

From: Alan Coyle

To: Hugh Dunn, David Robertson, Karen Kelly, Donald McGougan, Ian Stirton

Tram briefing – 17th January 2008

1 Introduction

- 1.1 This paper is intended to give you an update on the main issues/workstreams associated with the tram project.

2 Funding Agreement with Transport Scotland (TS)

- 2.1 The funding agreement with TS is in agreed form and we are awaiting a signed letter imminently. A letter had to be provided to TS to give them comfort on issues on the **tie** operating agreement.
- 2.2 TS are concerned with the "best endeavours" obligations **tie** have insisted should be in the Operating agreement, as they appear to be inconsistent with the grant award letter and accompanying schedule as the Council have absolute obligations placed in them in these documents.
- 2.3 The letter of comfort from the Council has been sent to TS to ensure that any apparent inconsistencies are recognised and will not present future difficulty to either the project or Scottish ministers.

3 Council Report of 20th December 2007

- 3.1 A report went on Edinburgh Tram Contract Acceptance went to full Council on 20th December 2007.
- 3.2 The report was originally intended to give **tie** authority to sign the Infraco contract.
- 3.3 Given a number of critical issues still outstanding, detailed in section 5 of this briefing, the Council was not in a position to grant permission to sign at contract close.
- 3.4 The main recommendations of the report were as follows:
- Approve the Final Business Case version 2.
 - Authorise the Chief Executive to instruct **tie** to enter into contracts with the Infraco bidder (BBS) and Tramco bidder CAF, providing the remaining issues are resolved to the satisfaction of the Chief Executive as detailed in this report.
 - Delegate to the Chief Executive authority to exercise the role in terms of above.
 - Authorise the Director of City Development to grant leases or licences, as required, to facilitate the construction and operation of the tram.

- Note that the formal award of these contracts is programmed to take place in January 2008 and will be notified to Council on 7th February 2008.
- Approve the issue of the Guarantee and to delegate authority to the Council Solicitor to conclude and execute this on behalf of the Council for the benefit of BBS.
- Note that the terms of the Draft Grant Award have been agreed in principle and to delegate authority to the Director of Finance to execute this on behalf of the Council
- Approve the governance structure

4 Update on Major Contracts

MUDFA (Contract for Utility Diversions)

4.1 Leith Walk

AMIS commenced work in January 2008 on the southbound carriageway of Leith Walk, between Brunswick Street and Dalmeny Street.

- 4.2 AMIS will commence work in January 2008 on the northbound carriageway of Leith Walk, between Balfour Street and the Foot of the Walk.

- 4.3 Jane Street has been reopened at its junction with Leith Walk on 15 January 2008. Another large BT chamber is required on the southbound carriageway on Leith Walk opposite the Jane Street junction. This work will be carried out, whilst maintaining two-way traffic flows on Leith Walk.

4.4 City Centre

Enabling works are being undertaken in the city centre throughout January 2008. The affected areas are Princes Street, St Andrew Square, Frederick Street, Hope Street and Charlotte Square.

- 4.5 This will allow temporary traffic management measures to be put in place in February 2008, to enable AMIS to commence major diversion works in Shandwick Place and the West End. Shandwick Place will be temporary closed from mid February for a period of 19 weeks with a major traffic diversion in place.

4.6 General

Ongoing minor works along various sections of the Tram route, including CCTV surveys of underground services, diversion of existing utilities and some enabling works.

SDS (Contract for Advanced Design)

- 4.7 SDS drawings are still incomplete and the latest programme shows they are some 300 days behind the programme for approvals. The Council has requested a status report as a deliverable prior to the Council Chief Executive giving tie authority to sign the Infraco contract.

