Transport Edinburgh
Edinburgh Trams
Lothian Buses

Tram Project Board
Report on Period 13
Papers for meeting 9th April 2008

09:00am – 11:00am

Distribution:

David Mackay (Chair)
Willie Gallagher
Bill Campbell
Dave Anderson
Matthew Crosse
Donald McGougan
Graeme Bissett
Geoff Gilbert
Neil Renilson

Stewart McGarrity
Neil Wood
Steven Bell
James Stewart
Susan Clark
Andrew Fitchie
Alastair Richards
Jim Greeve
Miriam Thorne (minutes)

Brian Cox
Neil Scales
Ricky Henderson
Kenneth Hogg
Allan Jackson
Gordon Mackenzie
Phil Wheeler
Peter Strachan
Marshall Poulton

FOISA exempt
☐ Yes
☐ No

FOISA exempt
☐ Yes
☐ No

Agenda Tram Project Board

Brunel Suite – Citypoint II, 2nd Floor

9th April 2008 – 9.00am to 11.00am

Attendees:

David Mackay (Chair)
Willie Gallagher
Bill Campbell
Brian Cox
Neil Scales
Donald McGougan
Graeme Bissett
Ricky Henderson
Neil Renilson
Stewart McGarrity
Neil Wood
Steven Bell
Kenneth Hogg
Susan Clark
Andrew Fitchie
Alastair Richards
Jim Greeve
Miriam Thorne (minutes)
Allan Jackson
Gordon Mackenzie
Phil Wheeler
Peter Strachan
Marshall Poulton

Apologies: Dave Anderson, James Stewart

1 Review of previous minutes and matters arising

2 Presentation:

3 Project Director's progress report for Period 13 - Papers:
- Phase 1b – Advance works

4 Health and safety - update

5 Change requests - update

6 Risk

7 Date of next meeting

8 AOB

Transport Edinburgh
Trams for Edinburgh
Lothian Buses

FOISA exempt
☐ Yes
☐ No

Edinburgh Tram Network Minutes

Joint Tram Project Board / tie Board

13th March 2008

tie offices – Citypoint II, Brunel Suite

Members:			
David Mackay (Chair) Willie Gallagher Cllr Allan Jackson Cllr Phil Wheeler Brian Cox	DJM WG AJ PW BC	Andrew Holmes Donald McGougan Neil Renilson Kenneth Hogg Peter Strachan	AH DMcG NR KH PS
In Attendance:			
Steven Bell Stewart McGarrity Alastair Richards Neil Wood Miriam Thorne (minutes)	SB SMcG NW AR MT	Gill Lindsay (part) Duncan Fraser Graeme Bissett James Papps (for James Stewart) Ian Cooper	GL DF GB JP IC

Apologies: Bill Campbell, James Stewart

1.0	**REVIEW OF PREVIOUS MINUTES**	
1.1	The previous minutes were taken as read and the outstanding actions from previous meetings were agreed as complete.	
1.2	Minute 8.3: PW confirmed that he had not received any further feedback from the Murrayfield Wanderers and the matter was considered closed.	
2.0	**MATTERS ARISING**	
2.1	AH gave an update on the proposals for a solution on Picardy Place. Further detail to be discussed at the next TPB	
2.2	NR confirmed that discussions in relation to the Bus Service Operator Grant were continuing and he would keep the boards updated on all matters.	
3.0	**OVERVIEW**	
3.1	WG provided an overview of the progress towards Financial Close and to achieve Notification of Contract Award. He highlighted that "Notification" would signify that procurement challenges may be issued from the unsuccessful bidders, albeit this was not considered very likely.	
3.2	He explained that the position with BBS was settled in terms of price, programme, and scope for Employer's Requirements, however two key items were awaiting resolution: a) Network Rail issue on the cap on economic losses, and b) SDS novation These issues were discussed in greater detail during the meeting.	
4.0	**Support for Notification to Award**	

4.1	GB outlined the current position in relation to notify contract award, the **tie** / CEC approval process, and an overview over the principal issues– details of which are addressed in term below.	
5.0	**Infraco and Tramco contract terms**	
5.1	SB and AR presented the status of the Infraco and Tramco contract terms, stating these were aligned with other programme constraints (MUDFA) and did not contain significant price or risk sensitive elements.	
6.0	**SDS Novation**	
6.1	SB described the key outstanding issues regarding the SDS novation. These relate to finalisation of Liquidated Damages, agreement on certain scope items and the approvals programme.	
6.2	WG explained that SDS had not proposed any alternatives or compromises to novation and that their reason for reluctance was unclear as it did not appeared to be related to design quality. Further, it was confirmed that SDS Parent Company Guarantees were no longer a concern for novation.	
6.3	SB also explained that SDS would receive 10% of the milestone retention payments on delivery to programme as an incentive to perform.	
6.4	Further, it was confirmed to the boards that novation was essential to progressing the project and that BBS were now happy with the novation agreement terms. A final position was expected later on the day (13th March) and WG undertook to document the agreed position for circulation to DJM/NR/CEC.	WG
6.5	The boards approved proceeding on the basis that novation will take place within the parameters set out previously.	
7.0	**Network Rail agreement**	
7.1	GB outlined the outstanding issues on the Network Rail agreement, which relate to the APA cap of liability for economic loss. He explained that this was critical for the project and that resolution was expected imminently.	
8.0	**3rd Party Agreements**	
8.1	GB outlined the status of the agreements with Forth Ports, the SRU and BAA, none of which had significant delays or issues attached to them.	
9.0	**Operating agreements**	
9.1	GB explained that BBS had expressed an interest in viewing the operating agreements between **tie** / CEC and TEL / CEC and that he expected them signed by cob 29th March.	
10.0	**Price, budget and risk position**	
10.1	SMcG presented the position in relation to contract prices, project budget and risk profile. He pointed out that the increases in Infraco contract price of circa £10m meant the baseline project estimate rises to £508m from £498m.	
10.2	The boards were informed that there was confidence in the achievability of savings on MUDFA. The indicated £3m savings were in part due to scope transfer to Infraco and in part based on current cost experience.	

10.3	SMcG explained that considerable elements of the price increases related to: - provisional sums, some of which are to be instructed and thus not part of the fixed price; - resource costs to provide greater quality assurances and to manage the SDS interface; - Maintenance mobilisation and spare parts; and - Push-out of the construction programme to July 2011.	
10.4	WG explained that in particular to buy-out the risk of SDS non-performance was considered good value for money. He also confirmed that the current price reflected a programme and scope for construction that BBS could deliver. Further, he stressed the importance of the contract for the future continued existence of particularly BB in the UK.	
10.5	SMcG summarised the key items included in the specified risk allowance going forward, which includes significant sums for programme delays, unforeseen delivery issues, design and consent issues and MUDFA related issues.	
10.6	He highlighted that the position reflected the fact that 95% of the combined Infraco /Tramco price is firm and the remainder had been reviewed by both **tie** and BBS for adequacy.	
11.0	**Overview of Deal relative to FBC**	
11.1	GB summarised the position of combined Infraco /Tramco deal in relation the forecasts in the FBC (see summary below).	
11.2	WG confirmed that the project would continue with its policy of transparency of communication and thus provide appropriate briefings to the elected members of the council, the Scottish Government and the wider public.	
11.3	The boards expressed the desire to stress the achievements of the proposed deal in all communications. These relate to obtaining additional benefits for Edinburgh, the fact of fixed pricing, and reassurance that sufficient funding is available in form of £545m. The boards also stressed the need for strict control of media releases by the bidders to ensure alignment with project communications and the requirements of the funding letter.	
11.4	The boards agreed that all communications should be routed through **tie.**	WG
11.5	WG provided a summary to the boards to approve for the project to proceed on the basis of: - total project budget at £508m; - programme to commence revenue operations Jul 2011; - that the SDS novation and Network Rail APA are non-negotiable requirements for proceeding - scope and risk profiles as previously presented; and - all other matters as presented at the TPB 23rd Jan; with delegation of authority to DJM/WG/NR.	
11.6	GL confirmed that CEC was fully engaged in the process of notifying the intent to award and would provide the mandate to **tie** on 13th March, following agreement on the outstanding issues (SDS novation / Network Rail) and the receipt of the agreed letter from DLA confirming the appropriateness of the procurement framework.	
12.0	**Risk of Procurement Challenge**	
12.1	GB stated the key risk of any challenge was from Tramlines, however not from	

CEC00115700_0007

	a strong position as Tramlines had refused to sign the preferred bidder agreement. To date no indication had been received from any bidder to challenge the procurement.	
13.0	**Readiness for Construction**	
13.1	SB presented the project's readiness status to commence the construction phase in terms of management structure, commercial management set-up, Health & Safety management, Insurance and Risk management.	
14.0	**Conclusion**	
14.1	WG requested the boards to formally notice the following; - recognition that the achieved position is a result of extensive efforts - documents are moving into acceptable form - changes to programme and budget are within acceptable tolerances and compare sufficiently closely to the FBC - no major changes are anticipated, but a rigorous quality control process will be implemented.	
14.2	The boards noted the above and approved the issue of the notification of award and move to Financial Close around 24th March subject to resolution of: - SDS Novation agreement, - Network Rail APA; plus the receipt of DLA's confirmation on the appropriateness of the procurement framework.	
15.0	**Progress Report**	
15.1	The progress report was taken as read, with key points highlighted as outlined below.	
15.2	MUDFA: the period experienced a slippage in programme due to AMIS' difficulties to ensure appropriate supervisor mobilisation. WG confirmed that **tie** had taken steps to work with AMIS to address this issue.	
15.3	Media and stakeholder responses: KH stressed the very positive responses to the handling of increased MUDFA activity in the city centre. The success of the start of major works provided good indication of the level of control over the project and the very visible activity on the ground resulted good feedback from the public.	
15.4	Traffic Management: the question of parking restrictions on the weekend had been raised with the project – WG / AH to discuss.	WG / AH
15.5	The boards requested that more visible signage should be employed, promoting the tram project and the "open for business" campaign.	WG / AH
16.0	**Phase 1b**	
16.1	WG explained this paper was presented for information only and further discussion would take place in April.	
17.0	**Project Changes**	
17.1	The boards noted the paper. DJM queried why SDS should be charged with the design of minor traffic calming works. AH / DF / DC to advise.	AH / DF / DC

	Post meeting note: discussions held with CEC and a review of the SDS proposal resulted in withdrawal of the original change request, with the work to be carried out by CEC.	
17.2	AH stressed the importance of retaining the commercial attractiveness of key city centre locations. His concerns related primarily to the handling of the re-opening of Frederick St. and the wider Public Realm works, which needed to ensure maximum benefits for pedestrians, even over public transport needs.	
17.3	NR requested a minor adjustment to the wording on change 3.2 – DC to respond.	DC - done
18.0	**AOB**	
18.1	WG stated that **tie** had received notification that a small business along Leith Walk intended to sue for a reduction in trade due to the tram works. He confirmed that due process was being applied and full engagement of CEC legal was ensured.	
18.2	The boards expressed their thanks and best wishes to Andrew Holmes on his retirement. His efforts and support for the tram project were greatly appreciated by all present.	
18.3	Date of the next TPB and TEL meeting – 9th April 08.	

Prepared by Miriam Thorne, 17th March 2008

1 Executive summary

2.1. Previous period update

1.2.1 Commercial and procurement

Infraco / Tramco negotiations:
Continued negotiations took place during the period to finalise the contracts with the preferred bidders. Good progress was made in relation to the primary areas as follows:

- SDS novation: progress was achieved in relation to Prior and Technical Approvals, linkage of design submission to the approvals process and CEC requirements and the legal liability relationship between BBS and SDS. To address the remaining outstanding issues, engagement continues to take place at senior level in CEC and **tie** to finalise the full approvals programme and agree an aligned programme with all parties;
- Infraco Employers Requirements: Internal technical consistency checks and legal reviews were performed during the period and the final version is now with BBS for final review;
- Tramco novation: Significant progress was made during the month to align and close out contractual issues; and
- Other items relate to the payment milestone schedule and Phase 1b terms.

Senior **tie** engagement has been ongoing to ensure conclusion of commercial negotiations during March. Progress has commenced through advanced mobilisation (progress outlined below) and sufficient progress was made to issue the Notification to Award on the 19th March.

Infraco advance works

- Tree felling has commenced along the route in accordance with the Infraco advance mobilisation agreement
- Final details regarding the demolition of the Caledonian Alehouse are being agreed with arrangements made to have services disconnected during Period 1 08/09. Meetings have also continued with Forth Ports, BAA, The Gyle and NR on the respective "Construction Code of Practices" to ensure understanding and agreement on the details prior to mobilisation at these sites.
- As part of the agreed advance mobilisation works, BBS has commenced attendance at the weekly Traffic Management Review panel and the Network Rail possession meetings to ensure respective programme alignment.

1.2.2 Approvals / governance / funding

As reported last period, a sub-committee of the **tie** TEL and Tram Project Boards has been formed to whom authority is delegated to approve final execution by the **tie** Chairman of Notification to Award, the Infraco suite of contracts and any necessary related agreements on condition that :

- The final terms of the contractual arrangements are within the terms of the Final Business Case, subject to previously reported slippage in programmed revenue service in 2011; and
- They unanimously conclude that it is appropriate to do so ; and

Approval has been received from the CEC Chief Executive to do so and the Notification to Award was issued on the 19th March. This is followed by a mandatory cooling off period which allows for finalisation of schedules and due diligence reviews. Signing of the suite of contracts and the related documents will take place on completion of these exercises.

1.2.3 Design and engineering

Design Review
The design review of "work-in-progress" SDS design package elements has now finished with approximately 10% of all design having been reviewed. Those results are being fed back into their ongoing design as appropriate and are intended to underpin fit-for-purpose, checked, compliant design that SDS will submit in the form of self-assured design packages, the first of which, for road section 1B (Leith Walk) had been due in March 2008 but which is still awaited. This is included in the on-going discussions with SDS as part of the novation agreements.

Each of the 18 "self-assured" packages will have an associated Design Assurance (Verification) Statement (DAS), which will be the prime demonstration from SDS that the package fulfils all requirements. Each DAS will be reviewed in detail, and some full packs also will be reviewed in detail. The reviews will be led by tie, assisted by TSS and will involve all stakeholders.

EMC
The Stray Current Working Group now has input from all potentially affected utilities. With their involvement and agreement a testing and monitoring programme will be derived. Collaboration is ongoing and the matter is not programme critical at present.

Roads design
A recent instruction has been received from CEC to implement a revised gyratory design at Picardy Place. This is being evaluated and will be implemented in line with Project Change Procedures following contract award.

Structures design
Ground conditions at the site of Murrayfield tramstop have necessitated a different approach to the construction of the retaining wall. The detailed design changes are being worked through with SDS and BBS with a view to minimise impact on programme and costs.

NR system immunisation works
NR immunisation verification will be provided by means of a detailed simulation study by the Infraco. The Infraco will be developing the full assurance case for NR acceptance.

FOISA exempt
☐ Yes
☐ No

NR lift and shift works
Implementation of the works is programmed to be complete by the end of April 2008. NR has contracted directly with Jarvis for the design and implementation.

System safety
Dialogue is ongoing and effective with the ICP appointed by tie to monitor the emerging design and construction and, eventually, independently authorise tram trials and then public operations to commence.

1.2.4 MUDFA

Progress

		Period 13 (01.03.08 to 28.03.08)			Overall Performance to Date		
		PLANNED	ACTUAL	Variance	PLANNED	ACTUAL	Variance
TOTAL	**Metres**	**2358**	**2276**	**-82**	**12112**	**10081**	**-2031**
	Chambers	**25**	**10**	**-15**	**104**	**54**	**-50**
- BT/Comm	Metres	1050	1154	104	5390	4504	-886
SGN	Metres	192	168	-24	841	623	-218
Scot W	Metres	780	504	-276	4400	3673	-727
Scot P	Metres	336	450	114	1167	967	-200
Forth Ports	Metres	0	0	0	314	314	0
Gogar Comm	Metres	0	0	0	0	0	0
Gogar Scot P	Metres	0	0	0	0	0	0
Gogar Scot W	Metres	0	0	0	0	0	0

**** Period 13 Actuals for metreage are 2 Weeks Actuals plus 2 Weeks Forecast**
**** Period 13 Actuals for chamber works are 2 Weeks Actuals Only**

Safety

Post period end, the first reportable accident occurred on 2/4/08. An AMIS operative suffered a fractured ankle as a result of dislodged material within an excavation. An interim report has been received, any necessary remedial action taken, and a formal review is planned for 7/4/08 with the tie Project Director, the MUDFA Construction Director and the AMIS Project Director.

The AFR at the end of Period 13 was 0.00

<u>Progress to Revision 6 Programme</u>

Works progressed in 6 areas:

- Constitution Street (1A)
- Leith Walk (1B)
- St Andrew's Square (1C)
- Princes Street (1C)
- Shandwick Place (1D)
- Gyle (5B)

Service diversions in the period were completed within 4% of the plan; however there has been no recovery of the previously reported slippage.

Cumulatively, the existing effect is a delay of ~ 6 weeks on the affected sections. The root causes of these delays are in 4 main categories:

- Greater congestion of existing utilities than anticipated (principally affecting Scottish Water diversions)
- Increased temporary diversion provision
- Slower than estimated chamber construction for BT chambers
- Incomplete supply of supervisory and operative resource to meet the full demands of the Revision 6 programme and the enabling works. (AMIS addressing)

Specific recovery plans are being finalised for each of the problem areas with early implementation starting to show evidence of recovery.

These plans are being completed on 8/4/08 and it will be necessary to confirm that acceptable actions are in place to meet any revised competent resource demand. This is likely to put further pressure on the supervisory and operative requirements from both AMIS and their subcontractor supply chain, particularly as additional work areas are programmed to commence in the next quarter. This will be reviewed realistically to ensure practical delivery is possible.

There is an opportunity to extend working hours (and recover lost production) within the Code of Construction Practice over the coming months with extended daylight hours. This is primarily in areas of low housing density or where businesses have been consulted and have voiced their support.

The summary impact on the REV 06 Programme critical path suggests that ~ 2 weeks delay is likely allowing for realistic implementation of the recovery plans to the MUDFA programme.

The effect of this, and any localised mitigation to avoid impacting on InfraCo, is being addressed as part of the detailed recovery planning.

<u>Anticipated Final Costs</u>

The impact on MUDFA of the potential programme delays noted above is allowed for in the current AFC.

Analysis of emerging quantities and utilisation of provisional sums has taken place, together with a thorough review of the risk provisions for the MUDFA works. No change is proposed.

Section 1A

Closure of Constitution Street and associated Traffic Management at the Foot of Leith Walk went live on Sunday 30 March 2008, following completion of the enabling works including Civils works at Dalmeny Street, Johns Place, Duncan Place, Wellington Place, Academy Street and Maderston Street to enable the diversion routes to accommodate additional general and bus traffic.

Construction of a major BT chamber at the Foot of the Walk commenced w/c 17 March 2008.

Works outwith the LOD have the following status:

- Scottish Power – Works commenced with a 1 week delay in programme due to SP resources.
- SGN committed to completing works by 26th March 2008.
- Scottish Water provided design to tie on 20 March 2008 in line with programme.

Clarification of CDM responsibilities have been achieved with SU's. SGN have accepted that tie is Client, SP have chosen tie as client and response is currently awaited from BTO.

Section 1B

The installation of temporary traffic signals at Leith Walk/Manderston Street junction has meant 6 diversions (SGN, BT, SW and SP) have had to be deferred until MUDFA works at the Foot of the Walk are complete. This will not impact on the overall completion of this sub section.

Limited testing of water and gas mains has been undertaken. An exercise to identify mains that remain to be tested within the whole of section 1B has been carried out. Programme of testing/commissioning of these remaining utilities being developed. This will allow subsequent handover of utility to asset owner within an agreed timeframe.

tie/AMIS are evaluating options as to how Leith Walk road crossings can be completed. One option is to reduce Leith Walk to one way (Southbound) with the return flow being directed via Easter Road

Section 1C

Awaiting issue of IFC drawings and schedules for sction McDonald Road to York Place. IFC drawings and schedules are being delayed by Scottish Power requirement to assess trackform relative to the Leith Walk Cable Tunnel.

Traffic Management proposals for McDonald Road to Greenside Place (Sheets 32-35) being developed by Faber Maunsell. Likely to adopt a 3-phase approach to the works around London Road Roundabout – subject to TMRP approval.

Diversions between the Mound and South St Andrew Street are behind programme due to the extent of existing services and requirements to alter/amend TM impacting on progress. Works are due to be completed by end of November'08 Remaining works limited to:

- Water – design issue related to requirement for vertically or horizontally acting valves
- Waverley Bridge – 1 no. gas and 1 no. water crossing to be installed
- Diversions between The Mound and Castle Street are complete bar the need to connect 1 no. water main.
- Further trial excavation completed on the SGN MP main in Hanover Street to determine both the diameter and location of the main. Subsequently **tie** and SGN have agreed a technical solution for the diversion.

Section 1D Shandwick Place - Phase 1 Shandwick Place Closure

Shandwick Place closure and traffic diversion route went live on Saturday 1 March 2008. Works completed in the period to enable the closure included:

- Installation of temporary traffic signals at Princes Street/Frederick Street junction
- Installation of 4 no. LUX temporary pedestrian crossings
- Installation of circa 200 diversion and traffic management signs
- Laying of new road markings including, taxi ranks, bus stops, yellow lines, hatched areas and loading bays etc
- Full extent of site enclosed by HERAS fencing

AMIS and Class One implementation programme developed to enable the closure. All actions on programme completed on day of closure as per programme.
A thorough snagging list has been produced to resolve Traffic Management issues related to line of sight to signs, additional road markings, additional cones etc. Snagging list is 90% complete. Outstanding works will be complete within period 1. Review carried out on TM approval process to ensure issues are addressed prior to implementation revised TM.

Section 5A

All diversions identified in this section have been carried out or have been transfered to the Infraco due to the constraints of Network Rail land and the relationship with the future track level and the existing ground and apparatus levels.

Section 5B

Some diversions in this section are being transferred to the Infraco. Enabling works are required to facilitate the proposed diversion works – the construction of the reinforced earth embankments/retaining walls (Infraco works) need to be constructed in advance of the diversions.

Remaining works are behind programme as a result of resourcing constraints and resolution of Traffic Management issues
unable to source adequate resources to shore this excavation. Currently 3 weeks behind programme.

Diversion did not commence as programmed, but was deferred for 3 weeks due to lack of suitable resources. Commenced 31/3/08, due to be completed 18/4/08.

AMIS are to follow up on a number of action points in this area including resolution of availability of resources.

Provided the resources are allocated the key constituents, works can be completed in this time and the critical path maintained.

AMIS/**tie** to review any outstanding information and AMIS to confirm start date for the crossings. These are not on the critical path however resource availability must be confirmed by AMIS.

Completion of the water main is critical to completing Phase 1 of the traffic management. AMIS/**tie** to review the remaining work requirements.

AMIS provided suitable resource for this diversion w/c 31/3/08.

Section 5C

MUDFA are still to receive the IFC drawings and schedules from SDS and this has significantly impacted the programme. Work was due to commence at the end of February 2008, however, the earliest start date is now 21 April 2008 in the Gyle Centre Car Park. MUDFA has carried out trial holes in the car park for the 33kv and 450mm water main diversion following the identification of existing petrol interceptor chambers on the route proposed by SDS. It is critical for the Gyle Centre that the works in the car park are completed by 23 May 2008 and the delay to the IFC documentation has put this at risk.

The design of the BTO chamber encroaching onto the Gyle Broadway slip Road from the west bound A8 has been reviewed and commented on by MUDFA. We currently await re-issue of the cross section by SDS to demonstrate that the proposed diversion can be constructed. The chamber is for the critical 24-way diversion to the south of the A8 underpass.

FOISA exempt
☐ Yes
☐ No

Section 6 – Gogar Depot

800mm Water Main design is ongoing. Latest draft drawings have been issued to Scottish Water for comments. Meeting held 27 March 2008, to obtain technical approval. Target acceptance 7/4/08. Issue of IFC drawings thereafter is critical. The IP Gas Main diversion is currently forecast for completion by end April 2008. The programme for the BAA Fence removal was issued 20 March 2008 showing a completion date of 30 May 2008. Discussions are ongoing with BAA to discuss any potential acceleration to enable the earthworks to proceed earlier. The water main installation cannot be completed without the fence being moved

Traffic Management

Traffic Management for city centre works maintained. The TM requirements for both signage and requisite equipment for Phase 2 of City Centre works are under design. Commencement date for Phase 2 – 28 April 2008 as programmed.

Constitution Street closure instigated as programmed on 31 March 2008. Works on CS will be carried out in phased sections. Emergency access has been agreed.

Traffic Modelling and design completed for the London Road Roundabout, Leith Walk. Programmed commencement date for London Road Roundabout w/c 28 April 2008.

Commercial

- Potential issues related to deep excavations along Leith Walk affecting the adjacent existing structures are being dealt with through OCIP insurance.

- Access to SU apparatus which will remain within the DKE – the draft agreement produced by DLA Piper has been reviewed in conjunction with **tie**/TEL/DLA/MUDFA. DLA Piper are incorporating a number of amendments to the draft agreement prior to issue to the SU's. Anticipate issue to SU in early Period 1 - 08/09

- The joint review of the required utility diversions to update the AFA based upon currently issued IFC and issued for approval drawings is underway and will be complete and agreed within the next period. Any amendments required to the existing AFA will be incorporated in the next PM report. No significant variance is anticipated.

- A formal Contract / Agreement for Faber Maunsell to carry out the traffic management modelling and design has been agreed.

- The MP Gas main at the Mound has been discussed in detail with SGN and a number of potential solutions have been reviewed. MUDFA are currently pursuing the minimum diversion length required. This solution carries a manageable degree of risk, associated with a 30" connection which has not been specifically callipered in the anticipated connection area, to accommodate the Programme requirements.

The **tie** proposed principle of cost sharing is being explored at director level of both organisations.

- AMIS insurance cover verified in place till November 2008, at which point the cover will be transferred to a Carillion policy.

1.2.5 Delivery

<u>Advance works</u>

- Badgers: continued monitoring and survey works during the period. One new sett had previously been discovered and the contractor is investigating the option of obtaining a licence to excluding animals from the sett as relocation outwith the season is unlikely to be permissible. This will reduce the costs of removal during the next season.
- Invasive species: the assessment of overlaps of work scope between the Invasive Species contractor and Infraco is ongoing with briefing meetings agreed for the period following contract award.
- Archaeological works: works on Site 1 are ongoing. Additional finds are likely to result in a small programme prolongation – current forecasts do not foresee an overlap with the Infraco construction programme. The likely resulting costs are covered by provisional sums in the project budget.

