendix [x] of this report.
- 4.3 The Business Case for project was refreshed as a requirement for the Council meeting of 14th October 2010.
- 4.4 The refresh reported to the Council meeting in October was not thought to provide enough detail to satisfy the Council motion from 24th June 2010.
- 4.5 As a result, this report provides further detail as to the inputs, process and the outputs of the refresh of the Business Case. A redacted version of the refreshed Business Case is included as Appendix [x] of this report.
- 4.6 The economic benefits of introducing tram were assessed and reported for the original Lines 1 and 2 during the Parliamentary process and for the present Phase 1a in the Final Business Case (FBC) of December 2007. The FBC was underpinned by an assessment of economic costs and benefits in accordance with the Government's Scottish Transport Appraisal Guidance (STAG).
- 4.7 The following narrative updates the examination of the economic benefits of introducing tram both from the STAG perspective and from the broader vision for Edinburgh's long-term economic future. The analysis provides an up-to-date forecast of future economic growth and development and consequent forecast growth in demand for public transport. The analysis focuses on the full scope of Phase 1a, but also highlights the benefits delivered by completing Airport to St Andrew Square as the first stage of incremental delivery.

Edinburgh's strategic position and the need for tram

- 4.8 Edinburgh's growing population is currently 477,660 and is expanding by around 1% per annum and forecast to reach 514,000 by 2020 and 543,000 by 2030. Just as significantly, 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 perhaps around 100,000 per day and growing.
- 4.9 The growth in population and commuters correlates to the concentration of job growth in the city compared to other parts of Scotland. Edinburgh also continues to grow as a tourism and day visitor destination, second only in the UK to London as a destination for overseas visitors.

- 4.10 The city's growth has led to rapidly increasing demand for road use and increasing demand for public transport. Between 2000 and 2006, Lothian Buses experienced an increase in demand of 22.6 %, an average of 3.8 % per annum. Between 2000 and 2009, the growth has been 18.9% in total.
- 4.11 The city's bus services are world class and have continued to deliver the highest quality of service to a rapidly increasing patronage base. However the prospect of further rapidly increasing demand, especially in the high volume corridors already congested at peak times, gives rise to a need to consider a complimentary high capacity, reliable and attractive mode of transport on those corridors.
- 4.12 Between 1999 and 2006, tram was identified and adopted as the preferred option to meet the increased demand and mitigate against the negative economic consequences of future congestion and tram lines 1 and 2 were approved by Parliament. Following affordability challenges presented by the rejection of congestion charging in February 2006, the tram from Airport to Newhaven (Phase 1a) was identified as the first phase of delivery with the addition of a spur from Roseburn to Granton (Phase 1b) should funding permit. This was the scope assessed in the FBC approved in December 2007.

Economic Regeneration and New Development

- 4.13 The tram from the Airport to Newhaven is considered to be a key stimulant to development and regeneration in the West and North of Edinburgh. The extent of new development forecast to be completed between the base year in 2006 and the commencement of tram operations is lower than was anticipated when the FBC was prepared in 2007 as a result of prevailing economic conditions.
- 4.14 With the assistance of Council Planning officials, an update of the likely timing of committed new development has been carried and is presented in the following table and compared to the original FBC profile.

	2012		2020		2031	
	Resid'l Units	Comm'l Sq M	Resid'l Units	Comm'l Sq M	Resid'l Units	Comm'l Sq M
<u>FBC</u>						
West	0	65,000	0	231,640	0	304,405
City Centre	960	132,070	3,695	290,135	4,245	335,885
North	4,000	41,480	11,800	299,600	26,000	337,000
Total	4,960	238,550	15,495	821,375	30,245	977,290
<u>2010 Update</u>						
West	0	33,460	0	276,055	0	474,905
City Centre	480	57,100	2,945	264,135	4,595	358,385

North	1,290	6,905	9,390	99,800	26,000	258,000
Total	1,770	97,465	12,335	639,990	30,595	1,091,290