Infraco / Tramco

- 4.8 The negotiations with the preferred bidders for Infraco and Tramco are continuing with the date of contract signing, subject to the Chief Executive's approval, now projected as 5th February 2008 which has slipped from the 28th January 2008.
- 4.9 The discussion with BBS resulted in the signing of the "Agreement for Contract Price for Phase 1a" on the 21st December, essentially fixing the Infraco contract price based on a number of conditions. Key points of the agreement are:
- Effective transfer of design development risk excluding scope changes to BBS;
 - Construction programme to commence operations in Q1, 2011; and
 - Certain exclusion from the fixed price of items outside the scope of the tram project.
- 4.10 Efforts in the period to contract close are focussed on resolving any remaining price and contractual issues with a focus on contract alignment between Infraco and Tramco, value engineering, provisional items and third party agreements.
- 4.11 An agreement was signed with CAF to fix the exchange rate of the Tramco contract and minimise any further risk of adverse exchange rate fluctuations prior to Contract Award.
- 4.12 In order to maintain the overall completion date for Phase 1a of Q1, 2011, advance mobilisation agreements were signed on 20th December with Infraco and Tramco.

5 Critical Issues

- 5.1 A number of critical issues require to be closed out before Directors of City Development and Finance can give the Chief Executive sufficient confidence to give authority to **tie** to sign the Infraco contract.
- 5.2 The following lists activities and deliverables that are expected to be achieved to allow formal award of contracts by **tie**.

5.3 Contract

- Novation agreements completed and ready to be signed off.
- CEC Guarantee agreed with BBS and ready for sign off.
- Due Diligence on approvals signatures for Infraco and Tramco.
- Operating Agreements for **tie** and TEL signed off.
- Mudfa – risks related to Infraco.
- DLA supportive letter of risk matrices. (DLA are **tie's** legal rep's on the Infraco contract)
- OCIP exclusions.
- **tie** to provide a list exclusions from the Bilfinger Berger and Siemens (BBS) contract with a financial value against each item.

5.4 Programme

- Confirmed dates for 1a and 1b and understanding of programme risk.
- Agreement of on-street construction methodology.

5.5 Employers' Requirements (ER)

- **tie** to provide written summary to CEC of the ER, including detailed scope of the Tram Works with endorsement from DLA.

5.6 Due Diligence

- Statement from the BBS that they accept the performance run-time model and "law of physics" results and confirmation of acceptance of the emerging quality of design.

5.7 Risk

- Full transparency of the QRA.
- **tie** to identify the black flag risks, the likelihood of any of these risks occurring and a strategy to avoid those risks materialising.
- The cost of exiting from the black flag risk is to be identified.
- Details of the risk management strategy for the key risks through delivery.
- Detailed analysis of programme risk. Confirmation of the risk allowance for programme delay. Detail of items on critical path and what is being done to ensure they do not cause (further) delay.
- **tie** to produce a written statement to CEC on risks as at 25 October 2007 compared to immediately post contract award.

5.8 Value Engineering (VE)

- **tie** to produce a VE summary included in the final deal highlighting other potential savings with a probability value.

5.9 Pricing

- The Council requires a detailed analysis of prices, costs and risks allowance. **tie** required to explain how prices for maintenance, etc. impact on operating cost assumptions.
- Statement on % of costs fixed and % outstanding as provisional sums with programme for moving these to fixed costs.

5.10 Network Rail (NR) Assurances

- Full statement from **tie** on current status of every proposed agreement between CEC and NR, including Depot and Station Change Procedures. Full risk analysis in respect of each agreement explaining consequences for CEC in terms of time and cost relative to any delays in concluding agreements. This analysis to cross refer to BBS programme.
- NR is contracting with third parties regarding other works at the Depot. Risk analysis to be provided regarding impact on BBS contract (time and cost) arising from late completion of NR works.
- **tie** to produce a contingency plan to take account of any delays in achieving agreement with NR on all matters, including Caley Ale House demolition, Lift and Shift and Immunisation. This to be included in QRA report.
- Minimum requirement that Asset Protection Agreement (APA) agreement is in place.
- Written confirmation from First Scotrail (and from other train operators in respect of Station Change) that they are not objecting to Depot and Station Change.

