

## Edinburgh Tram Network Minutes

**STRICTLY PRIVATE AND CONFIDENTIAL**

### Tram Project Board

**10<sup>th</sup> March 2010 (09:30 to 12:45)**

**tie offices – Citypoint II, Brunel Suite**

<b>Members in Attendance:</b>			
David Mackay	DJM	Bill Campbell	WWC
Richard Jeffrey	RJ	Donald McGougan	DMcG
Cllr Gordon McKenzie	GMcK		
<b>In Attendance:</b>			
Brian Cox	BC	Andy Conway	AC
Neil Scales	NS	Kenneth Hogg	KH
Steven Bell	SB	Cllr Phil Wheeler	PW
Stewart McGarrity	SMcG	Cllr Ian Perry	IP
Graeme Bissett	GB	Cllr Allan Jackson	AJ
Alastair Richards	AR	Ian Craig	IC
Peter Strachan	DA	Mandy Haeburn-Little	MHL
Marshall Poulton	MP	Susan Clark	SC
		Alasdair Sim (minutes)	AS

#### **Apologies:**

Dave Anderson

<b>1.0</b>	<b>Introduction, Review of Previous Minutes and Matters Arising</b>	
1.1	DJM welcomed the participants to the meeting and introduced the TPB to Ian Craig (Managing Director of Lothian Buses), who joined the meeting in his capacity as a TEL Board Member.	
1.2	DJM asked the TPB to declare and confirm any conflicts of interest; there being none, he went on to emphasise the absolute requirement for strict adherence to commercial confidentiality, both in regard to the specific matters discussed and to papers referred to in the meeting. He went on to express his appreciation for the efforts made by the whole team involved in the preparation of materials to be discussed at this TPB.	
1.3	The minute of the TPB from 10 February 2010 were not discussed, and for the purposes of this minute, are taken as read and accepted as a true record.	
<b>2.0</b>	<b>Chief Executive's Update</b>	
2.1	In line with the Tram Project Board instruction arising from the 13 <sup>th</sup> January 2010 TPB, RJ noted that the primary focus of this meeting was to report on the detailed work that has been underway over the past two months in regard the ongoing issues currently facing the project. He went on to note that he and DJM had provided a detailed briefing to John Swinney MSP, the Cabinet Secretary for Finance and Sustainable Growth, Stewart Stevenson MSP, Minister for Transport, Infrastructure and Climate Change and also to senior representatives of Transport Scotland.	

The context of the introduction was framed around the following areas:

- The current situation with no agreed programme and lack of meaningful progress is unsustainable and unsatisfactory for all;
- The relationship with and behaviours of BSC;
- Matters need to be brought to a head, and the options available to achieve this.

RJ went on to confirm to the Board that targeted work has been undertaken on a number of areas:

#### *Performance Audits*

**tie** is entitled under the Contract to audit BB's performance in key areas. Audits were conducted on design management, programme management and sub-contractor arrangements. SB reported on these findings.

#### *Design*

The design process has been problematic throughout the project and completion of the work is significantly behind the programme established in the Infraco contract. Whilst **tie** Changes have driven some of this delay, for example in areas such as Gogar Interchange and Picardy Place, there has been no clear justification from BSC as to the reasons for overall delay or any evidence of design management and mitigation of delay. There are also indications that the scope of what SDS has been asked to deliver compared to the base scope has increased substantially, though the reasons have not been communicated to **tie** by BSC.

#### *Programme*

The original construction programme submitted at Contract Close (May 2008) had a 38 month construction period, and the latest BSC submission allows for a 68 month construction phase which **tie** believes is unacceptable and unrealistic. Amongst a number of documented failings, BSC have not demonstrated that they have effectively sought to mitigate delay.

RJ reported that independent analysis of the programme has been undertaken, supporting **tie**'s position on the matter, and noted that in real terms approximately 4.5km of the 18.5km Phase 1a route are affected by ongoing utilities works.

**tie** has no dispute that utility diversion delays, which are to **tie**'s account, have caused substantial delay to the construction programme. This was acknowledged in an offer from **tie** in late 2009 of Extension of Time and costs covering 6 months. It appears this offer has not been accepted by BSC. The MUDFA Rev 8 matter which was put on hold at the time this offer was made to BSC, is now back in the DRP process at the instigation of BSC, with mediation being held on 16/17 March 2010.

#### *On Street Works*

The precipitate action taken by BSC in early February 2009 when work was halted on Princes St was resolved by agreeing an adaptation of the Infraco Contract in the form of the Princes Street Supplemental Agreement (PSSA). BSC are seeking to impose a new set of terms governing all on-street works which are unacceptable to **tie**, not least because, if accepted, **tie** would

potentially be exposed to sanction for breach of procurement regulations and do not offer best value. However, a detailed counter-proposal has been prepared by **tie** and will be a key feature of the search for resolution.

#### *Contractual Mechanisms*

Since the New Year **tie** has worked more assertively within the framework set by the Infraco Contract to resolve the issues around contractor performance and progress. The messages being relayed in this correspondence to BSC have been indicative of **tie**'s desire to robustly operate the existing contract mechanisms, and have expressed concerns about BSC's approach to fulfilling certain obligations and interpretation of particular clauses in the contract.

RJ confirmed that independent legal and Counsels' advice has been analysed and this has affirmed **tie**'s approach to these matters.