- 4.15 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 it is anticipated that the original development forecast will apply.
- 4.16 The latest TEL patronage projections for combined tram and bus operations have been modelled using the 2010 Update profile in the above table.
- 4.17 A first stage of tram services operating from the Airport to St Andrew Sq would stimulate, and serve the demand arising from, new development in the West and City Centre categories above, including new commercial space at Edinburgh Park.
- 4.18 The future completion of the project to Newhaven remains critical to support and catalyse the proposed redevelopment at Leith Docks by minimising dependence on private car for access to employment and retail areas, reducing congestion and underpinning the economic viability of North Edinburgh. Notwithstanding the current pause in development, the Council continue to work in partnership towards the realisation of the full master plan. This is unlikely to proceed to the same extent without a commitment to complete the tram system to Newhaven as and when funding sources are identified and economic conditions allow the re-commencement of the new development.
- 4.19 The new development included in the above table comprises only that which has been committed or has achieved outline planning consent. It does not take account of the broader vision for West Edinburgh reflected in the Scottish Government's West Edinburgh Planning Framework 2008 (WEPF) which categorises the areas to the south and east of the airport as being of national importance and envisages more extensive new development including an 'International Business Gateway' (IBG) to the north of the A8 at Gogar together with expansion of the airport and associated commercial development, and relocation and expansion of the National Showground.
- 4.20 As a required action arising from the WEPF, the Council has completed a West Edinburgh Transport Appraisal (WETA) to examine the sustainable transport options infrastructure which may be required to realise the WEPF vision. The WETA was based upon 175,000 sq m of new development at the IBG by 2021, increasing to 225,000 sq m by 2031 (87% comprising offices) which the appraisal assumes will be served by a new tram stop between the Gogar depot and Ingliston Park and Ride. This new tram stop would be safeguarded on the route secured by a first phase of tram delivery from the Airport to St Andrew Square.

- 4.21 Development and passenger growth at Edinburgh Airport is a cornerstone of the WEPF. The airport currently handles 9.1 million passengers per annum and is forecast to rise to 13 million by 2018. The Aviation White Paper published by the UK Government in 2003 forecasts 26 million passengers per annum by 2031 following introduction of a second runway. The WETA identifies a number of road and bus priority improvements which would be required to meet the additional demand for public transport and other road users. The tram remains a key element to realising this vision.
- 4.22 There are rational grounds for concluding that the stimulating impact of investment in the tram on new development which has been experienced in many other cities in the UK and Europe would also be experienced in Edinburgh, thereby contributing to Edinburgh's future economic growth and prosperity.

Environment

- 4.23 The imperative of reducing the carbon impact of travel in the city by achieving a shift from private vehicles to sustainable public transport has become ever greater in the past two years and is a key element of both National Transport policy and the Council's own Vision 2030 for transport.
- 4.24 The FBC identified the tram as a major contributor to a reduction in on-street emissions throughout the route and in particular through the heart of the city centre. The Council is addressing the issue of emissions through an Air Quality Action Plan (AQAP) in this area. Trams will contribute to the objectives of the AQAP by providing a large number of journeys through the city centre without adding to current levels of nitrogen dioxide.
- 4.25 Since the FBC, the potential, in future, to power the tram from renewable energy sources has been brought into focus. The economic viability of procuring sustainable electricity for operations is already under discussion

Mode Shift

- 4.26 Mode shift from cars to public transport remains a key plank of both local and national transport policy. Tram services along the route from the Airport to the City Centre is a significant factor influencing the predicted mode shift in the FBC from cars to public transport and connects to the existing Park & Ride sites at Ingliston and prospective new site at Hermiston Gait.
- 4.27 The evidence from other tram schemes in the UK and elsewhere is that there is greater potential for modal shift from car to tram than to buses (or guided buses) alone, especially if the tram is in operation before new development is constructed and travel patterns have been established.
- 4.28 Modal shift is also influenced by policy and aspirations. One of the major criticisms of efforts to improve modal share is that the alternative to car travel, better and more reliable public transport, is not provided in advance. The investment in tram helps provide that viable alternative to cars and the basis

upon which the city can raise its expectations for further modal shift to public transport.