5.11 SDS Novation

- Full written explanation of the SDS novation to be provided by **tie**, including risks of failing to deliver design.
- Full details are required from **tie** on status and degree of completion of SDS design work as at 14 January 2008, including prior and technical approvals. If approvals risk is not being transferred to BBS, the Council needs to know the impact and likelihood of the risks and a strategy for managing the risks.
- **tie** to confirm that public sector (**tie** and CEC) do not pick up cost of any delays in Planning Authority or Roads Authority processing prior and technical approvals.
- **tie** to provide written report on previous claim settlement with SDS identifying details, cause of claim and costs of settlement. Are any further claims expected from SDS and are they competent?

5.12 Funding Letter

- Terms to be agreed between CEC and Transport Scotland by Financial Close.

5.13 Third Party Agreements

- **tie** to provide status report on all Third Party Agreements.
- **tie** to confirm in writing that all Third Party Agreements were disclosed to BBS, and that BBS final price reflects them complying fully with all said agreements.
- **tie** to report on status of agreements with Telewest and Scottish Power.
- Forth Ports agreement and risk of not having this in place.
- Lease between CEC and tie to be concluded before Financial Close.

5.14 Land Acquisition

- **tie** to provide a full statement on land acquisition on behalf of CEC.
- Confirmation that the GVD process is complete.
- Confirmation of match between what land has been acquired by CEC matching BBS requirements.

6 Council Contribution

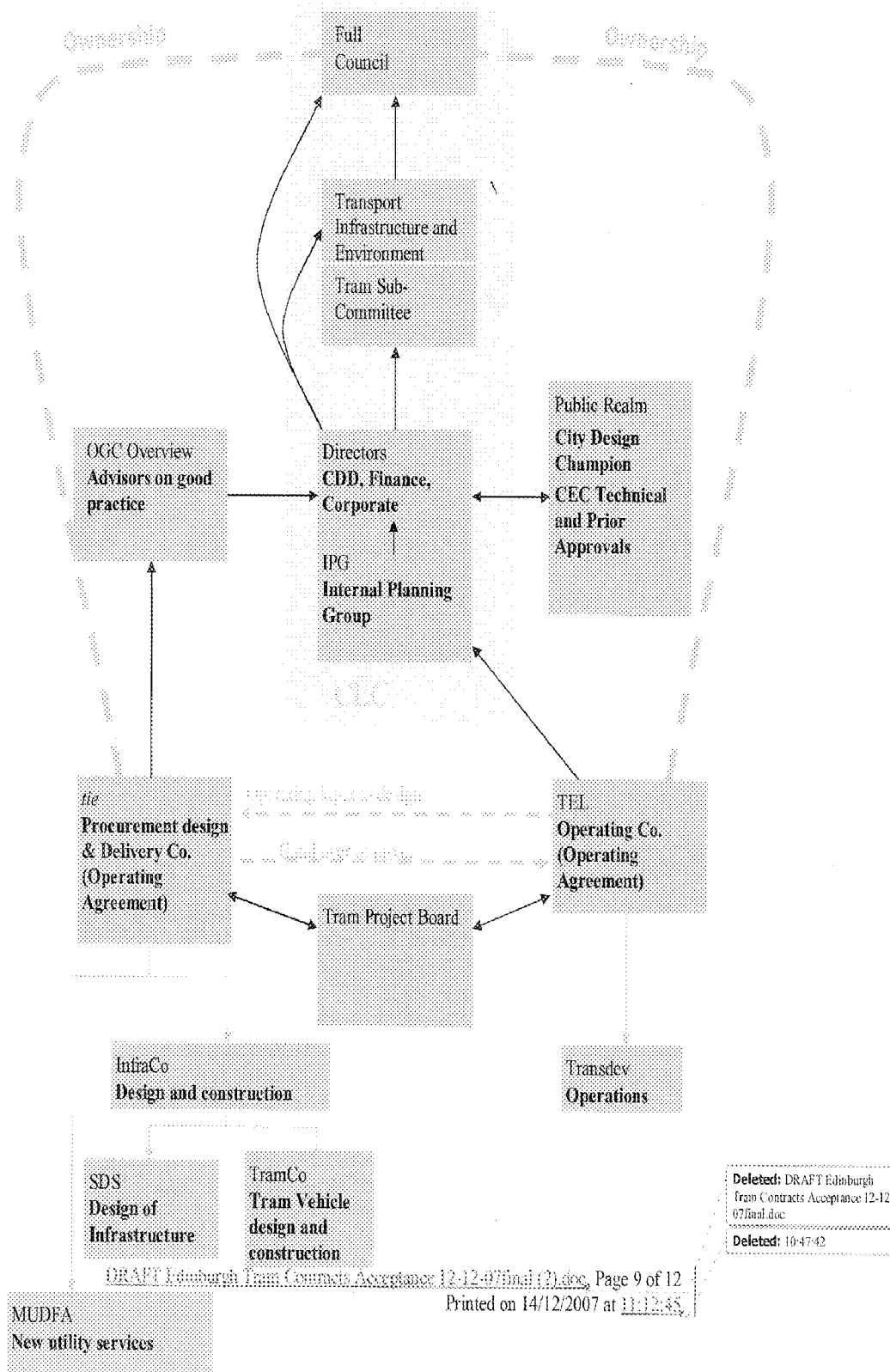
- 6.1 The Council contribution to the project of £45m was subject to independent scrutiny as a result of a Conservative Group addendum to the Tram Council Report of 25th October 2007. The independent assessment was conducted by DTZ Pbeda.
- 6.2 This independent assessment confirms the scale of contributions that can be expected. Their report states "*that the Council's tram funding strategy is realistic, based on sound assumptions and achievable within the timescales*". The findings were subject to a separate report within the agenda of the Planning committee on 19th December 2007.
- 6.3 Council's contribution is to be made up from a variety of sources. The latest position is detailed below:
- 6.4 **CEC Cash - £2.5m (No Change)** – City Development CIP has been reprofiled so that outstanding cash amount can be paid in current financial year, if required.
- 6.5 **CEC Land - £6.2m (No Change)** - £4.3m is for Phase 1a. The £4.3m £2m of the £6.2m is for Phase 1b. If Phase 1b does not go ahead alternative funding sources will be required.
- 6.6 **Developers Contributions Land - £2.2m (No Change)**
Of the £2.2m land contribution from developers £1m relates to Phase 1b. Again if Phase 1b does not go ahead further funding sources will be required.
- 6.7 **Developers Cash Contributions - £25.4m**
Contributions from developers have always been identified as a key component of the Council's financial contribution to the project. The recent report by DTZ gives additional confidence that this figure can be achieved of the time horizon. £2.3m has been contributed to date.
- 6.8 The Tram Developer Contribution Guideline was given approval at the Council's Planning Committee of 19th December 2007.