1.2.6 Health, safety, environment and quality

Post reporting note:
On Wednesday 2 April there was 1 RIDDOR reportable accident with an AMIS operative suffering a fractured ankle as a result of material dislodged within an excavation. An interim report has been received and all necessary remedial action undertaken and a formal review will be held with the Project Director on 7 April 08.

There were 4 minor accidents in the period. There was no lost time.

The accident frequency rate (AFR) for the project remains 0.00.

There were 10 minor incidents reported during the period

No safety tours were completed in the period.

Three site inspections were completed in the period and actions have been implemented to address the issues raised.

There were no HSQE bulletins raised this period.

There were no environmental incidents reported in the period.

There was one HSQE audit completed in the period. Three minor audit findings and no observations were raised. Corrective action responses are awaited from the auditee.

1.2.7 Stakeholder and communications

The stakeholder strategy has been implemented in full four weeks prior to the commencement of the two most recent phase of MUDFA works – Shandwick Place and Constitution Street

There has been much positive media coverage of the recent MUDFA works and there are no communications and stakeholder matters arising from the previous period.

Phase 2 of the MUDFA works on Shandwick Place are due to commence at the end of April and everything is in place to communicate with all stakeholder involved. In addition, works are underway and well developed to erect tram information boards on key sites throughout the city centre and in Leith.

2.2. Key issues for forthcoming period

<u>MUDFA</u>

TM design work ongoing for London Road Roundabout/South end of Leith Walk – construction due to commence on 28 April 2008. Works to enable commencement will be carried out during the period.

Closure of Constitution Street and associated diversions at the Foot of the Walk on 31 March 2008 and commencement of new works sections in Constitution Street (3no) and North end of Leith Walk.

MUDFA diversions continue on Leith Walk (Manderston Street –McDonald Road), in Dublin Street, York Place, St Andrew's Square and North and South St Andrew Street, along Shandwick Place.

Phase 2 Shandwick Place Closure is planned to go live on Monday 28 April 2008. Works to enable this over the following period are:

- Completion of Faber Maunsell design work.
- Traffic Signal and associated civils designs Lothian Road junction and Hope Street.
- Diversion and Traffic Management signs defined
- Road lining defined
- Site clearance designs
- Traffic Signal installation work
- Site clearance works

Construction works generally 3-4 weeks behind programme. No further slippage from last month. Outputs identified a significant change in previous noted under production. Still require additional resources and continual review of recovery plan to assess recovery completion period.

Reprogramming of Gogar depot 800mm WM and BAA fence realignment has produced a potential recovery of some 2 weeks in the programme here. Early indications are that BBS early start date of 2 June 2008 will be maintained.

Review of service utility diversions requirements based on revised depth and protection. Area of review 400 – 1200 depth range below FRL. Further review of latest detail of INFRACO proposed RHEDA CITY track system and potential reduced diversions ongoing. Overall construction depth to be of the order of 350 – 400mm. Protected services identified on 'as-builts' for informing SUC's/ INFRACO et al. Method of measurement may affect overall saving.

Dilapidation surveys are expected to be completed by end of April 2008, due to additional requirement to survey the route of the diversions.

RAT's proposal put forward for section 7b and following discussions with BAA, principle to adopt process on less complex utility diversions accepted.

Review of section 1A diversions – assess potential programme gains due to implementation of temporary diversions, thereby allowing earlier construction start to INFRACO works. Awaiting details of structures to verify alternative diversions.

SGN 30" gas main at the Mound – Ratifying proposal regarding minimum diversion.

Leith Walk Cable Tunnel – require definition of trackform solution to enable SP to assess impact of tunnel and provide approval for utility diversion crossings above the tunnel – resolution required as a matter of urgency and this is being pursued with BBS and SDS.

Scottish Water acceptance of the Gogar 800 water main to enable issue of IFC documents. MUDFA are in frequent discussion with both SDS and SW to progress – Meeting Thursday 27 March 2008 to conclude final acceptance with SW.
Section 7B – procurement of D&B arrangement is ongoing with AMIS, supported by DLA. The commencement of this section is likely to be delayed.

2.3. Cost

Outturn COWD for the FY0708 was £87.8m which includes:

- Continued development of design under SDS, advance works at the Gogar depot and utilities diversions both under MUDFA and direct works by utilities companies
- Land acquisition costs totalling £17m including land acquired under the GVD process and injected into the project by CEC

- Design costs totalling £2m in respect of Phase 1b as previously agreed with the Tram Project Board
- Costs under the Infraco and Tramco contracts comprising £1.8m under the mobilisation agreements and £25m in respect of initial milestones under the main contracts.

Forecast expenditure during FY0809 on Phase 1a is now £152m, including a conservative Risk Allowance of £14m. The TS share of costs at 91% would be between £125m of Base Costs or £138m of the total costs including Risk Allowance. In the context of a current cap on FY0809 funding from TS of £120m CEC would need to temporarily "fund" the shortfall of between £5m and £18m until the start of the FY0910 although it is unlikely that CEC will need to find cash to meet a shortfall due to the lag between work being done and payment under the contracts. The implication of the current TS funding cap for FY 0809 will be kept under close review.

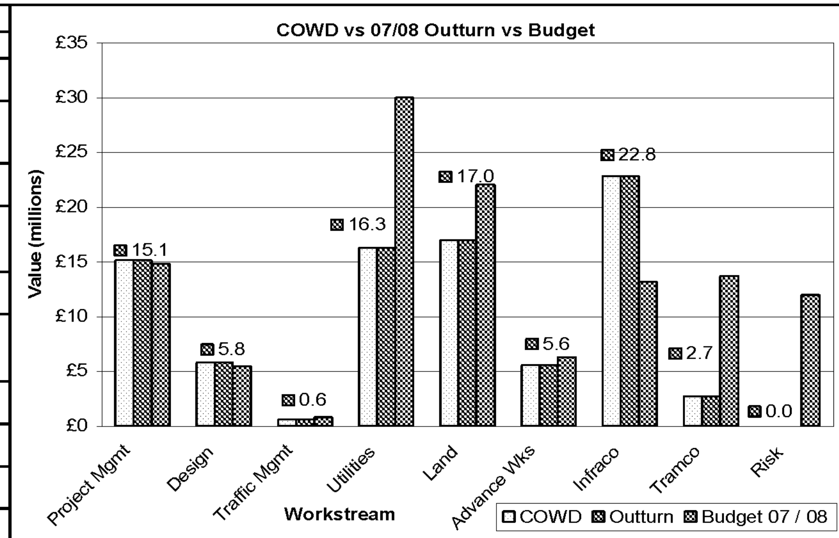
The anticipated outturn cost of Phase 1a of the project has increased by £10m to £508m reflecting the final Infraco and Tramco prices and a consequential reappraisal of the Risk Allowance required to complete Phase 1a.

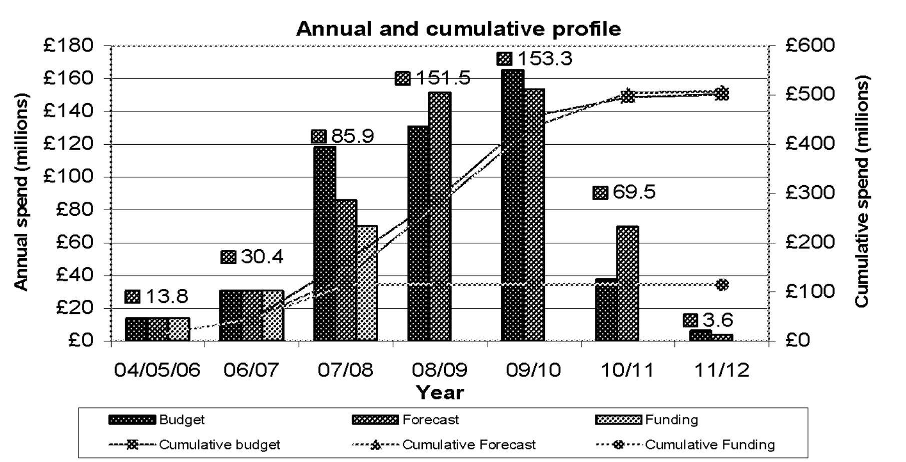
FOISA exempt

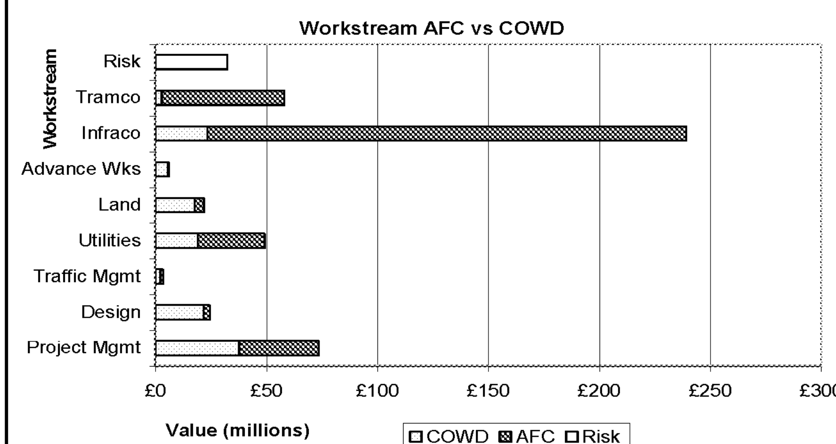
☐ Yes
☐ No

Phase 1 a only

Period 13 - 07/08 COWD (£000s)				
Workstream	**F/cast**	**Act**	**Var**	**Comments**
Project Mgmt	1,200	1,207	7	
Design	1,755	1,240	(514)	Poor progress on DD deliverables in period (none received)
Traffic Mgmt	79	21	(58)	Design delivery delay pushed out legal support to 08/09
Utilities	3,245	3,231	(13)	
Land	912	273	(639)	Forth Ports land transfer pushed out to 08/09
Advance Wks	5	2	(3)	
Infraco	18,132	19,772	1,641	Settlement of early infraco mobilsation payment
Tramco	2,707	2,608	(100)	Settlement of early tramco mobilsation payment
Risk	0	0	0	
Total	28,035	28,355	320	







CEC00115700_0022

2.4. Programme

With notification of award announced, sign-off for the full contract is expected by 15th April 2008.

MUDFA continues to Rev.06 Construction programme with Infraco commencing towards the end of April 08.

The first structure that will be seen is the Haymarket Station viaduct following the demolition of the Caledonian Ale House.
Infraco On-street works will commence from Aug.08.

Depot final earthworks commence in June 2008 with construction of the A8 Underpass commencing in August 2008.

Construction continues through to January 2011 at Picardy Place with driver training completing in July resulting in an Open for Revenue Service from mid July 2011.

2.5. Risk

Careful monitoring of the project risk profile was undertaken during the period to reflect the increased levels of activities in Utilities and the emerging position of risk transfer and allocation as a result of the negotiations with the Infraco and Tramco bidders. The risk register has been updated to reflect the risk profile as at the end of the contractual negotiations.

2.6. Approvals / decisions / support required

Decisions / support required from TS

- Cash availability in line with milestone schedule

Decisions / support required from CEC

- Signing of CEC-**tie** and CEC-TEL operating agreements
- Confirmation on the opening of Frederick Street
- Endorsement of Roseburn Viaduct preferred option
- Section 75 SRU to be concluded

FOISA exempt
☐ Yes
☐ No

2 Headline Cost Report

2.1. Current Financial Year

	COWD (YTD)	COWD YTD + forecast to year end	Funding authorised current year
Phase 1a	£87.8m	£87.8m	£87.8m [2]
Phase 1b	£0.0m[1]	£0.0m [1]	£0.0m [1]
Phase 1a+1b	£87.8	£87.8m	£87.8m [2]

Notes:
1. Phase 1b design costs in the amount of £2m are expended against Phase 1a budget as agreed by the Tram Project Board and as previously reported;
2. Expenditure is matched by Grant funding from Scottish Ministers under the terms of the Grant award letter dated January 2008 and CEC; and
3. The COWD for the year include £1.8m under the Infraco/Tramco mobilisation agreements and £25.0m in respect of Initial Milestones under the Infraco/Tramco contracts (other than for advance material purchases as described below).

As previously reported and agreed with CEC and TS, Initial Milestones under the Infraco and Tramco contracts for advance material purchases will be classified as prepayments. The aggregate amount of these payments for advance material purchases is £24.2m. These prepayments will be reclassified as expenditure against funding in the periods in future years when the related materials are delivered to site and incorporated in the works.

2.2. Next Financial Year

	Q1	Q2	Q3	Q4	Total FYF
Phase 1a	£33.5m	£29.2m	£43.6m	£45.3m	£151.6m
Phase 1b	£0.5m	£0.1m	£0.9m	£2.3m	£3.8m
Phase1a+1b	£34.0m	£29.3m	£44.5m	£47.6m	£155.4m

Further analysis of Phase 1a forecast:

	Q1	Q2	Q3	Q4	Total FYF
Infraco & Tramco	£11.1m	£13.1m	£33.2m	£30.1m	£87.5m
MUDFA & Utilities	£15.3m	£7.4m	£4.1m	£3.3m	£30.1m
Design	£0.7m	£0.7m	£0.5m		£1.9m
Land & Compensation	£2.5m	£0.3m	£0.2m	£0.7m	£3.7m
Project Mgt & other	£3.9m	£3.2m	£2.9m	£4.2m	£14.2m
Base Costs	£33.5m	£24.7m	£40.9m	£38.3m	£137.4m
Risk Allowance		£4.5m	£2.7m	£7.0m	£14.2m
Total Phase 1a	£33.5m	£29.2m	£43.6m	£45.3m	£151.6m

The profile above for FY0809 reflects the contractual payment profile with Infraco and Tramco and will not now materially change except to the extent the programme during FY0809 changes (by the actions of tie of the contractor) or there are changes to the Infraco works by way of significant variations.

The proportion of the overall risk allowance allocated to the year, proportionate to the level of forecast base costs, is £14.2m which is considered conservative.

The TS share of costs at 91% would be between £125m of Base Costs or £138m of the total costs including Risk Allowance. This is being kept under review in the context of a current cap on FY0809 funding from TS of £120m. The fall back position is that CEC would temporarily "fund" the shortfall of between £5m and £18m until the start of the FY0910 although our view is that at these levels the time lag between certification of work done and payment will ensure that CEC is unlikely to be required to find significant additional cash to meet a shortfall due to the current TS funding cap.

The implication of the current TS funding cap will be kept under close review as FY0809 progresses in the context of periodic reforecast of outturn expenditure and dialogue with TS officials.

2.3. Total project anticipated outturn versus total project funding

	FUNDING (total project)			Total COST (To Funders)
	TS	Other	Total	Promoter TOTAL AFC
Phase 1a	£500m	£ 45m [1]	£545m	£508.0m [2]
Phase 1b	£ 0m	£ 0m	£ 0m	£ 87.3m [2, 3]
Phase 1a + 1b	£500m	£ 45m	£545m	£595.3m
Phase 1a + 1b concurrent	£500m	£ 45m	£545m	£590.3m

Total anticipated outturn on Phase 1a has been adjusted upwards from £498m to £508m to reflect the final Infraco and Tramco prices and a consequential reappraisal of the Risk Allowance required to deliver the remainder of the project. It is considered that this out-turn is materially consistent with the Final Business Case.

Notes:
1. Includes £6.5m of CEC / s.75 free issue land.
2. If Phase 1b did not proceed then £3.0m of design costs for Phase 1b would require to be expended against Phase 1a funding.
3. The estimate for Phase1b is based upon agreed unit costs in the Infraco /Tramco contracts and is subject to finalisation in accordance with a value engineered and approved/consented design and programme. The finalised option price will be valid if an option under Infraco contract is exercised prior to 31st March 2009

FOISA exempt
☐ Yes
☐ No

2.4. Change Control

The current change control position is summarised in the table below.

£m	Phase 1a	Phase 1b	Phase 1a+1b
Final Business Case	498.1	87.3	585.4
Changes to reflect final Infraco/Tramco prices and contractual programme	9.9	-	9.9
Potential AFC	508.0	87.3	595.3

2.5. Summary Breakdown

Latest Estimate/AFC (including escalation)

	Base Cost	Risk	Opportunity	OB	(or)Contingency	Total
Phase 1a	£475.7m	£32.3m	£0	£0[1]	£0[2]	£508.0m
Phase 1b	£ 77.7m	£ 9.6m	£0	£0[1]	£0[2]	£ 87.3m
Phase 1a + 1b	£553.4m	£41.9m	£0	£0[1]	£0[2]	£595.3m

Notes:
1. OB included in risk.
2. Contingency included as part of risk.

Transport Edinburgh
Trams for Edinburgh
Lothian Buses

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA

Total Risk allowance: £32.3m

WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
11.1 Construction	994	The design for the lighting has yet to be approved by CECs Street Lighting section	Additional time or cost could be incurred in relation to the street lighting works	Compliance with their requirements may incur abortive works resulting in additional cost and delay to programme	17.50%		12.5		29-Aug-07	31-Oct-08
2 PROCUREMENT CONSULTANT	44	SDS contractor does not deliver the required prior approval consents before novation	Late prior approval consents	Delay to programme with additional resource costs and delay to Infraco. procurement. Impact upon risk balance.	50.00%	900	1800	2700	30-Jun-06	30-Nov-08
3 DESIGN	336	Adequate scope and extent of noise and vibration prevention measures/requirements are not provided to SDS; Specifications relating o Tram noise provided by Tramco are optimistic.	Design assumptions lead to Tram noise and vibration measures being inadequate during operation	Tram design requires to be re-worked; Post construction elements need to be adjusted or re-constructed or additional noise and vibration measures need to be incorporated.	10.00%	100		1000	01-Jan-07	31-Jan-11

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA

Total Risk allowance: £32.3m

WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
5 PARLIAMENTARY PROCESS/ APPROVALS	271	Inadequate quality of submission of approval. Partial submission of package. Programme compression. Lack of CEC resources.	Failure to process prior approvals applications within 8 weeks	Delay and disruption to Infraco programme	80.00%	750	750	1000	03-Jan-06	29-Aug-08
5 PARLIAMENTARY PROCESS/ APPROVALS	990	SDS are behind programme with design review certificates and tie have decided not to extend programme period to account for this.	CEC carry financial impact of uncertified designs provided to Infraco	Modifications required to the designs post-contract award resulting in additional costs	50.00%	500	750	1000	13-Aug-07	31-May-08
7.3 Infraco	279		Third party consents including Network Rail, CEC Planning, CEC Roads Department, Historic Scotland, Building Fixing Owner consent is denied or delayed	Delay to programme; Risk transfer response by bidders is to return risk to tie; Increased out-turn cost if transferred and also as a result of any delay due to inflation.	50.00%		1250		03-Jul-06	31-Dec-09
1 GENERAL/OVERALL	169	Concurrent major projects in Edinburgh	Other major projects in Edinburgh interface with Tram	Delay in sequence in certain areas, Additional interface project management costs.	50.00%	100	300	500	01-Mar-07	31-Dec-10
1.7 Miscellaneous	343	General delay to programme with various causes e.g. failure to obtain approvals on time; parliamentary processes, delays due to lack of prioritisation of BAA agreement with new owners	Delay to completion of project	Inflation at 5% causes increased out-turn cost due to delay plus revenue loss	40.00%	6000	15000	23000	31-Dec-10	31-Dec-11

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA

Total Risk allowance: £32.3m

WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
7.1.3 Depot	974	Inaccurate Topo Survey results	Increase in levels of Spoil Excavation	Increased Cost & Programme extension	25.00%	100	300	500	14-May-07	24-Aug-08
7.1.3 Depot	981	Existing Spoil Site Unable to accept future spoil	Increase in the Lothian Valuation Joint Board rateable value of the spoil site	New Landfill site will have to be found and agreements reached. Possibility of increased costs	80.00%	0	25	50	19-Jul-07	31-Mar-08
7.1.3 Depot	876	Agreement with SEPA to use Gravity Drain Proposal	Gravity Drain Proposal	Cost & time saving	79.50%	12.5	12.5	12.5	19-Mar-08	08-Jul-08
7.3 Infraco	952	Scope of works relating to Wide Area Modelling (WAM) have not been agreed with SDS because they consider this to be out with the scope of their contract.	Uncertainty about extent of construction works required on road network relating to Wide Area Modelling issues.	Potential claim from SDS to deal with additional design work; Potential construction costs to deal with WAM issues (difficult to quantify without design) over and above those already included	95.00%	0		3000	03-Jul-06	24-Sep-08
7.3 Infraco	931	Utilities assets uncovered during construction that were not previously accounted for; unidentified abandoned utilities assets; known redundant utilities; unknown live utilities; unknown redundant utilities.	Unknown or abandoned assets impacts scope of Infraco work	Re-design and delay as investigation takes place and solution implemented; Increase in Capex cost as a result of additional works	90.00%	500		1000	01-Oct-07	31-Jul-10

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA					Total Risk allowance: £32.3m						
WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period		
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
7.3 Infraco	172	Area of possible contamination and unstable ground (unlicensed tip) has been highlighted during desk study immediately to east of Gogar Burn - investigation for CERT project indicates that this consists of building rubble and domestic waste	Tramway runs through area of possible contamination and special foundation is required to cope with unstable ground	Increase in costs to provide special foundation solution	95.00%	100	200	300	01-Jan-07	31-Jul-08
7.3 Infraco	105	Encountering archaeological finds/burials/munitions during construction	Exhumation of archaeological finds/burials	Delay in construction programme	85.00%	0	150	500	28-Sep-07	31-Jul-10
7.3 Infraco	318	Failure to make arrangements with Utilities for the phasing of necessary connections; Utility Company operational constraints	Utility connections cannot proceed as planned	Potential delay to start of Infraco works in certain sections	50.00%	100		500	04-Apr-07	31-Jan-09
7.3 Infraco	173	Uncertainty over extent of contaminated land/hazardous materials on route	Tramway runs through area of previously unidentified contamination/hazardous materials and material requires to be removed and replaced (dig and dump).	Increase in costs to remove material to special and other tip	50.00%	1500	6000	8000	29-Sep-06	31-Jul-10
7.3 Infraco	865	Buildings contain asbestos that was not uncovered during surveys	Asbestos found during demolition works and excavations for construction	Cost and delay during investigation and removal	90.00%	60		150	01-Jan-08	31-Mar-09
1.1 Land & Property	352	Increase in land values	Higher land compensation claims than anticipated	Additional uplift on compensation claims	30.00%	0		4500	05-Mar-07	31-Dec-10
1.1 Land & Property	10	Costs of obtaining access rights are unknown	Cost associated with obtaining wayleaves	Increased legal costs relating to obtaining wayleaves	40.00%	50	200	500	02-Apr-07	25-Oct-08

Transport Edinburgh
Trams for Edinburgh
Lothian Buses

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA					Total Risk allowance: £32.3m					
WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
7.2 MUDFA/Utilities	164	Utilities assets uncovered during construction that were not previously accounted for; unidentified abandoned utilities assets; asbestos found in excavation for utilities diversion; unknown cellars and basements intrude into works area; other physical job	Unknown or abandoned assets or unforeseen/contaminated ground conditions affect scope of MUDFA work.	Re-design and delay as investigation takes place and solution implemented; Increase in Capex cost as a result of additional works.	95.00%	1000	3000	6000	02-Apr-07	31-Dec-08
7.2 MUDFA/Utilities	139	Utilities diversion outline specification only from plans	Uncertainty of Utilities location and consequently required diversion work/ unforeseen utility services within LoD	Increase in MUDFA costs or delays as a result of carrying out more diversions than estimated	90.00%	0	1200	2400	02-Apr-07	31-Dec-08
7.2 MUDFA/Utilities	342	Tram alignment at A8 crossing at Gogar co-incides BT data nests/cable (main coms link between Glasgow and Edinburgh) and sewer	A8 crossing tunnel requires special design or BT data nest/cables require to be moved or solution to sewer to be engineered		80.00%	1000	1250	1500	04-Apr-07	30-Sep-08
7.2 MUDFA/Utilities	914	Required approval/acceptance turnaround time does not reflect SUC standard practice; SUCs do not have enough resource or process capability to achieve 20 day turnaround	Statutory Utility Companies unable to meet design approval/acceptance turnaround time to meet programme	Additional period required for design approval/acceptanc e turnaround	95.00%		880		02-Mar-07	31-Dec-08

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA					Total Risk allowance: £32.3m					
WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
7.2 MUDFA/Utilities	911	Scottish Power own and maintain a cable tunnel in the vicinity of Leith Walk that may or may not interfere with Tram construction and operation; exact location and depth of tunnel is unknown; condition of tunnel is unknown.	Presence of Scottish Power tunnel in Leith Walk requires radical solution	Tunnel may have to be decommissioned and re-laid in a more suitable location; tram alignment may require to be adjusted; special foundation solution e.g. cantilever may be required; increased capex; potential for tunnel collapse during operation and	80.00%	400	500	600	02-Apr-07	31-Oct-08

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA

Total Risk allowance: £32.3m

WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
1.3.1 NR Immunisation Project	932	Information handed over in draft format as part of continual design development; Downstream Tram design change that impacts on requirements; Zone of interference not defined adequately	SDS gives wrong or insufficient information to Network Rail	Network Rail design their works inappropriately for final Tram requirements; Network Rail are unable to complete their design in time to meet programme; Cost to change design; Delay during redesign; Final works are not suitable and consequently Tram canno	5.00%	100	300	500	02-Apr-07	30-Oct-09
7.3 Infraco	134	Network Rail possessions over and above that estimate are required	Compensation paid to Train Operating Companies	Increased compensation paid to Train Operating Companies	5.00%	500	2000	4000	01-Oct-07	31-Jan-09
7.3 Infraco	115	Network Rail cancels planned possessions	Planned work at interface with Network Rail is delayed	Time delay and resulting cost increase	10.00%	350	750	2000	01-Oct-07	31-Jan-09

CEC00115700_0033

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA					Total Risk allowance: £32.3m					
WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
11.1 Construction	993	Due to a terrorism event relating to Edinburgh Airport or due to the mitigation of the risk of such an event occurring traffic restrictions introduced in the vicinity of the airport cause unacceptable delays for vehicles accessing and exiting from the sit	Free access cannot be guaranteed to the P&R site	Delays to construction vehicles could have impact on completion date and cost of construction, delays for car park users or buses could detract from usefulness and viability of facility	2.50%		12.5		01-Oct-07	31-Mar-09
2 PROCUREMENT CONSULTANT	337	Unsuccessful tenderer challenges procurement process (Tramco or Infraco)	OJEU procurement process is challenged	Possible retender; Delays, Legals costs to deal with challenge	5.00%	0		100	12-Jan-07	30-Oct-08
2 PROCUREMENT CONSULTANT	76	Introduction of TEL as client	Change of client during works	Delay and cost during re-negotiation of DPOF contract and additional approvals process	5.00%	12.5		12.5	03-Jul-06	30-Oct-08