Wider future vision for Public Transport in the City

- 4.29 The demand for private vehicle travel is growing beyond any capacity increases that are planned and this constraint, along with the vision to significantly improve public transport between now and 2030 as set out in the Transport 2030 Vision, is likely to result in a significant increase in the number and percentage share of public transport journeys. This pressure on road capacity and the resultant increase in car journey times and journey time unreliability along with the plans to base parking permit charges on vehicle emissions and more vigorous enforcement of public transport priority e.g. bus lanes, are likely to lead the car to become an increasingly less attractive form of transport. This coupled with the vision to improve public transport accessibility and interchange, increase park and ride provision, improve and extend the availability of public transport information, increase public transport priority including dedicated road space and priority at traffic signals will at the same time make public transport more attractive. It is likely that a shift away from private vehicles to bus / tram will be observed, while the improvements in the walking and cycling environment will also attract trips from both private vehicles and public transport.
- 4.30 Aspirations for increased public transport and walking and cycling mode share in new developments coupled with tighter parking restrictions is also likely to encourage mode shift away from private vehicles. Future extensions to the tram system, also mentioned in the Transport 2030 Vision, are likely to significantly increase demand right across the tram network, rather than solely on any extension that is built.
- 4.31 Factors beyond the 2030 Vision that could also see the demand for public transport increase include increases in oil and petrol prices, increases in car duty e.g. a mileage driven scheme, the impact of potentially reaching peak oil production in the near future, tighter development controls, parking restrictions and costs, increased environmental awareness, better provision and access to public transport information and improvements in the perception of safety and quality of public transport services. All of these factors are likely to produce upsides in the forecasts for public transport usage in the future, although due to the uncertainty around each of the individual influences, they have not been included in the central forecasts for public transport demand.

5 Infraco Contract and the Strategic Options

Termination

- 5.1 tie recommendation to terminate contract, reasons and their legal opinion on prospects of success. [Summary only-detail annexed as appendix to the

report] **[tie input needed] [Carol Campbell/Nick Smith to write this section]**

- 5.2 CEC independent legal view on validity of grounds for termination [Summary only-detail annexed as appendix to the report] **[Carol Campbell/Nick Smith to write this section]**
- 5.3 Explanation of likely timescale and costs involved in litigation [£30m] and consequences of failure to establish good grounds of termination (wrongful termination). **[tie/DLA input needed] [Carol Campbell/Nick Smith to write this section]**

Alternatives to termination

- 5.4 One of the alternatives to termination of the Infraco contract to reach agreement with BSC for a 'mature divorce' of the Infraco contract.
- 5.5 It was envisaged that this agreement would facilitate a negotiated exit of the Infraco contract through a curtailed scope in relation to BSC's involvement. The project would then be completed under a new contractual arrangements.
- 5.6 Unfortunately, these discussions failed to produce an agreed way ahead with BSC for a mature divorce as the offer made by BSC did not represent best value and produced little cost certainty. Carlisle-status of discussions and failure to reach agreement for 'mature divorce' means this is no longer viewed as a viable option. **[tie input needed] [Carol Campbell/Nick Smith to write this section]**
- 5.7 Continue with the contract -detail of pros and cons and explanation why this is not the recommended option [alternatively depending on the CEC legal opinion, it may not be possible to recommend termination and continuation with the contract may be the recommended option] **[Carol Campbell/Nick Smith to write this section]**

6 Edinburgh Tram Project post Termination

- 6.1 In the event that the Infraco contract is terminated, further strategic decisions require to be taken. The key decision is whether to continue the project.
- 6.2 The strategic case for tram is the key consideration post contract termination. Whilst termination of the Infraco contract would signal the end of the relationship with BSC, the investment made to date on the project is substantial and the strategic case for tram remains strong.

Continuation

- 6.3 As a consequence of termination a clear way forward needs to be mapped out to address issues relating to existing and future construction, the completed trams and those currently being assembled. The Project Management of the tram project and status of the design also needs to be affirmed.

Project Management

- 6.4 Given the complexity associated with the various contracts it is proposed that tie ltd (tie) will continue to deliver the project on behalf of the Council. Given its experienced resources and knowledge of all of the issues relating to the project it is considered that tie is the best vehicle to take forward the project from this juncture. It will also be charged with all aspects associated with the termination of the current contract and resulting legal action that will inevitably follow. The current Governance arrangements and Operating Agreement between the Council and tie will be retained with significant milestones identified at which point the success of the delivery will be measured, assessed and reported.