#### *Relationships & Behaviours*

Following a detailed and participative discussion on the behaviours exhibited by BSC, and the various avenues and options that have been explored over the past two years, RJ reported that a series of Senior level meetings with the Consortium took place in the week beginning 1st March, this culminating in a meeting which DJM attended at the request of Bilfinger Berger AG Executive Board Director, Kenneth Reid (responsible for BB's global civils business). Mr Reid indicated that BB were willing to look at any option and suggested putting the "6 key issues" to an independent expert for determination (on a without prejudice basis). DJM suggested that if the process is not binding on the parties, then it was unlikely to be an acceptable way forward.

**The Board concurred with this view.**

#### *Financial Context*

RJ confirmed that **tie** had attended a series of detailed reviews of the current financial position with CEC and Transport Scotland. SMG reported that a detailed financial analysis has been undertaken over a range of possible outcomes and presented the results of this analysis to the Board.

**The Board recognised and acknowledged its limit and delegated authority in regard to the £545m of available funding and an Operational Service Date of October 2012.**

#### *The Way Forward*

RJ presented a number of strategic options to the Board, and a detailed discussion was undertaken, with broad participation from the TPB. The default position of no material change to the present scenario is unattractive, as it offers no certainty on price or programme. A continuation of the current lack of progress will also probably cause public and political support to evaporate.

The work performed in early 2010 constituted a detailed examination of the matters in dispute and the means to resolve them; and determined application of **tie**'s rights under the contract.

The approach adopted appears to have had a significant impact on BSC and the basis on which **tie** can seek to achieve an acceptable legal and commercial outcome is now considerably clearer. **Accordingly, the TPB approved the**

	<p><b>following strategy:</b></p> <ul style="list-style-type: none"> <li>▪ Continue to pursue <b>tie's</b> rights under the existing contract with vigour and seek acceptable resolution of the main disputes in accordance with the agreed action plan;</li> <li>▪ The options and opportunities discussed in detail with the TPB to be pursued in accordance with the agreed action plan;</li> <li>▪ Actively address affordability and incremental options, including operational and financial viability;</li> <li>▪ Reach a resolution of the key matters with BSC;</li> <li>▪ Confirm a new way of working with BSC which mitigates against further dispute risk ;</li> <li>▪ Report progress regularly to the TPB, especially in relation to cost estimates, programme forecasts and potential scope changes in the context of funding availability and the structure of delegated authority which will govern any material changes ; and</li> <li>▪ Report to the next TPB on progress and advise the Board on the emerging timetable to resolution.</li> <li>▪ Continue to update Transport Scotland and CEC and the Non Executive Directors on developments on regular and detailed basis. DMcG suggested that the FCL Sub-Committee could be an appropriate means of achieving this.</li> </ul> <p><i>Communications &amp; Confidentiality</i> MHL noted that recent media attention has heightened, much of due to speculative opinion pieces, and in particular on the purported purpose of this TPB meeting. It was agreed that a statement should be issued in the afternoon of 10 March 2010.</p>	MHL
<b>3.0</b>	<b>Building the Tram</b>	
3.1	<p>RJ referred the Board to the TBP papers for the progress updates for Period 12 covering the following areas:</p> <ul style="list-style-type: none"> <li>▪ HSQE</li> <li>▪ Code of Construction Practice</li> <li>▪ Utilities</li> <li>▪ Infraco (Overall progress 14.2%; 0.5% in P12 vs 4.4% planned)</li> <li>▪ Tramco (Progressing as programmed)</li> </ul> <p>MHL presented a video to the TPB for the installation of the deck beams at Carricknowe Bridge, which involved an overnight operation under full railway possession conditions.</p>	
3.2	<p><u>Change Requests and Risk Drawdown</u> The Board noted the Period 12 Change Request and Risk Drawdown of £68K, relating to Balgreen Road Retaining Wall.</p>	
3.3	<u>Tram Traffic Regulation Order</u>	

	<p>AS noted that the Public Deposit for TRO1 commenced on 22 February 2010, and a staffed exhibition is operating at City Chambers (Monday to Saturday) until the end of the period available for objections (21 March 2010). Over the past three weeks a steady number of visitors have been attended to and so far 56 objection letters have been received.</p> <p>A report to Council is targeted for July 2010, and if the Members approve the recommendations, the TRO can be made in October 2010, and this will set the conditions to allow trams to operate in Edinburgh.</p>	
<b>4.0</b>	<b>Preparing for Operations</b>	
4.1	DJM referred the Board to the TPB papers.	
<b>5.0</b>	<b>Building the Brand</b>	
5.1	No updates were reported to the Board.	
<b>6.0</b>	<b>Building The Team</b>	
6.1	No updates were reported to the Board.	
<b>7.0</b>	<b>Preparing for the Future</b>	
7.1	No updates were reported to the Board.	
<b>8.0</b>	<b>Governance</b>	
8.1	No updates were reported to the Board.	
<b>9.0</b>	<b>AOB</b>	
9.1	No items were raised.	
<b>10.0</b>	<b>Date of Next Meeting</b>	
10.1	DJM thanked the Board for their participation and confirmed that the date of the next meeting will be <b>Wednesday 7<sup>th</sup> April 2010</b> commencing at <b>09:30hrs</b> .	
10.2	The meeting closed at 12:45.	

Prepared by Alasdair Sim on 15<sup>th</sup> March 2010