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA

Total Risk allowance: £32.3m

WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
2.1 tie Resources	58	Poor performance (quality) by Infraco during construction; poor materials; latent defects	Infraco fails to deliver construction quality; latent defects occur during or after Infraco maintenance period	Rework, stakeholder criticism, negative PR, programme delay if quality issue occurs during construction, operations affected by rework, project management costs to deal with issues	10.00%	25	62.5	100	31-Dec-10	30-Dec-16
2.2 Transdev	888	Design, construction and/or testing does not meet Transdev requirements and gain approval from the ROGS Competent Person	Transdev refuse to operate system on safety ground or apply overly restrictive procedures that are not directly the responsibility of Infraco (ROGS Competent Person agrees with this)	Delay to commencement of service, additional cost both for delay and rectification of the issue	2.00%	3000	4500	6000	30-Jun-09	31-Dec-10
2.9 TEL	889	Unsuccessful negotiation. TEL believes costs inflated too much.	Target operating costs for Phase D are not agreed.	TEL Business Case becomes undeliverable. Potential to undertake Dispute Resolution to gain agreement.	1.00%		300		04-Jan-10	06-Jan-19
3 DESIGN	104	Delay in design information release from specialist tram manufacturer	Delay in detailing of stops, trackway, OLE etc for Phase 1B	Time delay and consequent costs	15.00%	0	25	83	01-Jan-07	30-Sep-08
3 DESIGN	162	Land is not acquired yet	Gaining access to land prior to purchase for advanced works	Increased management costs and delays to design	10.00%	0		30	02-Apr-07	28-Sep-08

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA

Total Risk allowance: £32.3m

WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
7.1.1 Invasive Species	869	Surveying team unable to obtain access to Network Rail, BAA and other privately owned land because they were not cleared to access this land (including PTS).	Extent of Invasive Species Area Exceeds Estimate from Survey	Underestimating the extent of works; leads to an increase in cost	17.50%		20		17-Apr-07	01-Apr-09
7.1.1 Invasive Species	879	Contractor is unable to get access to worksite due to access route being outside LOD and owned by others	Access to land to eradicate invasive species is not available when required	Programme Delay; contractor refuses to take ownership of risk 869 or includes high contingency in tender to allow for.	10.00%	0	10	20	12-Mar-07	01-Apr-09
7.1.2 Badger Relocation	894	Ineffective/Inappropriate Proposals; new setts must be built before old ones can be closed and licenses will not be issued until nearer time of closure; animals must have settled in new home before closure of old one can take place	Roseburn Badger Proposals for closure of old setts not approved by SNH	Delay in accessing land to construct Tram works and hence in Programme	17.50%	0	12.5	25	01-Oct-08	28-Nov-08
7.1.2 Badger Relocation	883	Ineffective/Inappropriate Proposals; new setts must be built before old ones can be closed and licenses will not be issued until nearer time of closure; animals must have settled in new home before closure of old one can take place	Gogarburn Badger/Otter Proposals for closure of old setts not approved by SNH/SEERAD	Delay in accessing land to construct Tram works and hence in Programme	10.00%	0	12.5	25	01-Oct-07	30-Oct-08

FOISA exempt

☐ Yes
☐ No

3 Risks Valued in QRA

Total Risk allowance: £32.3m

WBS Item	Allocated Risks				Impact Assessment 08 Feb 2008				Exposure Period	
	Risk ID	Cause	Risk Event	Effect	Prob	Current Impact Assessment £k			Start	End
					%	Min	Most Likely	Max		
5 PARLIAMENTARY PROCESS/ APPROVALS	977	Legal challenge. Extension of statutory consultation process. Large number of objections. TRO process is subject to a public hearing process.	Delay in achievement of TROs) due to a large number of public objections and/or a legal challenge to using a TTRO to construct Infraco.	Requirement to start construction using TTROs	90.00%		750		18-Jun-07	31-Dec-09

FOISA exempt
☐ Yes
☐ No

4 Phase 1b

Paper to:	**TPB**	**Meeting Date:**	12th March 2008
Preparer:	**Susan Clark**		

This paper is presented for information only and to allow a full discussion on the subject at Tram Project board in April.

Background

The Infraco contract is being negotiated on the basis of Phase 1b as an option to be exercised by **tie** / CEC by March 2009. This means that we effectively have until March 2009 to instruct the Infraco contractor to commence works on Phase 1b works. The Infraco contractor has indicated that if works commence by July 2009, then Phase 1b would be open for revenue service by December 2011. To allow a start as indicated by the Infraco contractor, there are a series of advance works required to be completed as follows;

- Utility diversions
- Invasive species treatment
- Badger sett relocation

In summary, to carry out these works would require a decision to be made by June 2008 and additional funding of £3m found for 2008/09. The total costs, programme and decision timescales are set out in the table below:

	Indicative Cost	Budget	Funding	Start	Complete	Decision
Utilities	£7.29m (excluding risk)	£7.29m (excluding risk)	NIL	Nov 2008	July 2009	June 2008
Invasive species	£50k	£200k	NIL	Summer 2008	3 years	June 2008
Badgers	£40k	£64k	NIL	Summer 2008	September 2009	June 2008

MUDFA Construction Programme

The utility diversion construction programme for Phase 1a is well underway and due to be completed in December 2008. To allow Infraco to commence construction works by July 2009, the utilities must be diverted and these works should therefore commence in November 2008.

- **Impact on Phase 1b delivery date** - Impact on end delivery date of 1b moving from Dec 2011 to Dec 2012 if diversions are not started until summer 2009.

Invasive Species

Japanese Knotweed and Himalayan Balsam are both present on Phase 1b and require treatment in line with what has been carried out on Phase 1a. Indicative costs for this work are £50k, but to be most effective the first treatment should be started this season if construction work is to start in July 2009. £200k budget is available for this work in the Phase 1b budget.

- **Impact on Phase 1b delivery date if decision delayed** – Treatment could be delayed until 2009 but treatment may not be as effective.

Badger Relocation

According to earlier surveys two social groups of badgers live in the Roseburn Corridor. Following a survey in 2005 work, advisers have recommended that four setts should be destroyed and that two artificial setts should be created. Based on previous work done it is estimated that the anticipated work in the Roseburn Corridor could cost around £40k to take forward. The phase 1b budget assumes £64k.

To have the badgers excluded from the setts in question before main construction work starts means that planning and gaining statutory approvals for this work needs to start in July 2008. Actual construction works would not start until October/November 2008.

- **Impact on Phase 1b delivery date if decision delayed** – if planning and construction was delayed then the 1b programme would be impacted by up to one year

Key Issues / Risks

Funding / costs
Currently no funding is available for Phase 1b apart from that for design costs. If the advanced works identified are to be carried out, then circa £3m of funding will be required in 2008/09. If funding was found and these works completed under the banner of advance works, there is a risk that these would be abortive costs if Phase 1b did not go ahead.

PR
There are PR risks associated with starting any of these works in advance. In particular, the Roseburn corridor contains some of the strongest objectors to the project, some of whom have recently been asking about when a decision on Phase 1b will be made.

Statutory
However it has been suggested that SNH are highly unlikely to grant a licence until they have been convinced that the Line 1b works are actually going to proceed. A licence application would not be made until 2009 in line with these timescales.

Recommendation

It is recommended that:
1) TPB take this paper for information only; and
2) The subject is put on the agenda for a full debate in April.

Proposed	Name Susan Clark Title Deputy Project Director	Date: 12 March 2008
Recommended	Name Steven Bell Title Project Director	Date: 12 March 2008

FOISA exempt
☐ Yes
☐ No

Trams for Edinburgh Small Business Support Scheme

Preamble

The Small Business Support Scheme was agreed between **tie**, CEC and the Edinburgh Chamber of Commerce in October 2006.

The scheme therefore consists of two key components:

1. The provision of £2m from the tram budget towards a small business support scheme which applies during MUDFA only. This consists of three sub elements:-

(i) £1.6m for the ***Primary Support Element*** which comprises of £3k or £4k payments to businesses who are able to meet the eligibility criteria.
(ii) £350k for the ***Additional Support Element*** which is essentially a top up scheme aimed at businesses which have to operate in construction hot spot areas. It is intended that these areas will be decided by **tie**, CEC and the Edinburgh Chamber of Commerce. The same criterion for the primary support element applies but also includes the requirement for the business to demonstrate a loss as a consequence of tram utility diversions.
(iii) £50k has been set aside to contract Cowan & Partners, the independent accountants to administer the scheme and therefore eliminate the need for a costly and time-consuming appeal mechanism.

The initial success of the **tie** element cannot be under-estimated for the following reasons:

- At present in excess of £500k has been paid out.
- Over 50% of businesses on Leith Walk have benefited from the scheme.
- The positive aspect of the scheme is demonstrated by the eligibility criteria for support being set at a rateable value of £28k per annum. This widens the scope for more small businesses to be included as the current Scottish Government criterion for the classification of a small business is set at a rateable value of £15k.

The Edinburgh Chamber of Commerce have up until now been content that the scheme covers its original intention which was to give some support to as many businesses as possible.

Note: From the outset it was never intended that this was to be regarded as a compensation scheme as that would involve much more detailed and costly investigation to substantiate losses.
It's also worth noting that in no other tram project, both in the UK or Europe, has any form of financial business support been provided. In the Nottingham Tram Scheme it was decided that small businesses in the Hysam area (equivalent of the length of Shandwick Place) would be able to apply for business compensation. £300k was set aside for this purpose.
2. The business rates reduction scheme which applies during MUDFA and INFRACo.

This consists of the Lothian Assessor's office determining the impact of the construction site on the property values of businesses as frontagers. This impact, if any, is then represented with a temporary reduction in the business rates. During negotiations with the Lothian Assessor's office it was eventually accepted by the Assessor that the tram construction programme was probably unique to any other public works. As a consequence the Assessor indicated the position in a statement provided to **tie's** which is as follows:

"Having considered the tramway proposals in detail, the Assessor is satisfied that the works involved will be on a wholly different scale from normal road-works involving surfacing and utilities repairs, to the extent that they may constitute a material change affecting value.

"The Assessor therefore intends to make temporary reductions in Rateable Values, for the duration of the construction works, to properties of a retail character whose main customer access is from the street fronting the tramway construction works.

"The standard reduction will be 20.0% and will apply to average situations such as may occur on Leith Walk, Princes Street and West Maitland Street.
Greater reductions may be applied in the most severe cases of disturbance which will be determined on an individual basis.

Reductions may however also be set at a lower percentage where properties are affected to a lesser degree, for example where they are set back from the construction works, such as at the southern section of Elm Row".

The Edinburgh Chamber of Commerce, the Federation of Small Businesses, **tie** and the City of Edinburgh Council have made representations to the Lothian Assessor's office that they do not believe that the spirit of the agreement is being applied. For instance, there is a shared view that the business rates reduction would have applied to both sides of the streets regardless of which side the works were taking place.

Note: It was always going to be difficult to realise the benefits of this part of the scheme as it is based on an evaluation of property which need not take account of all aspects of the construction. That being said most businesses along the line of the route which have both MUDFA and INFRACo works adjacent to their property will mostly receive 20%.

FOISA exempt
☐ Yes
☐ No

Review of the Edinburgh Tram Business Support Scheme

Recent changes:

The scope of the scheme was reviewed last year and again in recent weeks.

1. Last year **tie** and CEC expanded the scheme to include an additional £300k as part of a three year package to promote Edinburgh's Open for Business. A sub-group of the Edinburgh Retail Forum was set up and chaired by the Edinburgh Chamber of Commerce for the purpose for making the strategic decisions on marketing the City during tram construction.

2. In the last few months a further change was made which amended one of the eligibility criteria. Before businesses had to be operating prior to 1st April 2006 however this has changed to on or before 31st January 2008.

Scope for further changes:

Since the above changes **tie,** CEC and the Chamber of Commerce have considered that there may be scope for further changes to the scheme. This is based on the commitment that the money allocated to the scheme will be spent on business support and that it now looks highly likely that on the basis of existing take up the money allocated will not all be spent.

It is, therefore, recommended that future changes should take into account the need to:

- Promote a wider take up of the benefits of the scheme, and;
- Provide support to the wider business community including those businesses which are not eligible to apply.

Reason for the changes:

In recent months it has become evident that any immediate impact of the MUDFA utility diversions can be greater for businesses operating on side streets as opposed to frontagers. In particular this is the case where some streets have been closed off especially for several weeks. One example of this is the Jane Street junction with Leith Walk. In this instance the entrance to all traffic was closed for 18 weeks and this may have had a significant impact on two small businesses. Another example is the closure of Stafford Street at the junction with Shandwick Place. Some of the businesses immediate to this closure may experience some degree of impact.

At present businesses in these circumstances are excluded from the **tie** element of the scheme.

There are other instances where we need to heighten the profile of those businesses and business communities (Leith Walk, West End Traders, George

Street Traders and City Centre Traders) which have no access to the business support scheme especially those whose rateable value is slightly more than the £28k band such as those between £28k and £35k.

Recommended changes:

The Edinburgh Chamber of Commerce have raised the following options for consideration:

1. Widening the geographical scope of the scheme so as to reclassify the meaning of a frontager. This would apply to certain businesses on side streets.
2. Once the above is addressed any anticipated unallocated money in the budget should be allocated to the Open for Business resource. This would help support the message that we wish to support those businesses which are excluded under the £28k rateable value criteria through marketing their businesses and street area and therefore demonstrating an understanding that they too need help.

Note: Any further change to the rules needs to have a legitimate rationale based on the fact that there is a limited financial resource with a £2m limit. As in the initial scheme there also needs to be a clear definition of who can apply and who cannot. Up until now having a set of rules has worked.

1. Geographical scope of the scheme

It is proposed that the amendment to geographical scope covers the following area:

Any side street business immediately adjacent to the MUDFA works will now be included as a frontager for the purposes of the **Primary Support Element** of the scheme where:

a) it is located on a distance of no greater than 100 metres from the works or the end of the street if less than 100 metres, and;
b) the postal address of the business is for the street immediately adjacent to the works such as on Stafford Street for example.

The existing eligibility criterion for the Primary Support Element applies in these circumstances.

Cost of implementing this change:

The extension to the reclassification of a frontager would equate to approximately another 200 businesses being included in the scheme. Assuming that these 200 businesses completed successful applications and were each granted £4k this would deploy a further £800k of the £1.6m available. In effect this would possibly use up the bulk of the remaining funds available to the **Primary Support Element** of the scheme.

2. Open for Business resources

In order to address the continued support for those businesses that are unable to apply for the scheme due to the rateable value criterion it is therefore recommended that we top up the Open for Business fund with any money which may be remaining when after the money available under the geographical extension has been paid out.

It is viewed that this objective would be widely accepted by the entire business community representative of the line of the tram route.

EDINBURGH TRAM PROJECT

FINANCIAL CLOSE PROCESS – NOTE FOR TPB 9TH APRIL 2008

Background

The normal papers for the TPB meeting on 9th April, including the Project Director's Report, will be despatched separately in advance of the meeting.

The purpose of this paper is to explain the attached package of documentation which has been prepared to support Financial Close and the process to get there. The papers provided to the TPB (attached) are :

- Close Report (draft effective 7th April 2008)
- tie Report on Infraco, Tramco and CEC financial guarantee
- tie paper summarising the approvals and quality control process

These are detailed documents and it is not anticipated that all TPB members will read the material cover to cover. A summary of all of the key elements will be presented at the TPB meeting.

Close Report

This document is intended to capture the main terms of Infraco contract suite (Infraco, Tramco supply and maintenance, SDS Novation, Tramco Novation and CEC guarantee and all related schedules). The Report also summarises important areas surrounding the principal contracts, including progress on a range of contracts with third parties, the funding arrangements, support for the budget risk contingency, management of the overlap between design and construction, the future governance model and tie's readiness for the construction period. The report should therefore give informed readers a comprehensive view of all the key areas relevant to Financial Close.

A draft was provided to the TPB in late January 2008. This was updated and issued to CEC officials in the run-up to issue of Notification of Award letters on 18th March 2008. The updating reflected the finalisation of negotiations with BBS, CAF and SDS and consequential matters. Additional material was requested by CEC officials in certain areas and this was provided in papers apart. The TPB meeting on 12th March received a presentation on the important developments.

The version of the Close Report attached here is a further update reflecting some final amendments from the closing negotiations and the incorporation of the papers provided separately to CEC officials. The final position on price, programme, scope and the risk profile is set out in the report.

DLA Report

At the Council's request, DLA have reported their advice on the legal acceptability of the Infraco Contract Suite separately to the Council. Their report contains a detailed risk matrix which demonstrates where residual risk falls between the public and private sectors. This risk analysis has been matched with the risk contingency calculations embedded in the final project budget to ensure we have full alignment of risk and costs.

The DLA Report also addresses two key areas where tie has provided a detailed report for DLA's evaluation :

1) A summary of the Infraco / Tramco / CEC Guarantee terms
2) An evaluation of the risk of procurement challenge

The sections in the Close Report on these areas are in summary form only. The detailed analysis of the contract terms contained in the separate tie report has been attached to the DLA Report so that its confidentiality is fully protected by legal privilege.

In a similar vein, the Close Report provides a summary review of tie's assessment of the risk of procurement challenge. The more detailed paper offered for DLA's assessment has been detached again to create legal shelter as it contains confidential details of the bids and negotiations.

All of the above have been shared and discussed with CEC officials. The tie paper summarising the contract terms is attached but must be treated with strict confidentiality. It remains subject to updating for the final results of the negotiations but will not change in any material respect. Respecting the additional sensitivity of bid material, the procurement risk paper has not been attached but is available on request. The debrief meetings with the unsuccessful bidders were held on 4th April 2008 and an update will be provided at the TPB meeting.

Completion process and quality control

The third document attached is a synopsis of the quality control and approval processes being deployed to support commitment to the Infraco Contract Suite. This is to provide the TPB with visibility of the processes being followed but need not be examined in detail. The process is underway, with QC on the contract suite anticipated to pick up pace in w/b 7th April with the availability of final form legal documents.

GB
7th April 2008

EDINBURGH TRAM PROJECT
REPORT ON TERMS OF FINANCIAL CLOSE ("CLOSE REPORT")

FOR THE ATTENTION OF THE TRAM PROJECT BOARD, TEL BOARD AND TIE BOARD

DRAFT v9 7.04.08

Purpose of report

The principal contractual commitments to be entered into at Financial Close are :

- Infraco Contract Suite – incorporating Infraco and Tramco construction / supply and maintenance ; Tramco and SDS Novation ; security documentation ; ancillary agreements and schedules including Employer's Requirements
- Council Financial Guarantee
- Grant Award Letter
- Operating Agreements between the Council and respectively tie and TEL

Various important agreements with third parties have also been completed or are in substantially agreed form.

Two documents have been prepared to provide a comprehensive view of the principal terms of the contracts and related documents which are being committed to at Close. This report from tie provides information across a number of key areas. A parallel report from DLA covers the content of the Infraco contract suite including the legal underpinning to the final contract positions, addressing specific CEC concerns. The DLA Report is a separate document in order to protect the confidentiality of the legal advice offered to tie and CEC. Specific issues of interest to CEC are addressed in each document.

A reasonable degree of prior knowledge is assumed. A draft version was reviewed at the meetings of the TPB, tie Board and TEL Board on 23rd January 2008 and the approvals below were granted on that date. The delegated structure has been implemented.

It is understood that the Council will prepare appropriate papers for its own approval purposes, specifically to support the provision of delegated authority to the tie Executive Chairman to execute the contracts. The Council will also require to confirm its approval of the Grant Award Letter and the Financial Guarantee in addition to the contracts which will be entered into by tie.

TPB	approval of terms of Infraco and all related documents including note of main open areas, recommendation to TEL on those terms and on the proposed delegated authority to approve and sign ; approval of governance and delegation paper
TEL	approval of terms of Infraco and all related documents including note of main open areas, recommendation to Council on those terms and the proposed delegated authority to approve and sign ; acknowledgment of terms which will be assigned to TEL in due course ; approval of the TEL Operating Agreement and; approval of governance and delegation paper
Tie	approval of terms of Infraco and all related documents as basis for commitment, including note of main open areas; acknowledgement of the proposed delegated authority to approve and sign ; approval of the tie Operating Agreement ; approval of governance and delegation paper

Report Contents

Appendices

(1) Introduction

The significant stages in the project to date include :

April 2003	Ministerial approval of initial Business Case and grant award
December 2003	Finalisation of STAG and submission of Bills to Parliament
May 2004	Commencement of early operator involvement with Transdev
October 2005	Commencement of design work under SDS
April / May 2006	Royal Assent to Tram Bills
April 2007	Commencement of utility diversion work under MUDFA
May / June 2007	Change of government and re-confirmation of project
October 2007	OGC Gateway 3 Review
October 2007	Final Business Case for fully integrated system approved by CEC
December 2007	Resolutions to proceed approved by CEC
April 2008	Financial Close – construction and vehicle supply

Although there have been several key events, the completion of the contract suite which commits delivery of the system is highly significant in terms of the scale of commitment and the definitive nature of the programme to complete the project.

To reach this stage has involved close collaboration over a number of years between tie, TEL and the Council along with principal consulting and contractual partners. Throughout, progress has been monitored by the Project Board and the tie and TEL Boards, with full Council approval at key stages. Until mid-2007, Transport Scotland (and predecessor departments) played an active role in the project, since then a more arms length role has been played but crucially this has supported the commitment to the majority of the funding.

In addition to the routine involvement and monitoring of progress by stakeholders through the governance procedures, the project has been cleared through periodic Gateway Reviews, under the Office of Government Commerce rules and executed by experienced external assessors. A further independent review of the project was performed by Audit Scotland in June 2007, following which the principle of the Scottish Government's grant award was confirmed.

The balance of this report summarises the main features of the project and its supporting documentation as a basis to assess readiness for commitment. More detailed information is available on every aspect on request, subject to commercial confidentiality.

(2) Infraco contract suite

The DLA Report provides extensive commentary on the development and final content of the Infraco Contract Suite.

The narrative below addresses three fundamental areas :

- Price
- Programme
- Scope

THE MATERIAL IN THIS SECTION IS COMMERCIALLY CONFIDENTIAL AND FOISA EXEMPT.

2.1 Summary Pricing Statement – Infraco and Tramco

The following table summarises the final pricing for Infraco and Tramco in the context of the budget provisions made in the Final Business Case.

Infraco	£m
Negotiated Infraco Price	234.0
Other items / adjustments (see 8.2 below)	5.0
Net other items in Infrastructure budget	4.8
Total budget required for infrastructure	243.8
Increase in Base Cost compared to FBC	*17.8*
<u>Tramco</u>	
Negotiated Tram Supply Price	55.0
Other items (see 8.2 below)	3.0
Total budget required for Tramco	58.0
Increase in Base Cost compared to FBC	*6.6*

The increase in Base Costs for Infraco is a result of a negotiated position on a large number of items including the contractual interfaces between the Infraco, Tramco and SDS contracts and substantially achieving the level of risk transfer to the private sector anticipated by the procurement strategy. It also reflects capital expenditure required on lifecycle related costs including mobilisation of the maintenance teams and acquisition of spare parts.

The increase in Base Costs for Infraco of £17.8m approximates closely to the allowance which was made in the FBC for procurement stage risks i.e. the increase in Base Costs which might have been expected to achieve the level of price certainty and risk transfer which has been achieved.

The increase in Base Costs for Tramco results from lifecycle related costs required and, significantly, a material weakening of Sterling against the Euro in the period between Preferred Bidder appointment and the fixing of the exchange rate in late December following FBC approval.

A simple reconciliation of the total Risk Allowance for the project between FBC and Financial close is:

	£m
Risk Allowance in FBC	**49.0**
Risks crystallised in contract costs :	
Infraco	**(17.8)**
Tramco	**(6.6)**
Other risk items now in base cost	**(2.2)**
Increase in Phase 1a risk estimate deemed necessary as a consequence of previous increases and taking cognisance of updated QRA	**9.9**
Risk Allowance at Financial Close (see 8.6 below)	**32.3**

The total Phase 1a project cost budget is settled at £508m, of which £133m has been incurred by 31st March 2008.

2.2 Summary of Programme – Infraco and Tramco

The critical milestones are :

Contract Award	April 2008
Commence on site (demolitions)	April / May 2008
Commence on Street Works	August 2008
Commence Princes Street Blockade	January 2009
Decision on 1b	By March 2009
Take Delivery of 1st Tram	March 2010
Complete Depot & Test Track	March 2010
TRO made	December 2009
Construction substantially complete	January 2011
Commence Shadow running	February 2011
Edinburgh Tram Line 1a Open for Revenue Service	July 2011
Line 1b Open for Revenue Service (if instructed)	January 2012

This programme has been developed around key assumptions and constraints such as:

- Operation within Construction Code of Practice working hours
- Compliance with embargoes affecting key city centre and Forth Ports areas
- Design and approvals early start constraints
- MUDFA diversion early start constraints
- Critical BBS skill resource constraints (e.g. track welders / Overhead line staff)

The most significant of these are outlined below:

Design and Approvals relationship with INFRACO Construction Programme

The SDS design and approvals programme (including CEC and other 3rd Party approvals e.g. Network Rail) has been used during the development of, and to agree, the INFRACO Programme.

There are a number of areas where the Design and Approvals Programme is the early start constraint for INFRACO, principal amongst these are:

- Section 1A: Forth Ports area
- Section 2A: Haymarket Viaduct
- Section 5A Structures at Roseburn / Murrayfield
- Section 5B Balgreen Road
- Section 5C A8 underpass
- Section 6 Depot
- Section 7A Gogarburn Structures

Sections which link to the critical path within 1 month are:

Section 1A: Forth Ports area
Section 5A Structures at Roseburn / Murrayfield
Section 5C A8 underpass
Section 6 Depot

MUDFA relationship with INFRACO Construction Programme

The MUDFA Rev06 programme has been used during the development of and to agree the INFRACO Programme.

There are a number of areas where MUDFA is the early start constraint for Infraco, principal amongst these are:

- Section 6: Depot
- Section 2A: Haymarket Junction
- Section 1C: Princes Street, Picardy Place and St Andrews Square
- Section 1A Ocean Terminal – Newhaven & Ocean Drive at Victoria Bridge

The sections which link to the Construction Critical Path within 1 month are:

Section 6 Depot
Section 2A: Haymarket Junction
Section 1C: Princes Street, Picardy Place and St Andrews Square

TRAMCO relationship with INFRACO Programme

The TRAMCO design, manufacture, testing and commissioning programme has been used during the development of the INFRACO programme and has been fully interfaced with the Infraco programme.