Existing Construction Sites

- 6.5 Much of the off-street construction works particularly between the Airport and Balgreen are at an advanced state of completion and this is summarised in Appendix *. Significantly many of the bridges and retaining walls are well advanced if not completed. In the case of the tram depot at Gogar, the main building is wind and watertight with internal finishes well advanced including fixtures and fittings. There are however no permanent service connections including lighting and heating. Track laying is completed on the former guided busway between Carrick Knowe and South Gyle and has advanced at the depot. Utility diversions are completed with the exception of some outstanding works still required at Newhaven. 17 trams have also been completed and tested by the manufacturer. However to date the project has only taken delivery of 1 tram.
- 6.6 At the point of termination, the construction sites will become the responsibility of tie. Construction is at varying stages of completion and there is a requirement to secure the work either in its current state of completion or to bring the construction to a suitable point at which it can be secured.
- 6.7 Prior to termination, the consortium and its various sub-contractors maintained an obligation to ensure all sites under construction remained safe and secure. The responsibility for the safety and security of all sites will transfer, upon termination to tie. By agreement between tie and the consortium the method of replacing the existing security measures will transfer to the tie. The cost will be borne by tie and are factored into the costs detailed in Section 5 of this report.
- 6.8 Following on from security of the construction sites there will also be a requirement to ensure that measures are taken at particular sites in order to preserve the construction to guard against any deterioration and effect essential safety and security measures. The most significant of these are:

The Tram Depot	There is a need to secure the building and connect services such as power and water supply (sprinkler system) to maintain the ambient conditions to avoid deterioration of finishes.
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A8 Gogar Underpass	There is a requirement to secure the temporarily suspended major public utilities and this will involve reinstatement of the Gogar roundabout and underpass road to its original alignment. These urgent works would not extend to construction of the Southern half of the tram underpass which has not yet started.
Haymarket Yards	There is a requirement to reinstate the carriageway excavation to provide a secure emergency access to buildings serviced by that road. It would be prudent to also include construction of the track slab prior to reinstatement of the carriageway.
Haymarket Terrace	The present temporary arrangement involves a temporary footpath in the carriageway and narrowing of the remaining carriageway. For the safety and security of the public it is necessary to reinstate the footway separated from the carriageway.
Tower Place Bridge	The present bridge has no pedestrian/vehicle containment parapet on the south edge. It is therefore necessary to fit a parapet to the south side of the bridge to ensure public safety.
Lindsay Road	The road is currently narrowed to accommodate an excavation on the southern side of the carriageway with pedestrians being accommodated on a fenced off section of the carriageway. For the safety and security of the public there is a requirement to reinstate the excavation and reconstruct a footway separated from the carriageway.

- 6.9 The consortium entered into a variety of sub-contracts throughout the extent of the works. These contracts exist between the consortium and the individual sub-contractors. ***These contracts are not transferable?. An assessment has been made of the ability to otherwise secure contracts with individual existing sub-contractors to complete specific sections whilst satisfying the requirements of public sector procurement and demonstrate best value. It is not, however, considered that this will be a viable option given the inability to demonstrate competitive appointment. In order to continue with any further construction works it will be necessary, therefore, to enter into new contracts directly with the existing sub-contractors or with new contractors for the immediate programme of works. These will be considered to be works of urgency under Council's standing orders. (Legal input required here!)***
- 6.10 These interim costs are included in the options detailed in Section 5. Tie Ltd will inform the Health and Safety Executive of the status of each site.
- 6.11 **Vehicles** - Can CAF contract to supply the trams be novated-need to establish the legalities and penalties of doing this. **[tie/DLA input needed]** What about the tram maintenance element of the contract in the event of

curtailment/incremental delivery. . **[tie/DLA input needed]** We should take ownership of vehicles if possible (even in the event of cancellation of the project) as the trams are a tradeable asset. **[Alan Coyle to expand on this]**

Design

- 6.12 As part of the original contract with the consortium, the existing design was novated to the consortium who had an obligation to complete and construct the works. An assessment has been made of the status of the design and ***it is proposed to re-appoint the scheme design team under direct control of tie ltd and complete the design prior to any re-procurement decision (to be confirmed)***. The costs to completion have been factored into the options.