2.3 Scope of works – Employer's Requirements

The scope of the project is defined in the Employer's Requirements Schedule to the main Infraco contract and the stated scope has been aligned to the contractor's proposal defining the construction approach and to the scheme design prepared by Parsons Brinckerhoff. This interlocking set of detailed documents combine to form the scope of the project in contractual terms.

The Employers Requirements (ERs) are a comprehensive and detailed set of specifications which set out the project obligations and responsibilities against which the construction consortium (BBS) must comply. It runs to some 650 pages and sits as a schedule within the Infraco contract. The document has evolved as the business case and design has been developed and reflects the inputs of the key 'user' stakeholders such as the Council, TEL and Transdev.

The document contains sections relating to how the project as a whole is to be delivered (for example project management, testing and commissioning and maintenance) as well the detailed systems and equipment requirements. The document was issued as part of the ITN package. Because it is essentially a procurement specification, wherever possible (and appropriate) tie have avoided being prescriptive and detailed because this would limit the freedom of bidders to propose their own specific, competitive solutions.

Since preferred bidder award, all of the ER terms have been reviewed in a three way technical alignment process:

- BBS proposal → ERs.

  To ensure that BBS proposals comply with the ERs. This has involved removing all of the stated non-compliances noted at the preferred bidder stage by either relaxing the ER clause (without affecting the output requirements) or by updating the proposal to make it compliant. Commercial alignment of the ERs and the Infraco proposals has been concluded.

- SDS design → ERs

  Because the SDS Design had responded to an up to date though not final draft of the ERs, the final alignment process produced no material mis-alignment issues. The final alignment review identified potential mis-alignment which was documented and assessed for its cost and programme implications and some minor amendments were agreed.

- Proposal → SDS design

  To ensure that in areas where the ER terms allow flexibility in approach, it was necessary to ensure that the BBS proposed solution was consistent with the SDS design. A review of the final Proposals against the SDS design was executed and again some minor amendments were agreed. The main issue was the extent of road reinstatement and adequate allowance has been made in the final budget to accommodate this factor.

In addition to these processes the ERs have also been reviewed in varying degrees of detail by three legal teams, DLA, BBS' lawyers and Siemens lawyers (because a far larger part of the ERs relate to Siemens scope). In these cases the ERs were checked for consistency and alignment with the contract suite. All evident ambiguities, duplications and gaps have been dealt with to ensure that as a vital contract document it can be used effectively in the future.

The tie team is confident that the final version of the ERs, the contract version fully meets the requirements of the client, i.e. is consistent with the technical principles of final business case; and is consistent with both the SDS design and BBS proposals.

(3) Grant Award Letter

Transport Scotland will provide up to £500m of the total capital cost and the balance will be provided by CEC, which has initially allocated £45m for this purpose. The source of these funds is a matter for the two funders. The Government grant is documented in an award letter which is specific to the project but follows standard terms for grants under S70 of Transport (Scotland) Act 2001. CEC has identified a range of sources and an independent review confirmed the validity of the assumptions made by the Council.

The programme concentrates on Phase 1a initially and the parties have the opportunity to commit to Phase 1b before 31 March 2009 on pre-agreed terms with BBS. During 2008-9, an assessment will be made of funding availability to support Phase 1b. Government contribution will not exceed £500m under the current arrangements.

Grant will be drawn down pro rata with Council contribution. The amounts of grant available in each financial year will be capped, with the balance of any undrawn grant added to the sum available in 2010-11. There are detailed arrangements for payment approval and audit.

With the contributions agreed, the pro rata drawdown mechanism becomes an accounting process each month and within tolerances will not create any difficulty. The annual capping does have potential to create difficulty, but it is felt there is sufficient tolerance in the spend plans versus funding availability that this limitation is manageable. The funding position will be actively managed and CEC anticipate receiving recovery from Transport Scotland for any interest cost incurred if borrowing is necessary to meet contractual commitments beyond the funding available from Transport Scotland in a particular period.

The terms of the grant letter are weighted in favour of the awarding body and fall short of the sort of protection which a borrower would seek from a commercial lending bank. This is however normal and the Council are satisfied that the terms of the award offer sufficient protection bearing in mind the relationship between Government and the Council.

The letter was negotiated with TS by tie and Council Finance and Legal officials with comment from DLA. See Section 7 for taxation assessment.

(4) Risk of procurement challenge

This section contributed by Jim McEwan, who performed a review of procurement process integrity independent of the main procurement team.

The legal advice provided to tie and CEC is summarised in the DLA Report.

<u>Summary</u>

Over the last 12 months tie has pursued the procurement of both the Infraco contract for the construction of the Tram infrastructure in its entirety and the Tramco contract for the supply and delivery of the Tram vehicles. The focus of the procurement strategy was to deliver fixed price contracts for each.

The process followed for each contract was consistent with that specified by the EU directive on Public procurement and details of the evaluation methodology employed are outlined below.

The Bilfinger Berger and Siemens (BBS) consortium have been duly awarded the Infraco contract.

CAF has been awarded the Tramco contract.

In the event of any challenge to these awards tie is well placed to successfully defend the fairness and integrity of the process undertaken in the selection.

<u>Infraco</u>

The Evaluation Methodology employed by tie in the Tram Project is detailed in a document dated 8th January 2007 'Evaluation Methodology for submissions in response to the invitation to negotiate issued on 3rd October 2006 for the procurement of the Infraco for Edinburgh Tram Network' .

In the process 6 key areas were identified in the evaluation and a stream leader appointed to each :

Financial
Programme and Project Execution Proposals
Project Team and Resources
Technical and Design proposals
Legal and Commercial
Insurance

Evaluation team members were identified in the methodology together with stream leaders for each of the key areas

Each team was charged to prepare a 'consensus' score matrix on each of the key areas, these have been duly completed and lodged in the central document repository.

Proper probity on the process was maintained with financial information being restricted to only those in the finance stream and to the tie executive team.

Security employed on maintaining confidentiality was consistent with best practice with documentation stored in a locked room and the financial documentation stored in a locked cabinet within the room. (Note: The details of the financial bids were only available to those in the Financial stream, the evaluation of the other streams was therefore carried out without prejudice on costs.)

All meetings with Suppliers were documented and the notes of said proceedings are held in the central repository.

Financial position was reviewed as was the normalisation process which ensures bids are viewed on an equal footing basis

Tramco

The Evaluation Methodology employed by tie in the Tram Project is detailed in a document dated 11th October 2006 and titled Tramco Evaluation Methodology.

The process employed was identical to that employed in the Infraco evaluation as detailed above with 6 streams and the same methods of approach on scoring, confidentiality, probity and security. All required documents have been lodged in the central document repository.

(5) Third Party Agreements

This section contributed by Alasdair Sim, who took the lead role developing the agreements. A second (and consistent) view on risk is provided by Stewart McGarrity in Section 8.

In addition to the principal Infraco Contract Suite, there are a number of agreements which are of varying significance to Financial Close. This section describes the purpose and status of these agreements, together with an assessment of the level of risk to programme / cost arising from the agreements remaining open at the date of Financial Close.

THE AGREEMENTS ASTERISKED ARE REGARDED AS THE MOST IMPORTANT IN RELATION TO REACHING A ROBUST POSITION AS AT FINANCIAL CLOSE.

The agreements addressed in this section are as follows :

5.1 Edinburgh Airport Limited - Licence *
5.2 Edinburgh Airport Limited – Lease *
5.3 Edinburgh Airport Limited – Operating Agreement
5.4 CEC/tie Licence *
5.5 SRU Agreement
5.6 Royal Bank of Scotland Agreement
5.7 Local Code of Construction Practice – Forth Ports *
5.8 Local Code of Construction Practice – New Edinburgh Limited *
5.9 Local Code of Construction Practice – Edinburgh Airport *
5.10 Network Rail Asset Protection Agreement *
5.11 Network Rail Depot Change *
5.12 Network Rail Station Change *
5.13 Car Park Compensation Agreements
5.14 Network Rail Framework Agreement *
5.15 Network Rail Lease & Servitude Agreements
5.16 Forth Ports Agreement
5.17 Stanley Casinos Agreement
5.18 Other Site Specific Code of Construction Plans
5.19 Licence – The Gyle
5.20 Licence – West Craigs
5.21 Network Rail – Neighbour Agreement
5.22 Network Rail – Operating Agreement
5.23 Network Rail – Bridge & Bridge Lease Agreements
5.24 Telewest utility agreement
5.25 Scottish Power utility agreement
5.26 DPOFA 2007 Revision
5.27 Mobilisation agreements (Infraco and Tramco)

5.1 Edinburgh Airport Limited - Licence *

Purpose of Agreement
This is a licence agreement between Edinburgh Airport Ltd and City of Edinburgh Council, the purpose of which is to enable/facilitate the construction of the Edinburgh Tram within the boundary of Edinburgh Airport. This agreement covers MUDFA and INFRACO works as well as the construction of the Burnside Road alternative access route, and sets out the working arrangements between EAL, tie/CEC and contractors working on the Edinburgh Tram Network.

Current Status of Agreement
The agreement is signed. This agreement has been drawn down into Schedule 14 of the INFRACO Contract.

5.2 Edinburgh Airport Limited – Lease *

Purpose of Agreement
This is a 175 year lease between Edinburgh Airport Limited and City of Edinburgh Council to facilitate the operation of the Edinburgh Tram Network. This lease follows the terms of the Minute of Agreement signed by the two parties during the Parliamentary process in September 2005.

Current Status of Agreement
This agreement is signed.

5.3 Edinburgh Airport Limited – Operating Agreement

Purpose of Agreement
The purpose of the operating agreement is to set out operational interface arrangements and procedures for running passenger services to and from the airport. This agreement will be an evolving document which will be updated periodically during the lifetime of the project.

Current Status of Agreement
An outline document is current under review by tie and TEL. The intention is to develop this document into draft agreement form during the first quarter of 2008, and complete the agreement prior to commencement of passenger services.

Risk to INFRACO Contract Award
The Operating Agreement is a non-construction related document and the risk to award of INFRACO Contract is considered low.

5.4 CEC/tie Licence *

Purpose of Agreement
The purpose of this licence is to pass over responsibility for land acquired for the ETN from CEC to tie. This will enable tie to manage the process of making land available to INFRACO on a programme/needs basis using the agreed Land Access Permit Procedure. CEC will manage the land/asset until the point that INFRACO take occupation of each worksite.

Current Status of Agreement
The agreement is signed.

5.5 SRU Agreement

Purpose of Agreement

This agreement governs design and construction activities in the vicinity of the Murrayfield Stadium. The agreement includes the construction of the Murrayfield Tram Stop, Roseburn Street Viaduct, Murrayfield Stadium Retaining Wall, the Wanderers Clubhouse remodelling, access accommodation works and the relocation of the training pitches. The agreement also sets out the requirement to develop a local construction plan which the INFRACO contractor will be obliged to comply with. This includes arrangements in relation to the temporary occupation of land within the Murrayfield site. The draft SRU agreement has been stepped down into Schedule 14 of the INFRACO Contract.

Current Status of Agreement

The only outstanding matter relates to the S75 agreement. which CEC intend will replace the current Section 50 agreement. This will be discharged as part of the agreement.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of Murrayfield in June 2008. Risk to award of INFRACO Contract is considered low.

5.6 Royal Bank of Scotland Agreement

Purpose of Agreement

This agreement builds upon the existing Section 75 Agreement signed in 2002 between RBS and CEC which committed RBS to fund the design, procurement and construction of the Gogarburn Tram Stop. The current proposal is for the INFRACO contractor to undertake the works within RBS land under licence, and sets out the procedure for CEC to later acquire the operational land based on the 'as built' (and at nil cost) using the GVD process. The agreement also covers the desire of RBS to maintain the landscaping between the Gogarburn Tram Stop and the A8 Glasgow Road.

Current Status of Agreement

The agreement is currently in draft format, with finalisation expected on completion of the detail design, as this will allow final costs for the tram stop to be calculated. RBS have provided written confirmation that access to the land will be secured under licence.

Risk to INFRACO Contract Award

INFRACO works are expected to commence in the vicinity of Gogarburn from mid-2009. Risk to award of INFRACO Contract is considered low.

5.7 Local Code of Construction Practice – Forth Ports *

Purpose of Document

The existing Minute of Agreement between Forth Ports and CEC requires the development of a Local Code of Construction Plan to govern how the construction works are to be undertaken within the Forth Ports area. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction. The Forth Ports Minute of agreement is included with Schedule 14 of the INFRACO Contract.

Current Status of Document
tie and BBS are currently drafting a local COCP with Forth Ports and have reached agreement with Forth Ports on the general approach to construction in the Leith Docks area. tie meet with the Forth Ports Project Manager on a weekly basis and will continue to evolve the local construction plan as certainty on programme is established.

Risk to INFRACO Contract Award
INFRACO works are expected to commence in the Forth Ports area from November 2008. MUDFA works will recommence in the Leith Docks area following the Easter embargo period from April 2008, and is currently being undertaken on a work by works licence basis, which contains the relevant elements that INFRACO will include within the final Local Code of Construction Practice document.

Forth Ports, tie and BBS have been undertaking preliminary discussions around programme and approach to construction. Forth Ports have expressed a willingness to work with BBS to have the works completed in the Leith Docks area as quickly and seamlessly as possible. As a result, the risk to award of INFRACO Contract is considered low.

5.8 Local Code of Construction Practice – New Edinburgh Limited *

Purpose of Document
The existing Minute of Agreement between New Edinburgh Ltd and CEC requires the development of a Local Code of Construction Plan to govern how the construction works are to be undertaken within Edinburgh Park. This would include method statements, programme details and consultation/notification requirements to be agreed prior to the commencement of construction.

Current Status of Document
tie and BBS are currently drafting a local COCP for Edinburgh Park and have consulted with Edinburgh Park Management Ltd and New Edinburgh Ltd on programme and approach to construction. NEL have confirmed in writing their acceptance of the construction programme.

Risk to INFRACO Contract Award
INFRACO works (track) are expected to commence in Edinburgh Park from June 2008, with construction of the Edinburgh Park Station Bridge commencing in August 2008. NEL have confirmed their acceptance of the programme and as a result, risk to award of INFRACO Contract is considered minimal.

5.9 Local Code of Construction Practice – Edinburgh Airport *

Purpose of Document
The licence between EAL and CEC sets out construction requirements in Schedule Part 5 – Development Rights and Obligations. This agreement has been drawn down into Schedule 14 of the INFRACO Contract.

Current Status of Document
tie and BBS are currently drafting a local COCP based on the obligations set out in Schedule Part 5 of the EAL Licence Agreement. tie meet with the EAL Project Manager on a four weekly basis and are currently working with EAL to ensure that tram construction activities integrate with other works ongoing within the Airport. EAL are content with the approach and tie/BBS will continue to evolve the local construction plan as certainty on programme is established

Risk to INFRACO Contract Award

INFRACO works are expected to commence in September 2008. Positive engagement between EAL and BBS is ongoing and as a result, risk to award of INFRACO Contract is considered low.

Network Rail (NR) agreements – general

The suite of NR agreements comprises the following :

- Asset Protection Agreement
- Station & Depot Change (NR with the Train Operating Companies)
- Framework Agreement
- Lease and Servitude Agreements
- Neighbour Agreement
- Bridge Agreement and Lease
- Lift & Shift Agreement
- Immunisation

5.10 Network Rail Asset Protection Agreement *

Purpose of the Agreement

The APA is an agreement between NR and CEC which governs design/construction activities as well as access to Network Rail land. The APA is designed to ensure that the heavy rail network can operate in tandem with the construction and commissioning of the ETN.

Current Status of Agreement

The APA has been signed.

Risk to INFRACO Contract Award

This allows INFRACO to undertake works on NR land and there is consequently no material risk.

Additional comment provided by DLA

The Asset Protection Agreement with NR has been concluded. This has been an arduous process, however the outcome is a document which achieves significant commercial improvements for tie/CEC on what was originally offered by Network Rail. The arrangement is nevertheless heavily tilted in Network Rail's favour, as is inevitable given the starting point of the biased regulatory template agreements. The main improvements secured have been:

- *Significant widening of the circumstances in which tie can recover money from Network Rail;*
- *Reasonableness in Network Rail actions and ability to refer to the Infraco ETN Suite form of Dispute Resolution Procedure;*
- *Dilution of indemnities given by tie to Network Rail to a mutually acceptable level.*

The unreasonable position taken by Network Rail regarding the indemnities contained in the Protection Provisions Agreements (entered into to remove Network Rail's objection to the tram scheme) delayed closure for a considerable time. This has now been resolved to restrict the scope and duration of this indemnity, particularly during construction.

5.11 Network Rail Depot Change *

Purpose of Document

This is a regulated process between Network Rail and First ScotRail, the operator of the Haymarket Light Maintenance Depot. Depot change is the process which defines the revised lease arrangements which will be required as a result of the tram construction and operation. This procedure also defines the methodology of undertaking works in the vicinity of the Haymarket Depot and sets out the interface requirements of the Depot Manager. A key requirement of FSR is that only one contractor (at a single work site) will be permitted to conduct works within the depot area at any given time. BBS, NR and First ScotRail are working together to ensure that this requirement can be met.

Current Status of Document

The formal submission of the Depot Change (by NR) to FSR was completed on 11/01/08. The regulated process allows for a maximum review period of 45 calendar days for comments to be submitted. FRS notified NR on 04/03/08 of their acceptance of the Depot Change proposal. The confirmed Depot Change Proposal was sent to the ORR for ratification on 07/04/08.

Risk to INFRACO Contract Award

INFRACO works at Haymarket Depot are scheduled for commencement after completion of the NR Pollution Prevention Works Contract (PPLMD). tie, BBS and NR are currently working to integrate the two programmes in order to minimise the risk of delay to INFRACO. At present, NR expect the PPMLD works to be completed at the end of September 2008, with INFRACO works scheduled to commence on the Roseburn Street Viaduct in January 2009.

The Risk to award of INFRACO Contract is therefore considered low.

5.12 Network Rail Station Change *

Purpose of Document

This is a regulated process between Network Rail and First ScotRail as the operator of Haymarket Station. The Station Change procedure also requires the consent of the other Train Operating Companies (TOC's) using the station and these are; Arriva Cross Country, Virgin, Trans Pennine Express, National Express East Coast and EWC.

The station change concerns the permanent loss of 49 parking spaces at Haymarket Station Car Park and the temporary closure of the car park as a result of the construction of the Haymarket Viaduct and Tram Stop, as well as the relocation of taxis currently operating from the forecourt of station.

Current Status of Document

NR formally submitted the Station Change proposal to FSR on 16/01/08, which triggers the start of the 45 calendar day consultation process which ended on 01/03/08. FRS notified NR on 04/03/08 of their acceptance of the Station Change proposal. The confirmed Station Change Proposal was sent to the ORR for ratification on 07/04/08.

Risk to INFRACO Contract Award

As the Station Change proposal has been accepted by FSR and the other train operating companies who use Haymarket Station, the Risk to award of INFRACO Contract is considered minimal.

5.13 Car Park Compensation Agreements

Purpose of Document

The loss of income generating cark park spaces at Haymarket Station is a compensation matter for both NR and FSR. Under Station Change, FRS receives a standard indemnity from Network Rail to cover losses, so the commercial arrangements can be negotiated separately and do not form part of the Station Change approval process.

Current Status of Document

FSR have confirmed that the compensation formulae adopted for the Platform Zero settlement will be used as a basis for this negotiation, reflecting the duration of the FSR franchise. An estimate of the likely compensation to NR has been prepared with input from the District Valuer. tie's internal calculations on this basis indicate that the final compensation settlement is likely to be within the current budget allowance. .

Risk to INFRACO Contract Award

The compensation settlement to both NR and FSR are commercial arrangements which have a budget allocation within the FBC and are not part of the Station Change approval process. There is therefore minimal risk to the award of the INFRACO contract.

5.14 Network Rail Framework Agreement *

Purpose of Agreement

This is an overarching document beneath which reside a suite of construction, property and operations related agreements.

Current Status of Agreement

The Framework agreement has been approved by Network Rail management and legal advisors and we are awaiting formal signature by NR London.

Risk to INFRACO Contract Award

The agreement is not construction related and therefore represents minimal risk to award of the INFRACO contract.

5.15 Network Rail Lease Agreements & Servitudes

Purpose of Document

Two leases are proposed, the first; with NR as landlord is a 175 year lease to allow operation of the ETN on NR owned land. The second lease is with CEC as landlord and allows NR to use the relocated car park at Haymarket Depot. The servitude agreements for Balgreen Road and Haymarket Station allow NR rights of access to the railway and NR owned infrastructure over CEC owned land.

Current Status of the Agreements

The documents are in agreed and final form. The tram lease does not become active until after construction and commissioning have been completed, and is suspensive on the execution of an Operating Agreement with Network Rail.

Risk to INFRACO Contract Award

These documents are not construction related, so the Risk to award of INFRACO Contract is insignificant.

5.16 Forth Ports Agreement

<u>Purpose of Agreement</u>
The original "Minute of Agreement" between CEC and Forth Ports was signed in February 2006 and sets out a range of requirements for the SDS design in key areas of Forth Ports land. A variation of the Minute of Agreement was documented in Heads of Terms in November 2007. The variation related to changes requested by FP to the design which will be funded by Forth Ports.

<u>Current Status of Agreements</u>
Forth Ports have stated that they have a concern about the composition of the baseline design in one specific area (Lindsay Road junction) against which future changes will be measured and funded by FP. Resolution of this matter will now delay signing the agreement with FP and depends on the final agreed scope of junction works at Ocean Drive West and the extent of funding from Forth Ports to support their aspirations.

The transfer of land from Forth Ports to CEC will be part of the FP contribution to the project, and this is part of the existing Section 75 agreement.

<u>Risk to INFRACO Contract Award</u>
This agreement should not impede signing of the Infraco contract. Although tie believes there is an important principle at stake which FP have sought to revise inappropriately, there is common ground on the design aspiration and the solution will emerge from the joint assessment of design options. The matter is assessed in risk terms at Section 8.5 below.

5.17 Stanley Casinos Agreement

The Stanley Casinos side agreement is also design dependant and is in agreed form and takes cognisance of the revised junction and access proposals at the Constitution Street/Ocean Drive junction. The agreement will also include provision for remodelling the Casino car Park. There is no risk to award of the INFRACO Contract.

5.18 Other Site Specific Code of Construction Plans

<u>Purpose of Documents</u>
As part of the suite of side agreements drawn down into Schedule 14 of the INFRACO Contract, there is a requirement in several agreements for the contractor to develop a local construction plan or CoCP as part of the notification/consultation process in advance of the works commencement. The relevant agreements are:

- USS
- Safeway/Morrisons
- Murrayfield Indoor Sports Club
- ADM Milling
- Ocean Terminal
- Royal Yacht Britannia
- Baird Drive Residents (Community Liaison Group undertaking)

<u>Current Status of Documents</u>
tie and BBS have prepared a suite of drafts setting out the construction related requirements of the relevant side agreements.

It is notable that the construction requirements laid down in these side agreements generally relate to those aspects of site working such as confirmation of programme, maintenance of access during the works, pedestrian management, dealing with dust/noise, site cleanliness, reinstatement of property etc, that one would normally expect a competent contractor to be cognisant of.

Risk to INFRACO Contract Award
All relevant 3rd Party agreements are detailed within the INFRACO contract in Schedule 14. The requirements on Infraco are entirely in line with normal construction practice and the risk to CEC for award of the INFRACO contract is considered low.

5.19 Licence – The Gyle

Purpose of Document
The licence will allow the INFRACO contractor to undertake the works within Gyle owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to The Gyle is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement
The Gyle have accepted the proposal to construct the works under licence. The licence is now signed.

Risk to INFRACO Contract Award
INFRACO works are expected to commence in the vicinity of The Gyle from June 2008. There is no risk to the award of the INFRACO contract.

5.20 Licence – West Craigs

Purpose of Document
The licence will allow the INFRACO contractor to undertake the works within West Craigs owned land prior to permanent acquisition. In agreeing to undertake this work under licence, CEC will be able to meet the terms of the existing side agreement whereby permanent land take is to be minimised. At this stage in the design process, SDS cannot define with certainty the extent of the operational land. The proposal made to West Craigs is therefore to defer permanent acquisition until this certainty is available.

The acquisition of the 'as built' operational land will eliminate the risk of not meeting the obligations of the side agreement. The existing side agreement already makes provision for a licence to undertake works.

Current Status of Agreement
The license is now signed.

Risk to INFRACO Contract Award
INFRACO works are expected to commence on the proposed licence site from January 2009. There is no risk to award of the INFRACO contract.

5.21 Network Rail – Neighbour Agreement

Purpose of Agreement
This agreement sets out the benefited and burdened property between CEC and Network Rail land. This agreement ensures that access to the railway network across tram land is maintained at specified points, and defines the various structures supporting the adjacent heavy rail property.

Current Status of the Agreement
The neighbour agreement is in agreed and final form and does not get signed per se, but rather the agreed burdened property plans are registered with The Keeper (Registers of Scotland). This will happen when the framework agreement is returned

Risk to INFRACO Contract Award
The Neighbour Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

5.22 Network Rail – Operating Agreement

Purpose of Agreement
The purpose of the operating agreement is to set out operational interface arrangements and procedures for running tram passenger services adjacent to the railway line. This agreement will be an evolving document which will be updated periodically during the lifetime of the project.

Current Status of Agreement
A draft is current under review by tie and TEL. The intention is to develop this document into draft agreement form during the first quarter of 2008, and complete the agreement prior to commencement of passenger services.

Risk to INFRACO Contract Award
The Operating Agreement is a non-construction related document and the risk to award of INFRACO Contract is considered low.

5.23 Network Rail – Bridge Agreement & Bridge Lease

Purpose of Agreement
The purpose of the Bridge Agreement and Bridge Lease is to allow operation of the ETN and set ongoing maintenance and operational responsibilities for the Carrick Knowe and Edinburgh Park Station Bridges, as these structures interface directly with the heavy rail network. The APA governs the construction of these bridges.

Current Status of Agreement
The framework agreement sets out that NR and CEC will work together, both acting reasonably, to develop a post construction Bridge Agreement. CEC will not be exposed to future network enhancement costs in relation to bridges.

Risk to INFRACO Contract Award
The Bridge Agreement is a non-construction related document, and for this reason, it offers insignificant risk to CEC for award of the INFRACO Contract.

5.24 Telewest utility agreement

Purpose of Agreement
The purpose of the Agreement is to set out how the diversion of utilities owned by Telewest are to be managed during the MUDFA works.

Current Status of Agreement
The contract has now been signed.

Risk to INFRACO Contract Award
This is a MUDFA related agreement, and as a result it offers insignificant risk to CEC for award of the INFRACO Contract.

5.25 Scottish Power utility agreement

Purpose of Agreement
The purpose of the Agreement is to set out how the diversion of utilities owned by Scottish Power are to be managed during the MUDFA works.

Current Status of Agreement
The agreement is in agreed and final form, and the return of the signed, engrossed agreement is awaited from Scottish Power.

Risk to INFRACO Contract Award
This is a MUDFA related agreement, and as a result it offers insignificant risk to CEC for award of the INFRACO Contract.

5.26 DPOFA 2007 Revision

A negotiation was concluded with Transdev to amend the DPOFA signed in 2004. The process is now complete and the principal agreed changes relate to :

- Improved performance bond underpinning both mobilisation and operating obligations
- Alignment with Infraco contract where previous drafting was based on anticipated Infraco terms
- Scope revised to reflect the Phase 1a / 1b configuration from the originally anticipated Lines 1 and 2
- Revisals to KPI performance regime based on up to date commercial view.
- Replacement of original tram revenue incentive mechanism with a reduced cost recharge, reflecting a fully integrated bus and tram system
- Alignment of insurance arrangements under OCIP
- Obtained tram cost synergy savings with introduction of TEL being responsible for transport integration

5.27 Mobilisation agreements (Infraco and Tramco)

The pre-close mobilization agreements with Infraco and Tramco are designed to enable works necessary to maintain programme. The agreements are The Advance Works and Mobilisation Contract ("AWM") and Tram Advance Works Contract ("TAW").

The core of the AWM is that Infraco will perform a schedule of works with payment determined by "Agreed Element Estimates" agreed by the parties in respect of each element of work.

The AWM does not overlap with the Infraco Contract because, when the Infraco Contract is entered into, the AWM automatically terminates. The Infraco Contract therefore deals with payment and other terms relating to advance works underway at that time. The TAW works similarly, in that it ends automatically when the Tram Supply Agreement is entered into.

(6) Land acquisition arrangements

Purpose of process

The process of assembling land required for the construction and operation of the Edinburgh Tram Network has been managed using a combination of Compulsory Purchase (using the General Vesting Declaration Procedure), and entering into long term lease arrangements with Network Rail and Edinburgh Airport Limited.

Current Status of Agreement

By financial close, the position in regard to Land available to INFRACO is as follows:

Nature Of Land	Land Area (sqm)	Available to INFRACO	Land Take Achieved	Target Date	No Plots
Pre GVD	498	Yes	0.1%	Nov-05	3
GVD 1&2	177467	Yes	21.0%	Feb-07	43
GVD 3	167854	Yes	19.9%	Jul-07	22
GVD4	43323	Yes	5.1%	Sep-07	19
GVD5	2381	Yes	0.3%	Dec-07	5
GVD6	83588	Yes	9.9%	Dec-07	17
Licences	24885	Yes	2.9%	Jan-08	14
BAA Licence	18388	Yes	2.2%	Nov-07	17
NR APA	42480	Yes	5.0%	Feb-08	37
Forth Ports (S75)	80293	Yes	9.5%	Mar-08	51
Adopted Roads	202521	Yes	24.0%	Achieved	78
	843679		100.0%	Total	306

Of the total land required, 85.5 % is under the control of CEC through ownership or license, a further 9.5% is committed under Forth Ports existing S75 agreement with the balance of 5% subject to the Network Rail APA agreement which has now been signed.

(7) Governance & corporate arrangements

7.1 Governance & delegations

The Governance model deployed to oversee and control the project has evolved as the project itself has moved through different stages of development. Appendix 2 is a detailed paper which was approved by the Boards on 23rd January 2008 and which has been updated to reflect the final position as at Financial Close. The paper sets out :

1) the proposed governance model for the construction period ; and
2) the proposed levels of delegated authority

The paper is an update of previous submissions to the Boards and differs only in two material respects – the inclusion of specific levels of delegated authority and alignment with the terms of the tie and TEL Operating Agreements (see below). Neither of these factors should cause concern : the levels of delegated authority are in line with those previously deployed by the TPB and the terms of the operating agreements have been subject to significant scrutiny by senior people over recent months.

7.2 Operating agreements

These agreements are now in final agreed form.

tie

The tie agreement was previously reviewed by the tie Board in December 2007 and the changes since then are in line with the request made by the tie Board. The tie agreement supercedes the existing agreement on matters relating to the tram project and sets out tie and the Council's mutual responsibilities for delivering the tram project.

TEL

The TEL agreement reflects TEL's role but the detailed wording is consistent with the tie agreement. The TEL agreement sets out the specific authority delegated to it by the Council with acknowledgement that TEL will sub-delegate its authority to the TPB.

These internal agreements have been settled, where possible, taking account of DLA Piper's advice to tie and CEC in relation to (i) their acceptability as evidence of agency authority to transact and (ii) their potential adverse impact on the project's strategy towards competition law.

7.3 Taxation

Advice has been taken from PwC on two principle areas :

1) The tax effect of the Infraco contract suite structure ; and
2) The VAT status of the grant funding

The main objective in tax planning has been to ensure that the arrangements were VAT neutral such that there would be no irrecoverable input VAT and that no unforeseen output VAT would require to be accounted for. We have a formal report from PwC addressed to tie, CEC and TEL confirming this. We have also engaged with HMRC and have a clearance letter from them confirming that the objective is achieved. The contract structure has also been assessed by PwC to ensure that it will be possible in due course to establish a cost base in TEL by either selling or leasing system assets owned by CEC which will create corporation tax shelter in TEL. This could prove very valuable over the operating period of the integrated system.

(8) Risk assessment of in-process and provisional arrangements

This section contributed by Stewart McGarrity, who reviewed those areas of the documents which are provisional in nature and the documents which will be in draft form at Close.

THE MATERIAL IN THIS SECTION IS COMMERCIALLY CONFIDENTIAL AND FOISA EXEMPT.

8.1 Overview

tie's approach to identifying and managing risks was fully explained in the Final Business Case. This section reviews the current status of the risks relating to the Infraco and Tramco contracts which have been identified as wholly or partly retained by the public sector beyond Financial Close which are:

- The process for granting of approvals and consents;
- The process for granting of permanent TRO's
- The interface with the implementation of utility diversion works
- Delays to design approvals for reasons outside the control of the Infraco
- Stakeholder instructed design changes

Specific areas covered are:

- Price certainty achieved through the Infraco and Tramco contracts with a view on items included in the contract price which will remain provisional at Financial Close
- Specific exclusions from the Infraco contract price
- Responsibility for consents and approvals

And as an area of particular concern to stakeholders:

- The risks associated with significant 3rd Party Agreements not concluded in full at Financial Close.

8.2 Price certainty achieved

The Tramco price agreed at £55m is a fixed sum in pounds sterling for the supply of trams. The overall capital costs estimate for Tramco also includes fixed sums totalling £3.0m for mobilisation costs associated with the maintenance contract and items of equipment for the depot which will be paid prior to the commencement of operations.

The Infraco price of £234.0mm comprises
- £228.3m of firm costs
- less £13.7m of Value Engineering initiatives taken into the price with the agreement of BBS but with qualifications attached
- plus £19.4m of items which remain provisional at Financial Close.

A thorough risk appraisal has been carried out on the deliverability of the Value Engineering initiatives with reference to the qualifications which attach to them. As a result a prudent allowance of £4m has been made against the possibility that for certain items these qualifications will not be removed (of which £2m has been included in the base cost estimate for Infraco and £2m has been included in the overall risk Allowance for the project).

Provisional items comprise a defined list of 22 Items each with a clear process for and programme for resolution. The estimate for each item has been reviewed by tie's technical consultants and by BBS and the risk of understatement is considered to be low. The most significant items are a £6.3m allowance for civil works, including utilities, at Picardy Place as the design for the approved layout is not yet complete. (the cost of the actual tramway, tram stop and associated works at Picardy Place are included in the firm element of the price) ; £3.1m in respect of works which may be carried out on behalf of 3rd parties (eg Forth Ports) and which are recoverable from those third parties and a £5.0m allowance for Urban Traffic Control works (traffic lights) associated with the implementation of the project.

The overall capital cost estimate for Infraco includes a further £5.0m, comprising £2.6m for maintenance mobilisation (as for Tramco), and £1m for major spare parts based upon a schedule of prices provided by Infraco and a £1.0m provision for known design changes at the Airport tram stop yet to be included in the Infraco price and £1.4m for other items for which the status or procurement method are yet to be finalised.

8.3 Infraco price basis and exclusions

The Infraco price is based upon the Employers Requirements which have been in turn subject to thorough quality assurance and the significant areas where post contract alignment of the SDS design will be required. Crucially the price includes for normal design development (through to the completion of the consents and approvals process – see below) meaning the evolution of design to construction stage and excluding changes if design principle shape form and outline specification as per the Employers Requirements. The responsibility for consents and approvals is further considered below.

Significant exclusions from the Infraco price are items not included in the Employers Requirements in respect of (responsibility for securing incremental sources of funding in brackets):

- Additional works at Picardy Place, London Road and York place (CEC)
- Additional works at Bernard Street (CEC)
- Full footway reconstruction in Leith Walk (CEC)
- Additional works in St Andrew Square outwith the tram alignment (CEC)
- Changes within the Forth Ports area (Forth Ports)
- Any other scope required by third parties not already included in the Employers Requirements by virtue of a commitment in an existing agreement

8.4 Responsibility for consents and approvals

As previously tie/CEC will retain the risk associated with the process of obtaining TROs and TTROs (some for TTROs post-Service Commencement which are Infraco's responsibility). Full provision has been made in the Risk Allowance for the possible costs associated with a legal challenge to the TRO process which it is not anticipated will include a formal pubic hearing.

As fully detailed in Appendix 1, for all other required consents and approvals (either design or construction related) the principles which apply are:

1. Infraco (including SDS) will bear any costs and programme consequences associated with design quality and constructability for all consented and/or approved design.
2. in respect of consents and approvals outstanding at Financial Close, tie/CEC will bear any incremental construction programme cost consequences of SDS failure to deliver design outputs in a timely and sufficient manner to the consenting or approving

authority insofar as the cost is not recoverable by Infraco from SDS under a capped liquidated damages provision or can otherwise be mitigated by the Infraco.

3. tie/CEC will bear the incremental cost and programme consequences associated with a delay in granting consents or approval having received the required information in a timely and sufficient manner and/or the cost and programme consequences of changes to design principle shape form and outline specification (as per the Employers Requirements) required to obtain the consent or approval.

Taking due cognisance of all mitigations described in Appendix 1, the Risk Allowance (see 8.6 below) includes provisions totalling £3.3m for delays associated with outstanding design work at Financial Close in addition to a £6.7m provision for general programme delay.

To clearly delineate responsibility and therefore risk allocation the Infraco contract and associated schedules, including the SDS Novation Agreement, clearly defines in detail and in a manner agreed by Infraco, SDS and tie/CEC:

- The necessary consents and approvals already obtained at Financial Close
- The remaining consents and approvals and whether the information to obtain such rests with Infraco or SDS
- The expectations with regard to quality of information including compliance with relevant law and regulation
- The programmed dates for delivering information and obtaining the necessary consents and approvals consistent with achieving the overall programme for the project

The role of tie in this complex process is to carefully manage the programme of delivery and take mitigating action as necessary to avoid any cost or programme implications from slippage on individual items. tie also retains responsibility for obtaining specific items including obtaining NR possessions which align with the construction programme agreed with Infraco.

The Risk Allowance does not provide for the cost or programme consequences associated with a wholesale failure of this process – see QRA alignment & Risk Allowance below.

8.5 3rd Party Agreements

There are three groups of residual third party related risks :

- EAL – there is a legal matter to resolve around a future redevelopment of the Airport terminus area. This issue and some contract alignment issues are described in the DLA Report and are not anticipated to create any material risk. .

- NR – a number of mostly programme related risks arising from the NR agreements which are in the normal course of business for doing business with NR. The QRA covers for these in the general delay provision

- Forth Ports - risk that the contribution to extra construction costs of their revised design requirements as capped in their agreement proves to be insufficient to cover the costs. This matter remains under negotiation and the cap should accommodate all reasonable requirements. In the final analysis, resort can be had to imposition of the original design to force an acceptable result however a compromise design is expected to be agreed.

8.6 QRA and Risk Allowance

tie's risk identification and management procedures as detailed in the FBC describe a process whereby risks associated with the project which have not been transferred to the private sector are logged in the project Risk Register. Where possible the cost of these risks is quantified by a QRA in terms of a range of possible outcomes, probability of occurrence and thereby the Risk Allowance which is included in the capital cost estimate for the project.

The project Risk Register also details the "treatment plans" being followed to mitigate individual risks and thereby avoid all or part of the cost allowance.

As the Infraco and Tramco procurements have progressed tie has maintained and reviewed contractual Risk Allocation Matrices, which reflect the risks retained by the public sector arising from the contracts, and has exercised prudence in ensuring the Risk Register, QRA and therefore Risk allowance provide adequately for risks retained for the public sector including the major areas or risk assessed above.

The only material change in the Risk Allocation Matrices between Preferred Bidder stage and the position at Financial Close is in respect of the construction programme costs associated with any delay by SDS in delivery of remaining design submissions into the consents and approvals process beyond Financial Close.

The Project Control Budget at Financial Close totals £508m (Final Business Case £498m) including a risk allowance of £32m (Final Business Case £49m). This change primarily reflects the closure of procurement stage risks on Infraco and Tramco including all the risks associated with achieving price certainty and risk transfer to the private sector as has been effectively achieved in the Infraco contract as summarised above.

The risk allowance of £32m includes the following provisions for residual risks retained by the public sector during the construction phase of Infraco and Tramco.

- £8.8m in respect of specifically identified risks held by and to be managed by tie during the construction phase including adverse ground conditions, unidentified utilities and the interface with non-tram works and post close alignment of the Infraco proposals with the SDS design.
- £2m in respect of the risk that conditions attaching to the VE items taken into the Infraco price may not be removed
- £3.3m in respect of post Financial Close consents and approvals risks which provides for the cost or programme consequences of imperfections which may arise in elements of the consents and approval risk transfer as described above.
- £6.6m to provide for the cost of minor Infraco / Tramco programme slippage of up to 3 months (other than as a result of delays to MUDFA which is provided for elsewhere in the risk allowance).

tie has assessed these amounts as providing adequately for the residual risk retained by the public sector arising from the Infraco and Tramco works and the post Financial Close consents and approvals process. However the Risk Allowance does not provide for the costs of:

- Significant changes in scope from that defined in the Employers Requirements – whether such changes were to emerge from the consents and approvals process or otherwise
- Significant delays to the programme as a result of the consenting or approving authorities failing to adhere to the agreed programme (Infraco/SDS having met their own

obligations) or any other tie/CEC initiated amendment to the construction programme which forms part of the Infraco contract.

All other things being equal any such changes falling into these categories would give rise to an increase in the cost estimate for Phase 1a of the project above of £508m.

8.7 Value Engineering Opportunities

As explained at 10.2 above, the Infraco price is stated after deducting VE opportunities with an aggregate value of £13.8m subject to satisfying certain conditions including the approvability certain items through the consents and approvals proves. A total of £4m have been provided against the possibility that such conditions will not be satisfied.

Value Engineering is a continuing process during construction and tie continue to seek to present value for money opportunities to save on construction and project management costs.

8.8 Alignment of QRA and Risk Allowance to DLA Letter and Risk Matrices

tie has considered the DLA Report and appended risk allocation matrices and considers that the Risk Allowance of £32m contained in the projected Control Budget at Financial Close and associated QRA adequately reflects the risks identified and the change in such risks retained by the public sector since approval of the FBC in December 2007.

The following references are to specific paragraphs/sections in the DLA letter:

5.1 Employers Requirements (ERs) – Alignment issues

There is a well understood and limited level of uncertainty with regard to the alignment of the ERs, the SDS design and the Infraco proposals (on which their price is based). The alignment work described at Section 2.3 above resulted in limited amendment to cost and risk contingencies.

5.2 Project Master Programme

The Project Master Programme which forms part of the Infraco contract is now agreed in all material respects.

The QRA provides an amount of £6.6m (equivalent to 2-3 months complete delay in the programme) for general delay risk which has been assessed by tie management as adequate for the management of the programme but will not provide for any significant stakeholder initiated change beyond the point of Financial Close.

6.4 EAL – Option to shift tramway post 1/1/13

The capital cost of any shift in the Tramway at the airport beyond 1/1/13 would be at the expense of BAA and is not therefore a risk which should be provided for in the Phase 1a budget.

7.1 Consents – Delay on post-close consents

This is the one significant change in the risk profile retained by the public sector since December 2007. The exact nature of tie/CEC's continuing risks have been well rehearsed and are detailed in Appendix 1 as are the mitigating actions and processes tie has in place to manage these risks. A risk assessment in relation to the QRA is provided at section 8.4 above.

The total risk allowance provided in the QRA in respect of continuing Consents and Approvals Risk is £3.3m. This equates to the cost of some 3 months of BBS standing time and is considered adequate by tie management in the context of the number and criticality of consents still to be delivered, the liquidated damages available to BBS from SDS in the event the delay is caused by SDS, the responsibility of BBS to mitigate the costs of any delay and the close management of the process beyond Financial Close by tie.

The risks summarised in the DLA Report are therefore accommodated in the risk and contingency allowance to an acceptable degree.

(9) Update on critical workstreams and readiness for construction

9.1 Design due diligence

The process and procedures laid out in the design management plan and design assurance process formal design reviews have been undertaken every week since September 2007 to inform and finalise the detailed design submissions. These submissions are then consolidated to form the necessary technical and prior approval packages for CEC to discharge their statutory obligations.

In parallel with the process since August 2007, BBS have had access to the detailed design submission across the range of asset for the Edinburgh Tram Network to enable Infraco's design due diligence to be undertaken. Appendix 1 sets out the status of the design process as at Financial close.

9.2 Run-time due diligence

The Infraco contractor has undertaken modelling based on the updated data provided by SDS and CAF to accept the "laws of physics" runtime as part of the finalised Employer's Requirements.

9.3 TTRO / TRO process

The process for gaining the TRO's for the project is documented in the TRO strategy produced in 2007. A major risk in this respect was removed when the Scottish Government amended the TRO Regulations to remove the need for a mandatory hearing for Tram TRO's. CEC can still elect to hold a hearing if they consider the level of objection to any particular TRO merits such action.

Completion of the TRO's is now driven entirely by design and modelling works being undertaken by SDS and JRC and managed closely by tie. The programme identifies the Orders being made in August 2009 which is in line with the overall construction programme.

9.4 MUDFA including interface with INFRACO programme

The Multi Utilities Diversion Framework Agreement [MUDFA] is currently being progressed to Programme Revision 06 as agreed in November 2007.

This programme has been utilised to integrate with the INFRACO programme and is identified as a constraint in a number of construction items. This has been reflected in the INFRACO Construction Programme with the agreement of BBS and other principal stakeholders as part of the sign up to overall construction methodology. Specific elements of diversions have been transferred to INFRACO where it is required by construction sequencing for the final utilities works.

It is expected that, despite detailed subdivision of works to facilitiate BT cabling and commissioning, there will remain some overlapping of work sections as INFRACO commences. It is likely to be restricted to section 1C and 1B and can be managed with INFRACO, BT, AMIS and tie.

Overall progress on the utilities works has been good in terms of adherence to budget (with no contingency drawdown to date) and to programme. In addition, the public communications process has worked well although it is fully acknowledged that there is a long way to go.

9.5 Management team and Handover

The Tram Project Team to manage the construction phase of the project has now been designed and is substantially populated. Interim arrangements are in place for all key posts where a permanent appointment is awaited. Handover arrangements and detailed documentation of the final contract terms are underway and key procurement phase staff are contracted to remain until this handover is successfully completed.

The Infraco Director and team have commenced detailed works from February 2008 and are already managing and monitoring the Mobilisation Agreements with BBS and CAF. In addition, 3rd party facilitation arrangements have been commissioned to accelerate the forming of effective working relationships between BBS and tie.

9.6 Safety

Safety management systems are in place. The governance paper at Appendix 3 sets out the overall approach being taken by tie in collaboration with the contractors and stakeholders. Safety management will be under the specific oversight of a tie Board committee chaired by one of the tie non-executive directors who is an experienced industry professional.

9.7 Commercial Management

tie have appointed their post-contract award Commercial Director, who commenced work on 7 January 2008. He is currently progressing the remaining recruitment to ensure a competent, fully populated commercial team is in place to manage the INFRACO contract (including novated contracts for SDS & TRAMCO) immediately on Financial Close. Updated commercial processes and procedures have also been established.

9.8 Insurance

The project insurance arrangements have been in place for some time under the Owner Controlled Insurance Programme (OCIP) implemented with advice and direction from Heath Lambert. The programme has also been subject to evaluation by the Infraco consortium.

9.9 Risk Management

tie's risk identification and management procedures as detailed in the FBC describe a process whereby risks associated with the project which have not been transferred to the private sector are logged in the project Risk Register. Where possible the cost of these risks is quantified by a QRA in terms of a range of possible outcomes, probability of occurrence and thereby the Risk Allowance which is included in the capital cost estimate for the project.

The project Risk Register also details the "treatment plans" being followed to mitigate individual risks and thereby avoid all or part of the cost allowance. There is an agreed risk management procedure currently in operation to manage and treat risks which is owned by tie's risk manager and subject to detailed scrutiny each period with the individual project managers at the period Project Director's Review.

tie and CEC have also agreed an interface to the project where a filter and review is applied to any risks raised by CEC which may be considered relevant as a project risk and requiring a necessary treatment plan.

tie are focused on managing the delivery risks and associated treatment and mitigation plans to avoid or minimise any cost, quality or programme implications.

(10) Specific confirmations

On the basis of the content of this report, the DLA Report and supporting documentation, it is considered that :

- **The Infraco Contract Suite is in terms acceptable for commitment ; and in particular**
  - **The Tramco Novation Agreement is in terms acceptable for commitment**
  - **The SDS Novation Agreement is in terms acceptable for commitment**
- **The CEC Financial Guarantee is in terms acceptable for commitment and is aligned in all material respects with the Infraco Contract Suite**
- **The tie Operating Agreement is in terms acceptable for commitment**
- **The TEL Operating Agreement is in terms acceptable for commitment**

APPENDIX 1

EDINBURGH TRAM PROJECT
SDS – DELIVERY AND CONSENT RISK MANAGEMENT

This paper is in draft form as at 12th March 2008 and will be updated for any necessary changes up to Financial Close. This will apply to facts and judgements. The content of this draft is our current best estimate of how the final position will crystallise.

Background

Negotiations have taken place over a lengthy period of time with the objective of defining a process and set of contractual terms which will enable tie and CEC to manage the risks arising from the overlapping design and construction periods. This problem was not anticipated when the SDS contract was concluded in 2005. The recent discussions have taken place under the umbrella of the SDS Novation Agreement, but it is important to distinguish two groups of issues :

> Cost certainty : The primary objective of the novation approach was to ensure that design work could commence long before commitment to the construction contract suite generating maximum construction price certainty and transferring design risk to the construction partner.
> Outstanding design risk : SDS have resisted accepting liability to BBS for the timeliness of submission and approval of design packages after Financial Close. Their concern is that the risk is different from (and incremental to) the underlying risk arising from the quality of their work. A delay, they argue, could result in hefty exposure because of the linkage to construction programme delay. SDS did not anticipate this risk when committing to their contract - the expectation was that the majority of design scope and certainly all approvals would be complete prior to Financial Close.

The packages which have been delivered to BBS, with the requisite approvals, by Financial Close ("Approved Packages") are subject to the Novation terms, which inter alia result in BBS accepting the design quality risk, with resort to SDS in the event of failure under the terms of the existing SDS agreement. The exposure to SDS could be potentially onerous, but was accepted when they entered into the existing contract and is not currently contentious.

This means that the primary objective above of cost certainty and risk transfer has been achieved relative to Approved Packages.

The problem relates to design packages which as at Financial Close are either :

- Submitted for Prior / Technical Approval but not yet approved ("Submitted Packages") ; or
- Work in progress and not yet submitted ("Outstanding Packages").

The rest of this paper provides an analysis of the residual risk to tie / CEC arising from these two groups of design packages. The paper does not address so-called "tie Consents" – TROs, TTROs and consents relating to statutory authority to implement the scheme - which have been accepted as out with the responsibility of SDS and BBS, except that BBS (and through them SDS) have an agreed contractual responsibility to assist in the process.

Risk overview

The risks which arise from the overlap of design and construction periods are summarised below :

A. The Submitted packages are not of requisite standard, preventing CEC from providing consent timeously and creating delay to the construction programme.
B. The Submitted packages are of requisite standard, but CEC fail to provide consent timeously, creating delay to the construction programme.

C. SDS fail to provide the Outstanding packages on a timely basis relative to the agreed programme, preventing CEC from providing consent timeously and creating delay to the construction programme.
D. SDS fail to provide the Outstanding packages to the requisite standard, requiring rework and delay, preventing CEC from providing consent timeously and creating delay to the construction programme.
E. CEC provide consents and approvals timeously, but SDS then fails to provide IFC ("Issued For Construction") drawings to BBS timeously creating delay to the construction programme.
F. SDS provide the Outstanding packages on time and to the requisite standard, but CEC fail to provide consent timeously, creating delay to the construction programme.

It is not anticipated that the final Outstanding Packages will be delivered until Autumn 2008. The option of delaying Financial Close to eliminate the risk is therefore unattractive.

SDS has resisted accepting any liability in the event of any of these scenarios. Since the point of investing in a procurement of a design appointment in Autumn 2005 was to secure a completed approvals process with an advanced network design development, there was no allowance for the implications of a coincident design and construction process in the existing SDS agreement. Accordingly, tie / CEC's leverage over SDS on the issue is limited.

BBS have similarly resisted accepting any liability for the consequences of delay arising from the Submitted or Outstanding packages. Their position was reserved (as was Tramlines' position) at preferred bidder, pending due diligence on SDS, as they were aware of the issue at the Preferred Bidder stage, but again we have only limited sanction over them.

There has been no sustained attempt by BBS to sidestep the transfer of design quality risk once the Submitted and Outstanding packages are eventually signed over to them with consent. In fact they have now explicitly accepted the design quality risk as part of the Agreement made on Friday 7 March for Contract Price adjustment. Accordingly, the remaining risk is focussed on construction programme delay as a result of late delivery of design and hence IFC drawings impacting construction.