Re-procurement

- 6.13 The first priority will be to carry out a detailed analysis of the current design and contractual form in order to take the project forward and reduce further the risk to the remainder of the project. Following on from this a costed proposal will evolve and a further report will be presented to the Council on proposals to continue the project. Should that proposal prove to be viable and affordable and receive endorsement of the Council, a re-procurement exercise will be required in order to appoint a new contractor. Given the protracted timescale associated with procurement of this scale it is unlikely that construction work would recommence before the beginning of 2012.

Third Party Agreements and Licenses

- 6.14 The implications of a delay to the works on the variety of third party agreements and licenses have been reviewed. There are financial consequences associated with project cancellation and the costs to meet these obligations have been included in the cost estimates associated with each option as described in Section 5 of this report.
- 6.15 Reprocurement options for civils and systems works to St Andrew Square – costs/timescales/scope (St Andrew Square/York Place?). **[tie input needed]**
[Bob McCafferty to add this section]

Cancellation

- 6.16 It is important to note that there are a significant number of downsides to project cancellation.
- 6.17 The financial downsides of cancellation must be the primary consideration; however other considerations such as reputational damage and the City's credibility are factors to consider.
- 6.18 In the event of cancellation, under the grant agreement with Transport Scotland could result in the Council having to pay back the grant that has been drawn down to date. At this point in time the value of that repayment could be [£380m]. **[Also Gogar implications]**

- 6.19 In addition, as the project would not be completed, the vast majority of the funding which has been spent to date would be a charge to the Council's revenue account due to the fact there would be no asset acquired.
- 6.20 Even in the event that Transport Scotland did not request that the grant funding be paid back, the Council would still be faced with the prospect of a revenue write off of [£40m] and would potentially have to return developers contributions that have already been made to the project.
- 6.21 Furthermore, there would be no prospect of securing value for the significant investment made to date on the project.
- 6.22 In the event of litigation post contract termination, there would also be the uncertainty in pursuing commercial settlement with the existing infrastructure consortium with no prospect on an operational tram.
- 6.23 Considerable costs would also fall to the Council associated with any reinstatement or safeguarding of incomplete works.
- 6.24 Finally, damage to the reputation of Edinburgh and Scotland as a place to do business with local and national Government would be a significant issue that would take a considerable amount to overcome.
- 6.25 Investment/Sunk costs [**Alan Coyle**] [financial information to be detailed in appendix to report]]

7 The future of tie

- 7.1 The activities tie will undertake post termination of the Infraco contract will be in relation to completion of the design, close out of the Infraco contract, re-procurement of the project and work to conclude interim works. In order to undertake these duties, tie will require a budget of £[x]m over the next nine months.
- 7.2 It is envisaged that after the nine month period, a gateway review will be undertaken, with a report to Council, which will set out the cost and programme to complete the project (having gone through a tender process for the remaining works). Only when the gateway review has been undertaken, will the decision to proceed with the construction of the project be taken.
- 7.3 During this time, a review of the governance of the project will also be undertaken.

8 Financial Implications

- 8.1 [**Alan Coyle** to add this section]

9 Environmental Impact

- 9.1 [**Alan Coyle** to add this section]

10 Conclusions

10.1 [Carol Campbell, Nick Smith, Alan Coyle to add this section]

11 Recommendations

11.1 [Carol Campbell, Nick Smith, Alan Coyle to add this section]

11.2 It is recommended that the Council authorise tie to proceed with the termination of the Infraco contract.

11.3 It is recommended that the Council endorse the approach in paragraph [x] that sets out the scope, programme and budget for tie’s activity in the next [9/12] months. In this time there will be a review of the project governance that will provide best value delivery mechanisms.

11.4 It is recommended that a report be prepared for Council in [x] months seeking authority to proceed with the construction of the project, detailing the revised cost and construction programme for the project following completion of design and a suitable procurement strategy.

Director’s Name
Director of (Dept title but not using “Department”)

Appendices

Contact/tel/Email

Wards affected

Single Outcome Agreement

Background Papers