Resolving this issue has been made more difficult because of concern built up over a long period about the quality and timeliness of SDS's work on the part of tie, CEC and BBS.

There is also a concern that performance against the agreed submission programme could be obfuscated with the intent (or at least result) that design packages fall out with BBS / SDS responsibility because of claimed failure by CEC. This could happen in four ways:

1. Confusion about submission date if a package is returned by CEC for quality improvement
2. Swamping CEC with a high volume of design packages which cannot be processed within the 8-week period
3. BBS and SDS by some means acting in concert to subvert the process
4. Lack of clarity about the quality of submissions

In summary therefore, tie / CEC are exposed to risks relating to timeliness of submission and / or quality. The risk could be heightened by deliberate or inadvertent actions by BBS / SDS. The next section describes the primary means by which these risks can be contained, through an effective management process controlled by tie / CEC.

Development of the design submission and approval management process

<u>Recent process improvements</u>

The process of managing SDS has not been smooth. The performance of SDS has been consistently disappointing on a number of levels and it is fair to say that weaknesses have also existed in execution by tie and CEC.

More recently, building on the existing Tram and Roads Design Working Groups, a number of important initiatives have been implemented to improve all-round performance. These have together improved both the rate of design production and the quality of those designs.

<u>(1) Co-location of staff</u>
The co-location of tie, CEC and SDS staff in Citypoint shortened lines of communication and promoted a healthy working relationship that has led to quicker resolution of issues.

<u>(2) Improved contract management arrangements</u>
tie has increased the number and calibre of resource devoted to managing the design contract, strengthening both its capability to deal with engineering issues and to manage the overall relationship including commercial management and issues resolution.

<u>(3) Focus on resolution of outstanding design issues</u>
By instituting the weekly critical issues meeting with attendance from tie, CEC and SDS aimed at clearing critical issues so that they did not hold up design production, tie brought together the relevant individuals, assigned clear responsibility for securing resolution and monitored progress. In recent weeks that has resolved almost all issues that are holding up SDS design and allowed a number of designs that were almost complete to take the critical final step to full completion and submission for approval.

(4) Closing out third party agreements

Many of the outstanding design issues involved reaching final agreement with third parties. Although steady progress had been made with many third parties a small number of third party negotiations were not moving to a satisfactory conclusion. tie devoted additional resources to closing out these issues and worked closely with CEC and SDS to ensure final agreements were reached.

Documentation of process and execution

The management process is captured in the Design Management Plan ("DMP") This, along with the review procedure forms Schedule 14 of the Infraco Contract. In recent months, SDS has had much greater clarity over the reasonable expectations of the approvals bodies. All of SDS's design packages are clearly defined. A programme has been agreed for the submission of each and the quality of information to be provided with the submissions has been defined. In this context, "quality" relates to an objective assessment of the fitness for purpose of the package, not a subjective assessment of the aesthetic character of the content. A well-defined process of informal consultation prior to submission with relevant CEC people is in effective operation. Once submitted, CEC have an agreed period of 8 weeks to deliver Prior and / or Technical Approval as necessary ("consent") for each package.

Following novation of SDS to Infraco at Financial Close, tie will continue to use the DMP, working with CEC and InfraCo, to manage the design and consent process and maintain the improved performance in design production and approval. The DMP has been updated to incorporate the role of Infraco in managing SDS following novation but the key principles and initiatives remain in place. This process will be applied to complete the consent process for Submitted and Outstanding Packages as defined above.

tie is holding daily meetings with SDS and CEC to maintain the focus on delivery of individual Outstanding Packages and identify any problems early enough for them to be resolved with minimum impact on the programme. This will continue (also involving InfraCo) once the contract has been awarded.

CEC's involvement in the daily meeting ensures that there is timely and effective feedback from the approval body of progress with Submitted Packages. It also allows CEC to raise any issues that need to be resolved before a submission can be made.

Whilst some of the Outstanding Packages lie on the critical path for construction, many do not. This means that there is still some flexibility in the agreed approvals programme. Management of that flexibility lies with tie and CEC and BBS/SDS can only take advantage of the flexibility with tie's consent.

There will be some changes to the design that SDS submits/has already submitted. Mainly these are necessary refinement of the detail of items where the detailed design will be completed by BBS and these have been allowed for within the programme. Where BBS is proposing an alternative design to that already submitted by SDS, BBS will be responsible for securing approval of that alternative design. In these cases BBS will draw on the experience of SDS to manage that consultation and approval programme.

Contractual underpinning

The contractual terms which capture these arrangements reflect:

- **The contractual responsibility for managing SDS design and development work supporting Submitted and Outstanding Packages sits with BBS;**
- **BBS are contractually obliged to follow the regime under the Review Process and Design Management Plan, as are SDS;**
- **SDS agree to liquidated damages to be applied by Infraco regarding late or deficient submissions to CEC;**
- **Contractual clarity as to primary responsibility for categories of Consents**
- **Excusable delay in failure to obtain CEC Consent entails evidence of full compliance by SDS/BBS with agreed regime: timing, sequence, quality, notification;**
- **The absolute nature of SDS contractual responsibility to obtain all Consents has been adjusted to reduce tension surrounding interface with CEC;**
- **The risk of prolongation cost as a result of SDS failings in terms of causing delay (through not obtaining Consent) is to be taken by tie.**
- **the risk to programme (and generally) of SDS consented design containing a quality deficiency is ultimately taken by SDS and, in the first instance, by BBS. BBS have now explicitly accepted this as part of the Contract Price. tie will hold a collateral warranty from SDS.**

Finally and critically, the overall programme for consents is not only embedded in the SDS Novation agreement to which SDS and BBS are parties, but the programme has been interfaced in detail with the construction programme.

In summary, there is confidence among the tie and CEC managers involved that the management process can be executed rigorously after Financial Close.

Focussed risk analysis

In addition to executing effective management control across all design packages, it is useful to identify those packages which carry the greatest risk. This facilitates prioritisation and mitigation action and also creates a clearer view of the residual risk arising from the overlapping design consent and construction programmes.

On 15th February 2008, CEC and tie jointly reviewed the status and risk profile of every Submitted and Outstanding Package relating to Phase 1a, allowing for anticipated progress to Financial Close. The review will be updated through the period to Financial Close, allowing a fresh assessment of risk at both point of Notification of Award and at Financial Close.

The best estimate of progress by mid-April will be that 10 Prior Approvals and 7 Technical approvals will have been achieved, making a total of 17 Approved Packages.

The review of the Submitted and Outstanding Packages assessed for each design package seeking Prior and / or Technical Approval :

1. The risk arising from the criticality of the package relative to the construction programme ; and

2. The risk arising from the quality and complexity of the package, which could affect timely consent

A graduated risk measurement was applied to each package for each of the two risk criteria : those packages which were required for the earliest stages of the construction programme having a higher risk rating than those required for later stages ; and more complex or sensitive packages or those with known quality issues were given a higher risk rating than those of a simpler character. The two risk ratings were multiplied together to give a risk rating tabulation across the whole population of Submitted and Outstanding Packages. The tabulation was then stratified into Critical, High, Medium and Low categories based on the risk ratings.

The people who contributed to this process and who have confirmed they are comfortable that the results are properly presented were Susan Clark (tie Programme Director), Andy Conway (CEC Tram Coordinator), Damian Sharp (tie Design Project Manager i/c of the SDS design and approval process), Tom Hickman (tie Programme Manager) and Mark Hamill (tie Risk Manager).

81 individual packages were reviewed, of which 75 were assessed as medium or low risk. The remaining 6 packages in each category were :

Submitted Packages	Critical	High
Prior Approval	0	1
Technical Approval	0	2

Outstanding Packages	Critical	High
Prior Approval	0	1
Technical Approval	1	1

Appendix 1 lists these Critical and High risk packages with a brief summary of their risk profile and the mitigating factors which can be deployed to manage the risk

A report is available which provides a detailed breakdown of the entire population of 81 packages.

For each package, the issue is well understood and mitigation plans have been identified to ensure that the risk is being managed on an ongoing basis. Appendix 1 contains full details of these.

In overall terms, the limited number of Critical / High risk packages is no surprise given the short anticipated time to finalise the consent process relative to the overall construction programme and the extent of work done to date to meet the needs of the approval authority.

Third party approval risk

In addition to approvals by CEC a number of the Submitted and Outstanding Packages also require approval by third parties. The most frequent and significant third party approval body is Network Rail. There has been substantial informal consultation with Network Rail throughout the development of the design and Network Rail has expressed satisfaction with many of the designs in principle. Network Rail has agreed to review Submitted Packages for technical approval in parallel with the CEC consideration of those packages. This means that Network Rail will be in a position to confirm approval very soon after CEC approval is granted. This is a significant concession by Network Rail and reflects their confidence in the design following the consultation to date.

The other significant third party in this context is BAA. Within the EAL Licence, Schedule 3 allows EAL to review tram works data – primarily design & construction related method statements. There is a 30 day review period, and EAL could object to this data, but only on the basis of adverse impact on airport operations or safety. There is also a DRP set out in the licence if an agreed position on design change (both acting reasonably) cannot be resolved.

We are taking EAL through the design and the MUDFA works in a scheduled process of meetings (held 4 weekly, but also in the case of MUDFA, more regularly), there is nothing to suggest that the risk of designs not being accepted is low.

Forth Ports is another player, but the agreement scheduled to be signed with them, and the generally constructive working relationship on these issues, creates a good level of comfort.

No serious issues are anticipated with the other third parties, with whom the approval process is fairly commonplace. Overall, it is considered that the third party arrangements create no material risk to the construction programme.

Higher-level mitigations

In addition to the mitigation arising from control of the well-defined management and approval process and the limited number of Critical / High risk locations, there are a number of higher-level mitigations which are relevant to the overall evaluation.

SDS Liability

In relation to the Submitted and Approved Packages, one contractual feature of importance in assessing the overall risk is the reward / penalty mechanisms to be applied to keep the design process on track after Financial Close. These mechanisms relate to what can reasonably be defined as SDS's performance. SDS will however accept no liability arising from CEC delay (risks B and F above). The effect of these arrangements has been incorporated into the assessment of risk contingency described below.

A general legal protection exists whereby SDS is exposed to claims from BBS following novation for "culpable failure" which could supersede the cap.

Funding support

Any uncapped exposure will carry no financial protection to tie / CEC. However, should this result in increased project cost, assuming legitimately incurred, the terms of the grant funding from Transport Scotland mean that the cost will be substantially covered by grant, to the extent that there remains headroom beneath the aggregate funding of £545m. It must be borne in mind that this factor cushions risk to tie / CEC but not to the project as a whole.

Existing risk contingency

The project cost contains risk contingency amounting to £3.3m linked to the consent risks described in this paper.

Conclusion

The overlap of continuing design and approval processes with the construction programme has created a risk. Experience in the early years of managing the design and approval process was not happy, but recent initiatives have successfully developed a well-defined and effective management process, led and directed by tie / CEC. This management process will continue following Financial Close with minimum risk of interference.

A thorough risk-focussed review of the consents has been performed by competent people from tie and CEC. This has concluded that the residual risk is contained in a small number of design packages. These have been the subject of prioritisation to mitigate their risk profile.

The combination of controlling the management process and focus on the key elements of the residual risk, constitute an effective risk mitigation framework. There are other higher-level mitigations which provide further help, notably the funding arrangements and the existence of a risk contingency in the project budget.

It is the view of the tie and CEC project team that these factors can be relied upon to manage the exposure successfully.

Prior & Technical Approvals **APPENDIX 1**

Critical Risks >21	Description	Risk	Issue	Mitigations
Technical Outstanding	A8 underpass	25	Underpass – sewer conflict	Technical solution now agreed and requires sewer to be diverted
High Risks 11 - 20		**Risk**	**Issue**	**Mitigations**
Technical Outstanding	Roseburn St Viaduct	20	VE solution changes design	Feasibility study complete – awaiting approval from NR. Options reviewed by CEC structures 10/3/8 and all options acceptable
Technical Submitted	Building Regulations approval	15	At 4 locations full planning approval is required	SDS to submit drawings for planning approval
Technical Outstanding	Depot earthworks	15	Requirement for earthworks to be approved separately	SDS to split batch into “for excavation” and “embankments”. CEC are considering need to prior approval for these slope as they are natural slopes. If prior approval is not required this will be removed as a risk
Prior Outstanding	Accommodation works – Murrayfield Murrayfield stadium retaining wall Roseburn St Bridge Murrayfield turnstiles	15	VE solution changes design	Feasibility study ongoing and due and we await final approval from NR
Prior Outstanding	Tram Stop Haymarket Haymarket Viaduct Substation Haymarket Relocation of war Memorial Line of route	15	Road Safety audit thrown up issues requiring rework	The issues are understood and rework is ongoing to allow resubmission.

tie Limited APPENDIX 2

Paper to : tie Board, Tram Project Board, TEL Board, CEC

Subject : Project Governance after Financial Close

Date : UPDATED 7th April 2008

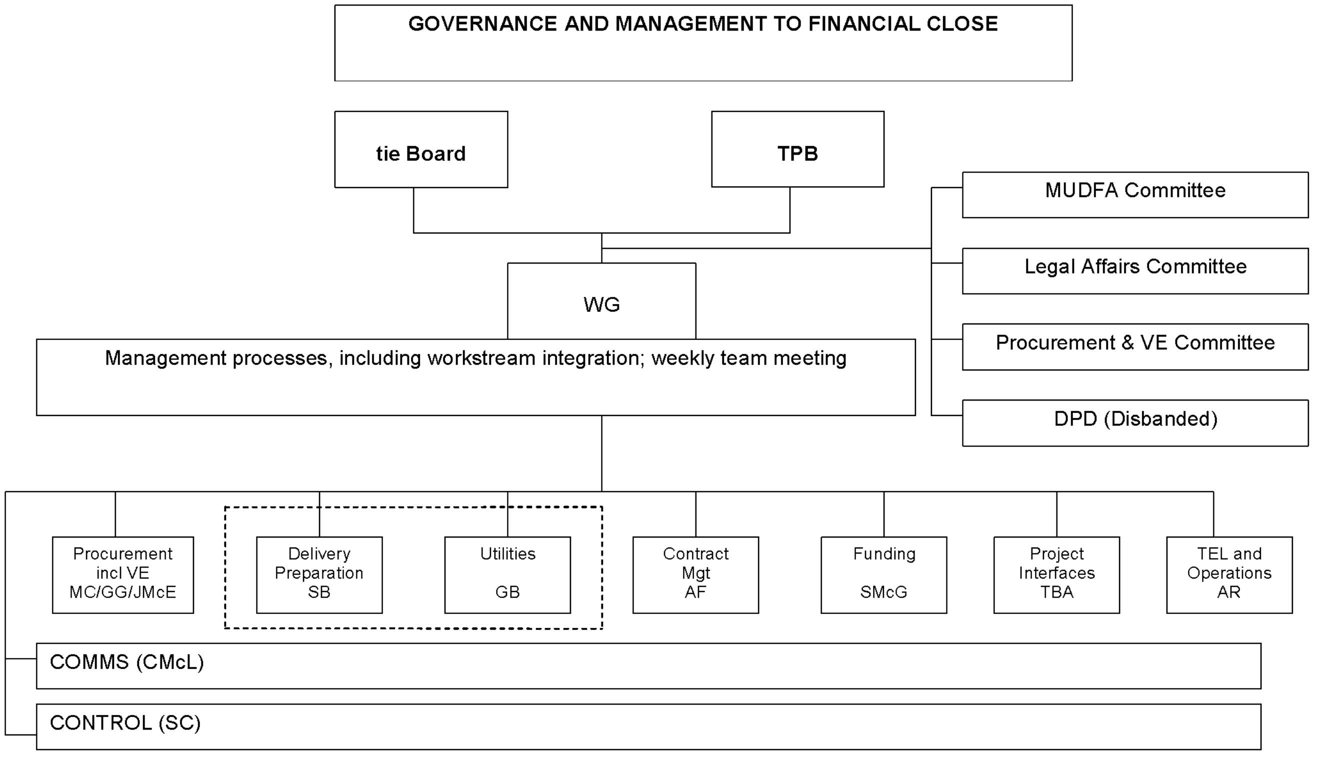
THIS PAPER SUMMARISES THE PROPOSED GOVERNANCE AND MANAGEMENT MODEL AS IT STANDS AT 7th APRIL 2008. THE AREAS WHICH HAVE NOW BEEN UPDATED INCLUDE FINALISATION OF OPERATING AGREEMENTS AND THE DELEGATED AUTHORITY WHICH FLOWS FROM THOSE AGREEMENTS. THIS PAPER IS THE FINAL FORM SUPPORTING FINANCIAL CLOSE

Edinburgh's integrated transport system
Project governance for the construction period

(1) Governance and management model in period to financial close

The recipients of this paper approved a governance and project management model for the period to Financial Close prior to the Council's meeting on 25 October 2007. The purpose of this paper is to present the proposed model for the period from Financial Close to operational commencement, planned for Q2 2011. The proposed model is very similar to the outline presented in October but this paper is drafted to be independent of previous submissions.

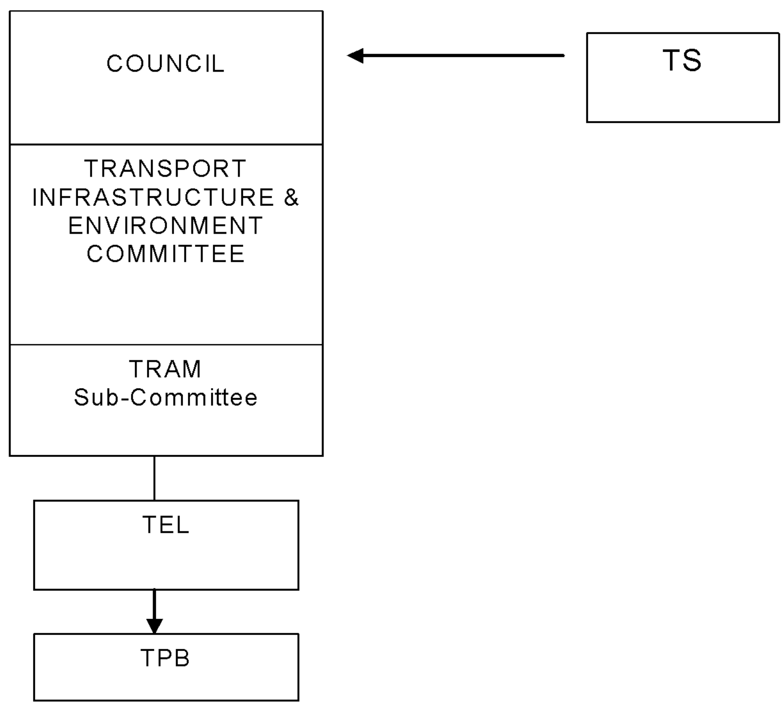
The current model is set out in the following diagram, including the project workstream structure under the TPD.

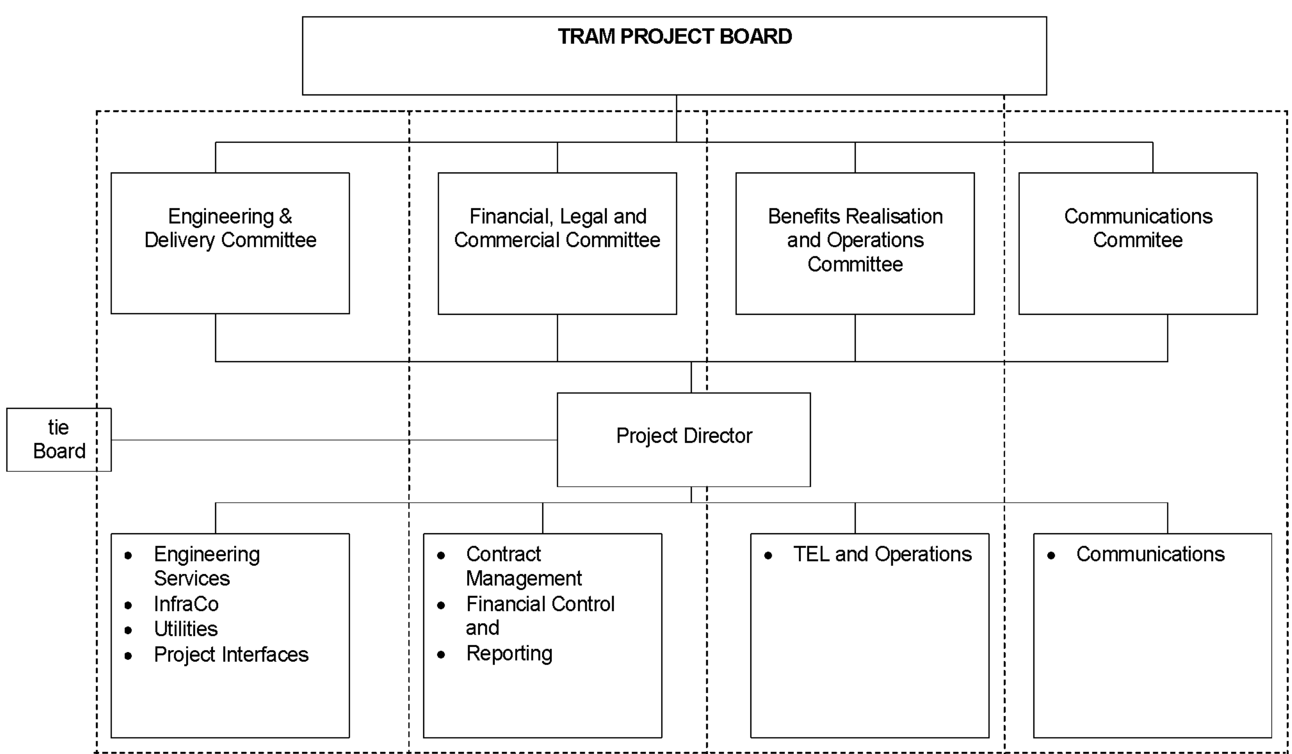


CEC00115700_0089

(2) Governance and management model in construction period

The diagram below sets out the proposed governance model for the construction period .





The roles & responsibilities of the entities within the new governance and management model are summarised below.

Transport Scotland (TS)

TS exercise their oversight of the project through 4-weekly reporting in prescribed format and a 4-weekly meeting with the City of Edinburgh Council (CEC).

The principal contractual relationship between TS and CEC is the Grant Award Letter which sets out the terms on which TS will provide the balance of the £500m grant. This contains detailed reporting and certification requirements appropriate to the conduct and scale of the project..

CEC

CEC have established a "Tram sub-Committee" of the existing Transport, Infrastructure and Environment Committee. The sub-Committee is chaired by the Executive Member for Transport with a 6-8 weekly meeting cycle. The purpose of the sub-Committee is to review and oversee decisions with respect to the project. This will include addressing matters directly affecting the Council and providing assurance that matters which cross Council departmental boundaries are managed cohesively (for example, responsibilities for roads & traffic management and budgets).

CEC have prepared Operating Agreements between the Council and respectively tie Limited and Transport Edinburgh Limited (TEL) to codify the arrangements between the entities and the responsibilities of the two subsidiaries. The signing of the Operating Agreements creates the authority for tie and TEL to execute their responsibilities.

The Council Report approved on 20 December 2007 indicated that some issues will require to be referred to Council including the approval of the annual business plans for tie and TEL respectively and significant changes to Council obligations including material changes to scope and cost within the Tram Project, will also be reserved to Council. Full Council will also require to ratify settlement of any claims greater than £500k or £1million in a 12 month period. The precise definition of the delegated interface between the full Council and its committees is a matter for the Council.

The Operating Agreements also specify certain matters which require the approval of a Council Monitoring Officer. The Monitoring Officer will be the same individual with respect to both tie and TEL and will also be a member of the TPB, in order to ensure that the governance structure is clear and singular.

TEL

The TEL Board is focussed on its overall responsibility to deliver an integrated tram and bus network for Edinburgh, on behalf of CEC. The Board is responsible for compliance with its Operating Agreement and it will also address any matters outwith the direct arena of Integrated Bus and Tram systems and any statutory TEL considerations.

The TEL Board comprises an independent non-executive Chairman, independent non-executive directors, Elected Members and Executive management. There is appropriate common membership across the TEL, tie and LB Boards to ensure consistency of approach.

The following matters will be a matter for the TEL Board to determine :

All matters affecting the programme, cost and scope of the Project except the following which are matters reserved to the Council:

(A) (i) any actual or reasonably expected delay to the Project programme of greater than 3 months; or (ii) any increased cost of over £10m; relative respectively to the programme leading to commencement of revenue service by 31 July 2011 and capital cost of £508m (Phase 1Aa) or £87m (Phase 1Bb) as set out in the Final Business Case or as subsequently approved by the Council prior to commitment by tie to the Infraco Contract ; or (iii) notwithstanding the terms of (i) and (ii) above, any projected or actual overspend of the available funding budget (being £545 million) at any time (whether on an annual or overall basis); or (iv) any substantial change to the design, scope or service pattern set out in the Final Business Case; and

(B) the settlement of any single claim in excess of £500,000, or series of claims in any 12 month period which would exceed in aggregate £1,000,000;

TEL may delegate responsibility for all matters other than those specified at A and B above to the TPB and the TPB may in turn delegate responsibility for all other matters to tie, but only to the extent that such delegation is already within the remit of tie in the context of the tie Operating Agreement. TEL agrees that it shall retain ultimate responsibility for all matters it so delegates.

The Council's majority shareholding in Lothian Buses (LB) will be transferred to TEL and parallel changes to the composition of the Lothian Buses Board will be effected in due course.

Tram Project Board (TPB) and its sub-Committees

The TPB maintains its role as the pivotal oversight body in the governance structure. The TPB is established as a formal sub-Committee of the TEL Board with full delegated authority to execute the project in line with the proposed remit set out in Appendix 1. In summary, the TPB has full delegated authority to take the actions needed to deliver the project to the agreed standards of cost, programme and quality within the authority delegated to the TEL Board.

The suggested membership of the TPB is 7 people (Office of Government Commerce constituency definitions "highlighted"):

- Chair (David Mackay)
- Senior CEC Representatives - "Senior User Representatives" (Donald McGougan and Andrew Holmes)
- TEL CEO and Project "Senior Responsible Owner" (Neil Renilson)
- "Senior Supplier" representatives (tie Executive Chairman and TEL Operations Director) (Willie Gallagher and Bill Campbell)
- Executive Member for Transport (Phil Wheeler)

The Chair will continue to be the TEL Non-executive Chairman, rather than the Project SRO. Other parties, principally senior project management and advisers, will be called to attend as required, though it is anticipated that a common group of senior project directors will attend

The remit and delegated authority given by TEL to the TPB, and by the TPB to the SRO and Tram Project Director (TPD) are set out in Appendix 1. The TPD will formalise delegated authority downwards to senior members of the delivery team.

tie Limited

tie's role is to deliver the tram network fit for operational purpose, on time and budget. For the foreseeable future, tie will have only one major project, the tram. It will maintain roles with certain smaller projects and will require to comply with normal statutory responsibilities as a limited company, including formal compliance with its Operating Agreement.

The tie Board presently comprises a group of independent non-executive directors and Elected Members under the Executive Chairman. The Elected Members will be the same on each of the TEL and tie Boards to ensure consistency of view across delivery of the system and operations. The independent non-executive members will also provide experienced participation in the TPB's sub-committee deliberations, as explained below.

In overall terms, the composition of the tie Board will be maintained in its present form. The Board will maintain its Audit and Remuneration committees, membership of which are restricted to the NXDs. In addition, a new tie Board sub-Committee will be established to address Health & Safety, chaired by an experienced NXD.

In its role on the tram project, tie provides services to the TPB. The tie Operating Agreement provides tie with the legal authority to enter into all competent contracts to deliver the tram system. The tie Board will delegate authority to its Executive Chairman to execute its contractual responsibilities for the tram project. The Tram Project Director (a tie employee) is given delegated authority by the tie Executive Chairman to manage and deliver the project. The authority given to the TPD in his role as a tie employee is synchronised with the authority delegated to him by the TPB. This ensures that the TPD leads the project delivery under delegated authority from his employer (tie) and from the project client (TEL through the TPB) which is consistently defined.

Further changes to the composition of the TEL, tie and LB Boards will be effected as is deemed necessary over the period ahead. In particular, in the event that tie assumes responsibility for additional major projects in the future, the Board composition may need to be addressed. All such changes will require the formal approval of the Council.

In summary, the roles of the parties are :

CEC

- To be responsible for the creation of a financially viable integrated bus and tram system in line with the approved Business Case ;
- Compliance with the terms of the Grant Award Letter

TEL

- Under authority delegated by its parent CEC, to prepare for the operation of the integrated tram and bus network, including oversight of the delivery of the tram infrastructure executed through its sub-Committee, the TPB ;
- Compliance with the CEC / TEL Operating Agreement ;
- Statutory responsibilities including Board membership, statutory reporting, maintenance of books of account and statutory records ;
- Matters relating to TEL employees including Health & Safety

TPB

- Prepare for the operation of the integrated tram and bus network, including oversight of the delivery of the tram infrastructure, conducted directly or through scrutiny by sub-committees of the TPB of specific activities within the project

tie

- Management of the delivery of the tram infrastructure including management of the contracts written with third parties to achieve delivery of the tram network fit for operational purpose, on time and budget
- Compliance with the CEC / tie Operating Agreement ;
- Statutory responsibilities including Board membership, statutory reporting, maintenance of books of account and statutory records ;
- Matters relating to tie employees including Health & Safety

TS

- To provide grant funding in line with the terms of the Grant Award Letter

(3) Practical operation of the governance model

It is recognised that there is inevitable duplication between the scrutiny by the tie Board of its Executive activities and the oversight role performed by TEL and the TPB. However, this situation is normal, if tie's role of providing a service to its client, in this case TEL, is borne in mind.

It is suggested that the tie and TEL Boards will meet every second period on a period-about basis. The frequency of TEL Board meetings is expected to increase as operational commencement approaches. The TPB and its sub-committees will operate on a 4-weekly cycle, linked to the 4-weekly report to TS. The means by which the Project Director arranges day to day management of the project is not reflected in this paper but will also follow the 4-weekly cycle and will respond to the reporting requirements of the tie and TEL Boards.

The outstanding matters required to finalise the calendar following Financial Close are :

- Dates for proposed CEC Tram sub-committee meeting
- Dates for 4-weekly TS / CEC meetings

The current TPB sub-Committee structure will be dissolved and the new sub-Committee structure will comprise :

Engineering & Delivery Committee (E&D)
- Delivery under contracts - Infraco, Tramco, Utilities / MUDFA, design,
- Health & Safety, Quality & Environment
- Improvement initiatives – VE, Innovation, ICT
- Project interfaces & approvals – Land & Property, Traffic, third parties

Financial, Commercial & Legal Committee (FCL)
- Financial management – reporting, control, audit, risk management, insurance
- Contract management – reporting, compliance, interface with delivery, claims & variations

Benefits Realisation & Operations Committee (BRO)
- Operational & integration planning
- O&M contract planning
- Transdev
- Marketing

Communications Committee
- Comms management – utilities / MUDFA, Construction, Media, stakeholders

It is anticipated that the BRO and Communications committees will not meet for the early period of construction in the absence of any material issues arising which require separate scrutiny. The TPB will deal directly with any relevant matters under these headings for the foreseeable future.

In order to create close cohesiveness between the TPB / sub-Committee governance model and the project management structure, the sub-Committees will be directly interfaced with the Project workstreams and the individual directors responsible. Appendix 2 sets out the interfaces which effectively constitute the remits for these committees.

To further reinforce cohesion, the tie Executive Chairman will Chair each of the sub-Committees. The attendance of senior project and client officers, and the clear responsibilities allocated to individual Project Directors, will ensure that appropriate independence and challenge is achieved. As currently, the sub-Committees will have clear remits and will focus on detailed interrogation of key issues, leading to recommendations to the TPB which retains decision-making authority over all key areas.

(4) Health & Safety

A detailed analysis of the means by which H&S responsibilities are discharged is set out in Appendix 2. In summary, H&S is clearly of paramount importance both currently and in the construction phase of the Project. CDM 2007 will be a key focus and will be given appropriate prioritisation by all parties at all levels. The application of legal H&S responsibilities in the context of the governance and management of a large, complex project requires very careful analysis.

The detailed definition, allocation and communication of responsibilities will be executed as part of the readiness process in advance of construction commencement.

(5) Approvals requested from recipients of this document – tie Board, TPB, TEL Board and CEC in appropriate sessions

The following approvals have been completed :

1. Approval of the proposed governance model for the period from financial close to operational commencement.
2. Approval of the tie and TEL Operating Agreements and all related delegated authorities
3. Confirmation of the proposed members and participants in the governance bodies
4. Confirmation of the proposed meeting cycle
5. Approval of the proposed H&S regime.

GB
07.04.08

Appendix 1 - Tram Project Board ("TPB") Remit

TPB has delegated responsibility for the delivery of an integrated Edinburgh Tram and Bus Network on behalf of TEL and CEC, in particular :

1. To oversee the execution of all matters relevant to the delivery of an integrated Edinburgh Tram and Bus Network, with the following delegations :
    a. Changes above the following thresholds
        i. Delays to key milestones of > 1 month
        ii. Increases in capital cost of > £1m
        iii. Adversely affects annual operational surplus by >£100k
        iv. is (or is likely to) materially affect economic viability, measured by BCR impact of > 0.1
    b. Changes to project design which significantly and adversely affect prospective service quality, physical presentation or have material impact on other aspects of activity in the city
    c. Delegate authority for execution of changes to TEL CEO (the Project SRO) with a cumulative impact as follows:
        i. Delays to key milestones of up to 1 month
        ii. Increases in capital cost of up to £1m
        iii. Adversely affects annual operational surplus by <£100k pa
        iv. is (or is likely to) materially affect economic viability, measured by BCR impact of <0.1

    [Note: these are cumulative impacts since the last position approved by the TPB.]

    The TEL CEO will delegate similar authority to the Tram Project Director.

    These levels of authority apply to all matters affecting the programme, cost and scope of the Project except the following which are matters reserved to the Council:

    (A) (i) any actual or reasonably expected delay to the Project programme of greater than 3 months; or (ii) any increased cost of over £10m; relative respectively to the programme leading to commencement of revenue service by 31 July 2011 and capital cost of £508m (Phase 1Aa) or £87m (Phase 1Bb) as set out in the Final Business Case or as subsequently approved by the Council prior to commitment by tie to the Infraco contract ; or (iii) notwithstanding the terms of (i) and (ii) above, any projected or actual overspend of the available funding budget (being £545 million) at any time (whether on an annual or overall basis); or (iv) any substantial change to the design, scope or service pattern set out in the Final Business Case; and
    (B) the settlement of any single claim in excess of £500,000, or series of claims in any 12 month period which would exceed in aggregate £1,000,000;

    All matters which fall to the determination of the TPB will be reported to the TEL Board on a comprehensive and timely basis.

    Matters which do not fall within the TPB and TEL Board's delegated authority levels described above will require determination by the Tram Sub-Committee of the Council.

2. To appoint the Senior Responsible Owner (SRO) and Tram Project Director (TPD) for the project and to receive reports from the SRO and TPD on project progress

3. To receive reports from sub-committees established to oversee specific areas, as approved by the TPB

4. To ensure project workstreams are executed according to robust programmes under the leadership of Project Director.

5. To approve the submission of funding requests and to recommend approval of funding terms to the TEL Board. TPB will also confirm to CEC compliance with all relevant aspects of the grant award letter.

6. To ensure proper reporting through the TPB Chairman to the TEL Board and to CEC (as appropriate) of decisions made.

Appendix 2
Interface between new governance bodies and project management structure in the construction period – people identified are included for discussion only at this stage

TPB Governance body	Chair	Management responsibility	Director
Engineering & Delivery Committee	Gallagher	Engineering & Delivery - Infraco Tramco Utilities / MUDFA Engineering design Health & Safety planning & management	Bell
		Improvement - VE Quality & Environment ICT Innovation	McEwan
		Project Interfaces & Approvals - Land & Property Traffic management / regulatory Other CEC, third party	Sim
Financial, Commercial & Legal Committee	Gallagher	Financial management - Financial reporting Financial control, internal audit Risk management Insurance	McGarrity/ Thorne
		Contract management - Contractual reporting & compliance Claims & Variations management	Fitchie
Benefits Realisation & Operations Committee	Gallagher	Operational Planning - Integration & service planning O & M planning Transdev Commissioning Marketing	Richards
Communications Committee	Gallagher	Communications management - Utilities / MUDFA Construction Media Stakeholder	McLauchlan

Appendix 3
Health & Safety background and proposed operational structure

General

H&S obligations are well-understood and entrenched in the project governance and management structure. The increased level of physical activity which may give rise to H&S risks once construction commences reinforces the need to ensure H&S responsibilities are clear and that the highest standards of H&S management are applied. These considerations must be addressed on a daily basis in all actions and at all levels by parties involved in Project.

In overall terms, the key H&S considerations for CEC, TEL, the TPB and tie are:

- the health & safety of their people - the corporate H&S Management Systems address this responsibility
- ensuring that CEC, TEL, the TPB and tie deliver against clearly stated H&S responsibilities in the framework of the project including working alongside third party H&S management systems
- monitoring and reporting regularly that these responsibilities are being properly discharged
- ensuring that all persons employed by CEC, TEL and tie are competent
- ensuring that contracts entered into address H&S issues adequately
- ensuring that H&S ramifications are considered when key investments and business decisions are made

These H&S considerations apply currently, throughout the period to Financial Close and throughout the period of construction and into operation of the tram system.The H&S responsibilities are currently defined clearly to meet the demands of the current project activity including the utility works now underway. These responsibilities will require to be revised to integrate with the revised governance structure described in this paper and to enable effective management of the full-scale construction activity which will follow Financial close. The narrative below provides a description of the responsibilities of the bodies involved in the project and has been drafted with the full involvement of DLA. A precise and legally supported H&S regime will be put forward for approval and then implemented in advance of financial close.

Relationship of revised governance model to H&S responsibilities

The TPB creates an "inclusive" decision making process which is important for the effective operation of the project. The TPB will be a formal sub-Committee of the TEL Board so that members of the TEL Board on the sub-Committee retain the formal responsibility for decisions taken at the TPB, with all other parties to TPB deliberations being participants or observors only. The TPB itself is not a shelter from health and safety liabilities or a clearing house for liabilities. Legally CEC, TEL and tie cannot delegate H&S responsibility to the TPB in the governance structure and thereby declare that they have discharged their health and safety liabilities and have no further duty regarding input into or consideration of health and safety issues.

The ultimate responsibilities for the TPB decisions flow up to the TEL Board and CEC, subject to the intended election under the Construction Design and Management Regulations 2007 ("CDM 2007") of tie as "Client" under those regulations. A Procurator Fiscal may consider that all parties (CEC, TEL and tie), together constitute the entity for the discharge of H&S obligations. As a result H&S implications must be considered by all these parties when making significant decisions affecting design and implementation through the construction phase of the Project. The HSC guidance *Director's Responsibilities for Health & Safety* must be followed by CEC, TEL, the TPB and tie. Appropriate leadership should be demonstrated in this area by the boards and senior management.

Where changes are submitted for TPB approval, or are requested by the TPB, tie/TEL/CEC (and the appointed CDM 2007 parties) will be legally responsible for identifying and managing any impact that these changes will have on safety. The TPB will be responsible for ensuring that they understand and have responsibility for any decisions made in this respect. It is intended that tie will be mainly responsible for implementing the decisions made throughout the construction period.

It is considered that TEL/CEC would remain the "client" in terms" of CDM 2007 as the TPB is not a separate legal entity although it will make decisions on behalf of TEL/CEC. tie is responsible as the elected second client under CDM 2007 and the client/employer (for general health & safety regulations) for the overall project safety management for the development and implementation of the Project. Such an election is, however, not a full delegation of all rights and responsibilities. tie and the TPB must ensure that its activities or its stakeholders or advisors do not undertake actions that encroach upon the role of the designer under CDM 2007, because this would mean that they would require to demonstrate competency in this role and fulfil added responsibilities.

The revised project governance structure described in this paper will distance Transport Scotland from the H&S responsibilities as their responsibilities are related to those of the principal funder of the project, in the absence of any material involvement in design or construction matters.

Health & Safety, Quality & Environment will form an element of one of the new TPB governance sub-Committees. H&S matters within tie will be the responsibility of the Engineering and Delivery Director. In addition to the E&D Director's leadership on this issue, a senior NXD will be the nominated chair of the H&SQE sub-committee of the tie Board to add a further H&S check in the operation of tie and the TPB.

A regular safety report is produced and presented to the tie Board and to the TPB each month. The TPB will ensure that safety is a core agenda item for each meeting and will ensure that the safety report tabled at each meeting is actioned where appropriate. Copies of these reports, or summary documents as appropriate, will be disseminated to TEL and CEC. This will ensure that H&S issues are considered at senior level on a regular and disciplined basis.

Legal backdrop

There may be occasions where a decision which is made by the TPB under its delegated authority from TEL is driven by one of the stakeholder directors to the exclusion of the other members of the board. In the event of an incident, this may result in the contractual relationships or duties between the stakeholders being considered. Notwithstanding that financial indemnities could be put in place to cover losses suffered, if a particular party declares that it will be held accountable for a decision impacting safety, it is important to highlight that it is not possible to ensure that fines imposed as a result of prosecution can be the subject of an enforceable indemnity. It is not possible to contract out of criminal liability nor is it possible to insure against a fine. Although it may be competent to include a clause in a contract, it is possible that such a clause would be construed by the courts as unenforceable and contrary to public policy. In this context, the representative of each stakeholder would need to look to their employer, with regard to personal accountability.

The creation of appropriate safety responsibility structures, safety management systems and culture will form a key defence to any prosecution assuming all procedures have been followed. Clearly there could also be a number of other parties involved in a safety incident, for example contractors, sub-contractors, agency staff, designers, CDM-Coordinators and third parties.

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008. Corporate homicide will be committed where a death is caused by an unlawful or grossly negligent act of the senior management of an organisation. The management and organisation of activities by senior management must constitute a "substantial element" of the breach, in other words, partial delegation of the duty will not prevent liability attaching to senior management. Breach is punishable by a fine. Although directors do not face personal liability under the Act, the offence will make directors more vulnerable to disciplinary action and further crystallise their accountability for health and safety compliance to their stakeholders. It remains possible for directors and senior management to face personal liability if there is sufficient evidence to bring a prosecution under the existing common law or under the Health & Safety at Work etc Act 1974.

REPORT BY TIE LIMITED ON
INFRACO CONTRACT SUITE AND COUNCIL GUARANTEE

SECTION TO BE UPDATED FOR FINAL AMENDMENTS

Content of this section

- Process of drafting, negotiation, review and quality control
- General description of scope, parties and contract structure
- Overview of Infraco contract terms
- SDS Novation Agreement and design delivery and approval process
- Confirmation of BBS acceptance of modelling
- Employer's Requirements and Infraco & Tramco Proposals
- Advance purchase materials
- Infraco payment mechanism
- Infraco performance security arrangements
- Overview of Tramco contract terms
- Tramco payment mechanism
- Tramco performance security arrangements
- Council financial guarantee

Process of drafting, negotiation, review and quality control

The structure, membership and competence of the tie / TEL commercial and technical negotiating team have been assessed by tie and have remained largely consistent since the bid evaluation process commenced. Council officers have operated in an integrated manner with the main negotiating team, which has also had extensive support from our external legal advisors (in DLA Piper's case from late September 2007 onwards, following instruction to disengage from the process in May 2007), Transdev and other advisors. DLAP's engagement on the development of the Tramco Contracts has been more limited following tie's in house legal team taking over this part of the procurement from May 2007 onwards.

Appropriate quality control procedures have been applied to finalisation of the Infraco contract suite. In a number of critical areas, senior tie and TEL people have performed a review of terms independent of the main negotiating team, the important elements of which are set out in this report. The TPB, TEL and tie Boards have been regularly kept abreast of progress in all important areas and have confirmed or redirected effort as appropriate. Communications on these key matters with senior Council officers has been conducted both through the TPB and its sub-committees and also through frequent informal contact. Finally, the OGC Gateway 3 Review Team examined key areas of the contract suite before approval in advance of the October 2007 Council meeting.

In broad terms, the principal pillars of the ETN contract suite in terms of scope and risk transfer have not changed materially since the approval of the Final Business Case in October 2007. It is felt that the process of negotiation and quality control has operated effectively to ensure the final contract terms are robust and that where risk allocation has altered this has been adequately reflected in suitable commercial compromises.

This report is not a substitute for reading the Contract itself. It summarises those provisions in which CEC has expressed particular interest. It should be understood that the ETN Contract Suite has undergone a lengthy and difficult negotiation and close out phase.

General description of scope, parties and contract structure

The Infraco contract suite comprises the following principal contracts :

- Infraco system design, construction and maintenance contract between tie and BBS;
- Employer's Requirements and Infraco Proposals;
- Tramco vehicle supply and maintenance contracts between tie and CAF;
- Tramco Novation Agreement establishing Infraco – Tramco arrangements;
- SDS Novation Agreement establishing Infraco – SDS Provider arrangements;
- Security documentation; and
- Ancillary agreements and Collateral Warranties

Overview of Infraco contract terms

The Infraco Works are to be carried out pursuant to an Infraco Contract between tie Ltd and Bilfinger Berger (UK) Limited and Siemens plc. Bilfinger Berger (UK) Limited and Siemens plc have formed an unincorporated consortium to carry out the Infraco Works and are together called the 'Infraco', each company separately being an Infraco Member. Bilfinger Berger (UK) Limited and Siemens plc have joint and several liability for the performance and discharge of all obligations under the Infraco Contract and the three novated agreements that will be housed within it.

<u>Authority to Transact</u>

The legal authority of the various counterparties to tie and to CEC (under its Guarantee) will be confirmed in the conventional manner:

- each party will produce certified board minutes or other legally competent evidence of the corporate decision to enter into the ETN Contract Suite;

- all signatories will demonstrate legally effective power of attorney from their respective organisations; and

- in relation to foreign companies, an external counsel's opinion covering the legally binding nature of the corporate acts (re Contract execution) carried out in accordance with the Board resolutions, the signatories' delegated authority and the enforceability of the Contracts against the parties through the courts in their respective home jurisdictions.

CEC and tie will be required to produce their own legal authority to transact as has been explained and agreed previously with CEC Legal.

The Infraco Contract executed by tie Limited, Bilfinger Berger (UK) Limited and Siemens plc comprises the Core Terms and Conditions and a series of detailed Schedules which contain the price for and the scope of the Infraco Works and amplify the responsibilities and commitments accepted by the Infraco.

Conditions Precedent

At present, the draft Infraco Contract provides that the delivery of various ancillary agreements (notably the novations and the performance security package) are conditions precedent to Contract effectiveness. Since the intention is for all documentation to be closed, provided and executed simultaneously, this technical provision may be removed prior to contract award date.

Warranties

The Infraco members provide key individual warranties regarding the Infraco Proposals meeting the Employer's Requirements and regarding their capacity to enter into the Infraco Agreement.

Duty of Care and General Obligations

Under the Infraco Contract, the Infraco has a duty of care and general obligation to carry out and complete the Infraco Works fully in accordance with the Agreement. Infraco is further obligated to procure that the Infraco Parties (the Infraco members and their agents, advisors, consultants and sub contractors) carry out the Infraco Works in accordance with, inter alia, the Contract, the general Law and stipulated tie and CEC policies to enable the Edinburgh Tram Network to be designed, constructed, installed, integrated, tested, commissioned and thereafter maintained. The scope for which the Infraco has contracted is contained in the Employer's Requirements and the Infraco Proposals.

Indemnity Provisions

Generally, the Infraco must indemnify tie and CEC from all losses incurred as a result of a breach of the Infraco Contract by the Infraco or negligent or wilful acts of the Infraco. This includes where the breach or negligence causes:

- death or injury;
- damage to property or to the Infraco Works;
- infringement of third party IPR;
- causing tie or CEC to breach any law, consents, third party agreements or undertakings entered into prior to the date of the Infraco Contract;
- causing tie or CEC to breach the Network Rail Asset Protection Agreement, the DPOFA or the Tram Inspector Agreement.

The Infraco also has a specific obligation to indemnify tie in respect of any losses suffered resulting from the adverse impact of the Infraco Works in respect of the property interests, liabilities or statutory obligations of Forth Ports and Stakis. The Infraco is wholly responsible to tie for any actions or omissions of its employees, agents, advisers and sub-contractors.

Principal Exclusions are the following:

- any act or omission of tie or CEC is the cause of such death, injury or damage to property;

- proportion of loss caused by tie/CEC;

- indirect losses of tie/CEC by reason of Infraco breach or negligence, but indirect losses claimed by a third party are carved out of this prohibition. Infraco would therefore be liable to indemnify tie/CEC against a claim for lost revenue asserted by a business adversely affected by Infraco's breach.

<u>ETN Assets</u>

The Agreement provides for the direct transfer of title to CEC in all materials, goods, and equipment which are intended to be part of the completed Edinburgh Tram Network. Infraco shall procure that all ETN assets are supplied free from security interests and that any goods or materials stored off site are identified as belonging to CEC, wherever practicable.

<u>Price</u>

A contract price has been agreed. The contract price and pricing schedules for carrying out the Infraco Works is contained in Schedules to the Infraco Contract. A substantial portion of the Contract Price is agreed on a lump sum fixed price basis. There are certain work elements that cannot be definitively concluded in price and as such Provisional Sums are included.

<u>Programme</u>

The Agreement provides that Infraco shall progress the Infraco Works to achieve timeous delivery and completion of the Infraco Works (or parts thereof) and in their obligations under the Agreement, all in accordance with an agreed Programme which is bound into the Schedules. This Programme is the product of tie, Infraco and SDS Provider negotiations and is cardinal to the control of Infraco and SDS Provider's performance and their potential entitlements to relief or additional cost.

<u>Novations</u>

The Agreement provides that, as a condition precedent, Infraco shall enter into and execute Novation Agreements to incorporate and bind previous agreements between tie and the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider (Tramco), into the Infraco Contract. These agreements therefore become the full responsibility of Infraco as an essential component of the carrying out of the Infraco

Works. In addition to the Novation Agreements, assignable collateral warranties are to be provided to tie by the design provider (SDS), the Tram supplier (Tramco) and the Tram Maintenance provider.

<u>Network Rail Interface</u>

Under the Infraco Contract, Infraco acknowledges that it will require to comply with the Asset Protection Agreement (APA) with Network Rail in relation to the Edinburgh Tram Network. Infraco are to comply with the APA and undertake not to put tie/CEC in breach of the APA. The APA has been stepped down into the Infraco Contract so that the Infraco is fully on notice of those obligations which it will perform on behalf of tie/CEC.

<u>Operator Interface</u>

The Infraco's interface with Transdev is dealt with through Clause 17 of the Agreement. A duty of liaison and cooperation is imposed. Interference with maintenance works by the Operator may entitle an Infraco to claim for a Compensation Event and likewise any adverse affect of unplanned maintenance/defective maintenance would give rise to a right of indemnity for tie against any Transdev claim for relief/cost under the DPOFA. Any change to tram operations which adversely impacts the Infraco maintenance could give rise to a tie Change.

<u>Safety</u>

Infraco is to provide a permanent representation for the Project Safety Committee and shall develop and implement a safety management system and comprehensive plans to address all aspects of safety in working practices during construction, operation and maintenance.

<u>Site Access</u>

tie has granted a non exclusive licence to Infraco to enter and remain upon the permanent land for the term of the contract and exclusive licence to enter and remain upon designated working areas (the public road) during Infraco Works and shall provide Infraco with all necessary land consents.

Works on permanent land or temporary sites by Infraco are subject to compliance with the requirements of third parties.

<u>Infraco Maintenance</u>

Infraco shall comply with the requirements of the Code of Construction Practice and Code of Maintenance Practice with regard to the maintenance of access properties, bus stops, bus services and closure of roads.

The Infraco is obliged to undertake maintenance of the ETN from the time when any section is completed and afterwards under the full Maintenance Services regime once Service Commencement occurs. The Maintenance Services regime is for ten years post Service Commencement, with a unilateral option for tie to extend for five years, subject to any required changes. tie may terminate the Infraco Contract on six months' notice at any time after three years of ETN operation. Compensation is payable as if such termination had occurred for tie default.

Milestones and Payment schedule

The construction sequence is broken down into construction milestones and critical milestones and Procedures have been agreed for the monitoring of progress toward each milestone based upon milestone schedules. Interim Payments will be made to Infraco monthly subject to and in accordance with the completion of stated Milestones. The Agreement obliges Infraco to complete the Infraco Work in sections and failure to complete sections by the sectional completion date will result in Infraco becoming liable to pay liquidated and ascertained damages to tie at amounts stated in the Agreement. If Infraco are delayed by reason of certain prescribed contractual events they may be able to apply for a Extension of Time and/or claim costs.

Variation

The Agreement contains a relatively conventional contractual change mechanism in relation to the management and evaluation of variations. Variation rules depend upon the type of change instructed whether it is a tie Change, tie Mandatory Change (where an event occurs which needs to be dealt with) or an 'Infraco' Change.

Phase 1b and Network Expansions

Infraco acknowledges that tie may, subject to notice instruct the Phase 1b works to be carried out provided that the election is made no later than 31st March 2009. The Agreement contains specific provisions (Schedule 42) under which Infraco would carry out Phase 1b works if so instructed. Network Expansion (i.e. a spur, interconnect or modification) would fall to be dealt with as a tie Change under the Variation mechanism.

Termination

If tie defaults (on payment above a certain threshold or becomes insolvent) Infraco may serve a termination notice in accordance with the Agreement. The Agreement sets out the treatment of such termination. If Infraco defaults in certain prescribed matters, tie may, after giving required notice, terminate the Agreement. The Agreement again sets out the rules relating to such proposed termination as to final account, compensation (if any) and tie's entitlements to compensation under these provisions, the compensation entitlements are sole remedies.

Dispute Resolution

The Agreement contains provision for the settlement of any disputes under a Dispute Resolution Procedure contained in the Schedules to the Infraco Contract.

Disputes are to be dealt with through a rapid escalation process to Chief Executive level in order to achieve amicable resolution of any unsolved dispute within 15 days. If no settlement is possible, the Chief Executives may elect mediation, adjudication, or court proceedings as the resolution process. The Dispute Resolution Procedure mechanic allows for joinder of related disputes at the instigation of either party. The provisions are exempt from the application of mandatory adjudication time limits (under the Housing Grants Construction Regeneration Act 1996) by virtue of the Tram Acts.

SDS Novation Agreement and design delivery and approval process

Principles of Novation

The novation of SDS Provider to Infraco involves Infraco taking responsibility for managing SDS to produce the remaining design and approvals for the Edinburgh Tram Network.

The principal of novation was to ensure that the integration of design and construction is the responsibility of BBS and gives BBS recourse to the same contractual remedies against SDS as tie would have had in that situation, including critically the ability to claim against SDS in relation to defective design carried out by SDS.

SDS Provider Novation outcome

The novation of SDS Provider to the Infraco has been the subject of intense negotiation since preferred bidder announcement. tie's ability to close this element of the procurement has been compromised by:

- SDS Provider indifferent performance to design production programme
- BBS increasing visibility of SDS underperformance
- a reluctance by SDS Provider to engage on the terms of the novation
- the evolving status of the Employer's Requirements and the Infraco Proposals
- the negotiating stance of BBS to avoid importing any risk from SDS failure to manage design approval.
- SDS claims relating to earlier periods of design development and previous tie project management's lack of experience in using the SDS Contract to control SDS performance.

There is no SDS Provider performance guarantee. There is a £500,000 bond which is callable if SDS Provider fails to novate.

Design expectations of the Infraco

The Infraco offer is based on design completed to date and a programme for future delivery of design. The offer is also based on those approvals achieved to date and a programme for achieving the remaining prior and technical approvals.

The original 'Infraco' construction programme was based on version 22 of the SDS design programme; the construction programme included in the final 'Infraco' proposal has been updated to match up with version 26 of the SDS design programme (dated 4 February 2008)

The substantial progress with completion of the SDS design has reduced the risk of late production impacting on the construction programme and has given 'Infraco' greater certainty of the construction needed.

Managing Approvals Risk

The risk of securing approvals has been shared between SDS and tie. The 'Infraco' then takes programme and construction risk based on approvals being granted in line with the agreed master programme for the project.

SDS takes a capped risk of achieving delivery of batches for approval on the agreed date to the agreed quality. Provided the application for approval is made on time and the quality of application is in line with agreed expectations then tie takes the risk that the Council does not process the application within the 8 week period included in the programme.

The management of this risk has begun long before the application for approval is made. Designs have been reviewed progressively throughout their development involving the relevant Council officials and representatives of other approval bodies. Before applications are made for prior approval there is an 8-week period of informal consultation on top of the earlier involvement in design development. Addressing the comments received from informal consultation significantly improves the design and the chances of the Council being able to process an application within the 8 week formal period.

Design Guidance

In developing the current design, SDS has been under an obligation to take account of:

- the provisions of the Tram Acts
- the Environmental Statement
- statutory and supplemental planning guidance from the Scottish Government and City of Edinburgh Council
- the Tram Design Manual
- all third party agreements in relation to the project
- UK guidance on the safe design and operation of tram systems

Confirmation of BBS acceptance of modelling

This matter is now enshrined in the Employer's Requirements.

Scope of works and Employer's Requirements

The scope of the project is defined in the Employer's Requirements Schedule to the main Infraco contract and the stated scope has been aligned to the contractor's proposal defining the construction approach and to the scheme design prepared by Parsons Brinckerhoff. This interlocking set of detailed documents combine to form the scope of the project in contractual terms.

The Employers Requirements (ERs) are a comprehensive and detailed set of specifications which set out the project obligations and responsibilities against which the construction consortium (BBS) must comply. It runs to some 650 pages and sits as a schedule within the Infraco contract. The document has evolved as the business case and design has been developed and reflects the inputs of the key 'user' stakeholders such as the Council, TEL and Transdev.

The document contains sections relating to how the project as a whole is to be delivered (for example project management, testing and commissioning and maintenance) as well the detailed systems and equipment requirements. The document was issued as part of the ITN package. Because it is essentially a procurement specification, wherever possible (and appropriate) tie have avoided being prescriptive and detailed because this would limit the freedom of bidders to propose their own specific, competitive solutions.

Since preferred bidder award, all of the ER terms have been reviewed in a three way technical alignment process:

- BBS proposal → ERs.

  To ensure that BBS proposals comply with the ERs. This has involved removing all of the stated non-compliances noted at the preferred bidder stage by either relaxing the ER clause (without affecting the output requirements) or by updating the proposal to make it compliant. Commercial alignment of the ERs and the Infraco proposals has been concluded.

- SDS design → ERs

  Because the SDS Design had responded to an up to date though not final draft of the ERs, the final alignment process produced no material mis-alignment issues. The final alignment review identified potential mis-alignment which was documented and assessed for its cost and programme implications and some minor amendments were agreed.

- Proposal → SDS design

  To ensure that in areas where the ER terms allow flexibility in approach, it was necessary to ensure that the BBS proposed solution was consistent with the SDS design. A review of the final Proposals against the SDS design was executed and again some minor amendments were agreed. The main issue was the extent of road reinstatement and adequate allowance has been made in the final budget to accommodate this factor.

In addition to these processes the ERs have also been reviewed in varying degrees of detail by three legal teams, DLA, BBS' lawyers and Siemens lawyers (because a far larger part of the ERs relate to Siemens scope). In these cases the ERs were checked for consistency and alignment with the contract suite. All evident ambiguities, duplications and gaps have been dealt with to ensure that as a vital contract document it can be used effectively in the future.

The tie team is confident that the final version of the ERs, the contract version fully meets the requirements of the client, i.e. is consistent with the technical principles of final business case; and is consistent with both the SDS design and BBS proposals.

Advance purchase materials

CEC have required explanation as to what happens if BBS advance purchase to support unapproved design: the risk relating to advance purchase materials is with BBS if material is purchased to support unapproved design or design that has not been consented.

Infraco Payment mechanism

<u>Construction</u>

Payment under the contract is entirely against a 4 weekly application from Infraco in respect of milestones which have previously been certified by tie as having been achieved. The milestone schedule reflects the Infraco price allocated in amounts to series of construction milestones and critical milestones and to the future period in which each milestone is expected to be achieved in accordance with the agreed programme.

The milestone schedule and certification mechanism has been prepared and agreed in accordance with the following key principles:

- Save in respect of agreed advance payments, Infraco will not be paid in advance of its own outgoing cash flows through its own supply chain

- The individual milestones are defined such that the process of determining whether or not they have been achieved will be subject to the minimum of uncertainty or dispute

- The certification of a milestone will require evidence that all required relevant consents and approvals have been delivered in respect of the related works

The contract provides an effective mechanism for the addition and variation to milestones (valuation or date) initiated by either tie or Infraco.

Infraco will submit a detailed claim for payment within 3 business days of the end of each 4 week reporting period in respect of milestones certified as achieved following which tie will have 5 business days to certify the total payment and a further 15 business days to make payment. There are no express retentions of payment, but a retention bond is provided as explained below and tie has a contractual right of set off.

<u>Commissioning and Maintenance</u>

Infraco will commission Phase 1a in 4 key sections, transfer title accordingly and hand over control of each section to the operator and maintainers:

- Section A – The depot, certified after system acceptance test T1 has been passed for that section;
- Section B – Depot to the Airport, certified after system acceptance test T1 has been passed for that section;

- Section C – The rest of Phase 1a, certified after system acceptance test T1 has been passed for that section and system acceptance test T2 has been passed for Phase 1a, and
- Section D – Driver training and commissioning, certified after system performance test T3 has been passed for Phase 1a.

Certification of Section D requires that in addition to passing the system performance demonstration all relevant consents and approvals have been obtained and documentation and initial spares have been delivered.

After the period of trial running without passengers has been completed, passenger service will commence.

During the commissioning period, Infraco will be paid Mobilisation Milestone Payments according to the programme for establishing the maintenance organisation and systems. The Operator, Transdev, will be paid on a 4 week reporting period basis up to a maximum of a capped sum for the commissioning activities as a whole.

After the commencement of passenger operation, the Operator and the Infraco will be paid their respective operating and maintenance fees on a 4 week reporting period basis. The performance of the delivered systems in passenger service will be monitored against two final system acceptance test criteria, Network Performance test T4 and Reliability test T5. After the Reliability Certificate has been issued (Service Commencement + approximately 9 months) then the 4 weekly fees paid will be subject to the performance regime.

Infraco performance security arrangements

<u>Bonds during construction period</u>

Two bonds are being provided by Infraco from Standard & Poors A- rated financial institutions (expected to be ANZ Bank and Deutsche Bank), a Performance Bond and a Retention Bond. Both bonds are in substance ‘on-demand’, meaning there is no requirement that proof of failure (beyond formal notification) by Infraco must be produced by tie before a claim can be made under the bond.

The Performance Bond is in the amount of £23m throughout the construction period reducing to £11.5m when a certificate of Revenue Service Commitment is issued and further reducing to £9.2m when a certificate of Network Certificate relating to the achievement of performance criteria is issued. The issue of the aforementioned certificates is subject to a rigorous testing regime as defined in the Employers Requirements, including evidence that all relevant consents and approvals have been delivered, and provides both security for tie/CEC and incentive to Infraco to perform.
The Retention Bond is in the amount of £2m initially adjusting to the following amounts at sectional completion:

- £4m section A – The depot
- £6m section B – Depot to the Airport
- £8m section C – The rest of Phase 1a
- £10m section D – Driver training and commissioning

- £6m at issue of Network Certificate (pertaining to reliability as defined in the Employers Requirements)

The Retention Bond is released when a Reliability Certificate is issued.

The Operator provides a Performance Bond in amount of £10,000,000 from a financial institution of good credit. The Bond is 'on-demand', meaning there is no requirement for proof of failure by the Operator to be produced by tie before a claim can be made under the bond.

During the maintenance phase post Service Commencement, Infraco is required to provide a performance security (or submit to a cash deposit/retention regime) at any time that there is determined (by survey) to be remedial work of a value greater than the minimum to reinstate the Edinburgh Tram Network assets to the Handback Condition. The security may be up to £1,000,000.

Parent Company Guarantees (PCGs)

PCGs are provided by the ultimate holding companies of both Infraco consortium members in respect of all performance, financial and other obligations of their subsidiaries which are contracting with tie. The substance of these entities, which are the group holding companies in each case, has been subject to financial verification by tie.

The PCGs respect the joint and several liability provisions in the Infraco contract; each claim by tie under the PCG's must be served on each of the parent companies in the proportion of their share of the Infraco consortium but in the event of either parent company failing to honour payment of such a claim, the other parent company is liable up to the limit of overall liability specified in the Infraco contract (20% of the Infraco contract price but subject to graduated Step down).

The PCGs provide that in the event of a change in control or ownership of the subsidiary companies which are entering into the Infraco contract, the PCG's remain in force until a replacement PCG has been provided on terms which are acceptable to tie. Securing a stable position on BBS' offer on PCGs has proved very difficult indeed. Currently, the PCGs contain a Step down during the period post Service Commencement in relation to liability for Content defects, patent defects and pre existing obligations. Liability for maintenance related activity is capped at £3.5 million pounds.

All obtainable necessary collateral warranties have been agreed sought and provided for as requirements of Infraco.

Brief Overview of Tramco contract terms

<u>Authority to Transact</u>

This is dealt with in the same manner as under the Infraco Contract.

<u>Joint and Several Liability</u>

This issue is not relevant as CAF is sole Counterparty to both agreements.

<u>Conditions Precedent</u>

As for Infraco Contract.

<u>Indemnities</u>

The indemnity provision is back to back (as required) with the Infraco Contract.

<u>Warranties</u>

The three principal Warranties relate to:

- Tram defects - two years from maintenance commitment
- Paint and finishes - six years from maintenance commitment
- Key Parts - 10 years from maintenance commitment

<u>Consents</u>

The Tramco is required to support the obtaining of relevant operational Consents and permits and is responsible for obtaining Consents relating to the tram vehicles themselves.

<u>Termination</u>

Both Tramco contracts contain conventional and rolling stock market aligned termination provisions for Supplier default, no fault (30 days notice), client default, force majeure and corrupt gifts and fraud. No termination of the Tramco contracts cannot be terminated by Infraco post novation without tie's approval.

Trams will be supplied pursuant to a Tram Supply Agreement between tie Limited and Contrucciones y Auxilliar de Ferrocarilles S.A (CAF) “Tramco”. Tramco are to carry out the Tram works and design, manufacture, engineer, supply, test, commission deliver and provide 27 trams and if required any additional trams in accordance with the Employer’s Requirements, the tram Suppliers Proposal and agreed programme. Tramco shall ensure that all data, component, systems, devices, equipment, software and mechanism incorporated in the trams are fit for purpose and compatible with each other. Tramco shall operate under good industry practice, comply with all applicable laws and consents and ensure that each tram meets the required standards. The parties have agreed to work in mutual cooperation to fulfil the agreed roles and responsibilities to carry out and complete the tram works in accordance with the Agreement. Tramco shall deliver and finalise the designs, design data and all other deliverables as prescribed in the Employer's Requirements.

<u>System Integration</u>

Tramco shall provide support in respect of the key elements of system integration of the tram works with the Edinburgh Tram Network.

<u>Operator Interface</u>

Tramco acknowledges that the operator shall be responsible for the Operator Maintenance of the Edinburgh Tram Network and that Tramco would at all times liaise with the Operator.

<u>Variation</u>

In Similar fashion to the Infraco Contract the Agreement allows for the introduction of changes either by tie or Tramco always subject to notices and prescribed rules. tie may, subject to notice and terms, order additional trams with related spare parts and special tools.

<u>Quality Assurance</u>

Tramco shall at all times utilise a Project Quality Assurance Programme compliant to standards.
A tram manufacturing and delivery programme is agreed and regular monitoring of progress will take place.
There is provision is the Agreement for tie to be involved in inspecting the trams at various stages of the manufacturing process. Tramco shall deliver the trams to the designated point of delivery at the depot and delivery tests shall be conducted.

Tramco, tie and the operator shall agree a training programme and the detailed implementation.

<u>Transfer of Title</u>

Tramco shall provide Trams free form all security interests title to CEC on delivery or, in certain circumstances, at factory. Ownership earlier than this would expose CEC to not be able to reject a defective tram.

Tramco payment mechanism

<u>Supply agreement</u>

The payment mechanism under the supply contract conforms substantially to that under the Infraco contract as described above with the milestone payments heavily weighted towards:

- Initial mobilisation and establishment of supply chain
- Delivery of tram vehicles

- Attainment of performance and reliability standards as specified

Tramco performance security arrangements

Bonds during supply period

Tramco will provide a Reliability bond in the defined amount of 5% of the Tramco price such bond to be provided on or before the due date of delivery of the first Tram vehicle. A further advance payment bond is under discussion with tie.

Parent Company Guarantee (PCG)

The supply and maintenance contracts with Tramco are with the ultimate holding company so the issue of a PCG does not arise. The liability cap of Tramco under the tram supply agreement is 20% of the Tramco supply price.

Maintenance agreement

The Infraco is responsible for providing tram maintenance through Tramco performing the tram maintenance agreement. This is a relatively standard agreement, developed from UK sector models. Infraco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 to reinstate the Edinburgh Tram Network assets to the Handback Condition. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value.

Performance securities under maintenance agreement

Tramco is required to provide a security at any time that there is determined by survey to be remedial work of a value greater than £50,000 required to reinstate the Tram assets to the Handback Condition,. This may either be in the form of a cash deposit or an on-demand Handback Bond covering the full value of the remedial work outstanding. The liability cap of the Tramco under the tram maintenance agreement is 18.5% of the aggregate 30 year Tram maintenance price.

CEC Financial Guarantee

CEC are required to provide a guarantee to the Infraco of the financial obligations (including future variations) of tie under the Infraco contract in recognition of the fact that tie on its own has no capacity to bear any financial commitment insofar as it is not 'back to back' with the funding of the project which is channelled through CEC. In this sense it is materially consistent with the provisions of the PCGs (including periods allowed for payment of amounts due) provided by the Infraco, except that it is a guarantee of financial obligations only and not of performance. The CEC Guarantee will be released upon issue of the ETN Reliability Certificate, that is to say approximately nine to twelve months after Service Commencement. Any pre-existing claims will survive release until settled.

The terms and conditions of the CEC Guarantee and in particular its call mechanics, liability cap and protections are in line with market practice for this type of instrument. It should be noted that the Guarantee may be called upon by the Infraco on multiple occasions if tie is in payment default more than once. The instrument has been drafted, negotiated and settled with direct involvement and support of CEC Legal and Finance.

The guarantee is provided to Infraco meaning either or both of Bilfinger & Berger UK Limited or Siemens PLC or their assignees as permitted and approved under the Infraco contract.

CEC will benefit from the same contractual defences and entitlements to set off as tie and will have no liability greater than tie's. No claim can be made for an amount which is in dispute if tie has been referred the matter under the dispute resolution provisions of the contract.

The practical day to day implication of the Guarantee is that its provisions will not be invoked so long as the process for drawdown of cash from CEC to tie to meet payment obligations as they fall due is uninterrupted. Any dispute under the Guarantee would be subject to court proceedings.

TIE LIMITED
7 APRIL 2008

EDINBURGH TRAM PROJECT
FINANCIAL CLOSE PROGRAMME, QC AND APPROVALS PROCESS

(1) Background

This note summarises the process we will follow through to Financial Close and focuses on the quality control actions needed to ensure we have robust final legal documents for which tie and TEL take appropriate collective responsibility.

(2) Overall programme

w/b 24th March	• Completion of the drafting for all critical Infraco Contract Suite issues, schedules and terms • QC programme on all finalised Infraco Schedules, third party agreements
w/b 31st March	• Completion of the drafting for all remaining Infraco Contract Suite issues, schedules and terms • QC programme on all finalised Infraco Schedules, third party agreements • Finalisation of Close Report and DLA Report
w/b 7th April	• QC programme, all remaining areas • Conclusion to Close Report and DLA Report including CEC sign-off • Approvals required from all parties to support Close
Monday 14th April	• All documents ready for signature
Tuesday 15th April	• Financial Close – contract completion

(3) Quality control

Outputs

- Infraco Contract Suite
- Necessary third party agreements
- Close Report + Appendices
- DLA Report + Appendices
- Grant Funding Letter (completed)
- Operating Agreements x2

Processes

- Management of Close process & issue resolution (JM)
- Finalisation of Infraco contract suite (DLA)
- DLA Report + Appendices finalisation (DLA)
- Close Report + Appendices finalisation (GB)
- Approvals process – counter-parties (DLA)
- Approvals process – tie / CEC (GB – see below)

Quality control approach

The objective is to ensure that a knowledgeable tie or TEL person, semi-independent of the front-line negotiating and legal team, reviews the final form of the documents. The review should identify 1) fatal flaws ; 2) potentially important issues needing an internal debate before sign-off ; and 3) obvious errors. This review is <u>not</u> about nuances or minor drafting changes nor is it designed to second-guess negotiated commercial positions unless there is an obvious serious issue.

The attached matrix sets out the detailed responsibilities :

- The responsibility for finalisation of the Infraco Contract Suite is based on the matrix controlled by Geoff Gilbert.
- The Primary Reviewers for each important document must review the document in full and sign-off.
- The scope of work by the Secondary Reviewers should be agreed with the Primary Reviewer and comments finally provided to the Primary Reviewer, who can judge how they should be handled.

Certain of the third party agreements have already been signed. There is no point raising issues on these for amendment, but we should identify any points which may be inconsistent or problematic in some way relative to the final Infraco documents. These reviews are therefore light touch only, but still potentially important.

<u>All matters identified by (or through) the Primary Reviewers should be discussed with Jim McEwan, Steven Bell and Andrew Fitchie before being communicated in any way to the counterparties.</u>

DLA will perform their own legal QC review on the full set of final documents and this will support and complement the review by tie / TEL people.

Susan will manage the Close Programme including the QC work. Each person involved will be expected to sign-off on conclusion of their role in sensible terms, to evidence execution of our QC processes.

<u>(4) Approvals Process</u>

The approvals process should be straight-forward :

Documents required by CEC officials :
- Close Report update
- DLA Report / appendices update
- Letter from WG to CEC Chief Executive recommending completion

The Close Report and DLA Report will be finalised and sent to CEC next week (w/b 31/3) with Q&A and approval by CEC the following week (w/b 7/4).

The letter to Tom will be in similar form to the letter which supported issue of the Notification letters and will be supported by a formal conclusion by the tie / TEL management team.

Once the CEC officials are content, they will no doubt convene with Tom and we should then get the reciprocal letter from Tom to WG approving contract commitment. This letter will be the basis of a meeting of the WG / DM / NR Approvals Committee to finally authorise WG to sign the contracts.

The next TPB is scheduled for Wednesday 9th April and an update on progress will be presented.

There is no further approval required from TS, although courtesy calls on progress and to ensure the money is ready to move would be appropriate.

GB
28th March 2008

FINANCIAL CLOSE - QC PROCESS	Responsibilities :						
Documents	**Finalisation (based on Schedule status doc 20.3.08)**	**Main QC Review**	**Secondary QC Review(s)**				**Full DLA QC review**
Infraco Contract Suite :							
Infraco contract	GG / DLA	SB	DM	JM	SMcG		√
TSA	AR / DLA	SB	SMcG	DM	BC		√
TMA	AR / DLA	BC	SMcG				√
TSA Novation Agreement	AR / DLA	n/a					√
TMA Novation Agreement	AR / DLA	n/a					√
CEC guarantee	DLA / CEC	SMcG					√
SDS Novation Agreement	JM / DLA	SB	DS				√
Principal schedules (in addition to above) -							
Definitions	GG / DLA	SB	DM	JM	SMcG	AR	√
Employer's Requirements (Sch 2)	MC	SB	JM	DM	GG	AR	√
Pricing (Sch 4)	GG / BD / DM	SMcG	SB				√
Milestone payments (Sch 5)	DM / ES	SMcG					√
Maintenance pricing / payment (Sch 6/7)	AR	BC	SMcG				√
Security package (Sch 9)	DLA	SMcG	GG				√
DRP (Sch 10/11)	DLA	SB	DM				√
Insurances (Sch 12)	DLA	MH	SC				√
TPAs (Sch 14)	DLA	SC	SB	AS			√
Design management (Sch 15)	DS	SB	SC				√
Programme (Sch 16)	TH	SB	SC				√
Tramco spare parts (Sch 26)	AR	BC	SMcG				√
tie obligations (Sch 27)	GG	SB	SC				√
Infraco Proposal (Sch 31)	MC	SB	JM	DM	GG	AR	√
Building Fixing Agreement (Sch 34)	BD	SB	AS				√
Tram Inspector Agreement (Sch 35)	AR	BC					√
Reporting Period end-dates (Sch 36)	BD	SMcG	DM				√
Phase 1B (Sch 38)	GG	SB	DM	SMcG			√
TSA obligations (Sch 40)	AR	BC	SMcG				√
Environmental / H&S KPIs	SB	TC					√
Ground condition information (Sch 42)	SB	GG					√
Utilities information (Sch 43)	SB	GG					√
Close Report :							
Introduction	Complete	SB			CEC		
Infraco Contract Suite	GB	SB			CEC		
Grant award letter	Complete	Complete					
Procurement risk	Complete	SB			CEC		
Third Party Agreements	Complete	GB	DS		CEC		
Land Acquisition Agreements	Complete	GB			CEC		
Governance & corporate matters	Complete	Complete					
Risk assessment - in-process & provisional matters	Complete	SC	MH		CEC		
Readiness for construction	Complete	JM	SC		CEC		
Specific confirmations	Complete	SMCG			CEC		
App 1 - Design management	SC	SB	DS		CEC		
App 2 - Governance & Delegations	Complete	n/a					

FINANCIAL CLOSE - QC PROCESS	Responsibilities :						
Documents	Finalisation (based on Schedule status doc 20.3.08)	Main QC Review	Secondary QC Review(s)				Full DLA QC review
DLA Report							
Letter from DLA	DLA	GB			CEC		√
Infraco summary including Council guarantee	GB	SB	DM		CEC		√
Procurement risk	Complete	SB	MC	JM	CEC		√
Risk matrix	DLA	SMcG	SC		CEC		√
Other key documents :							
Grant funding letter	Complete	n/a					
Operating Agreement - tie / CEC	GB	n/a					
Operating Agreement - TEL / CEC	GB	n/a					
Third Party Agreements :							
BAA license / lease	Complete	SC	DS				√
Station change	Complete	SC	DS				√
Depot change	Complete	SC	DS				√
NR APA	Complete	SC	DS				√
NR Framework agreement and sub agreements	Complete	SC	DS				√
Forth Ports	SC	GB	DS				√
SRU	SC	GB	DS				√
License - West Craigs	Complete	SC	DS				√
License - Gyle	Complete	SC	DS				√
tie and TEL Parties :							
Alastair Richards	AR						
Alasdair Sim	AS						
Bill Campbell	BC						
Bob Dawson	BD						
Dennis Murray	DM						
Damian Sharp	DS						
Eric Smith	ES						
Graeme Bissett	GB						
Geoff Gilbert	GG						
Jim McEwan	JM						
Matthew Crosse	MC						
Mark Hamill	MH						
Steven Bell	SB						
Susan Clark	SC						
Stewart McGarrity	SMcg						
Tom Condie	TC						
Tom Hickman	TH						