6.9 **Capital Receipts - £9.7m** – There is still a large amount of uncertainty over where these receipts may be coming from. Andrew Holmes has asked his staff to look at how sites could be aggressively marketed. In addition there may be potential to resell some of the land acquired for the tram construction (but not once it is running) and benefit from any uplift in value. Information has now been supplied by estates to enable this information to be taken into account when assessing the Councils borrowing requirement.

7.0 **Project Governance Issues**

7.1 The governance structure for the project was approved at the Council meeting of 20th December 2007. A diagram of the governance structure can be seen on the next page.

Appendix 1 Tram Organisational Structure



8 Cashflow

- 8.1 The cashflow profile for the project is detailed in Table 1 below with the corresponding gross contribution required from the Council.

Table 1

Year	Cashflow £m	CEC Contribution £m
06/07	36.815	3.056
07/08	97.687	8.108
08/09	150.734	12.511
09/10	139.794	11.603
10/11	50.390	4.182
11/12	4.285	0.356
	479.705	39.816

- 8.2 The profile above does not include land expenditure of £18.4m as there is uncertainty as to the profile of land compensation payments.

9 Advance Purchases

- 9.1 Part of the initial milestone payment to the Infraco Contractor is for advance purchase of steel. This is to give price certainty by removing inflationary risk and because of a substantial discount in the region of £11m.
- 9.2 **tie** were to have in place vesting agreements that would ensure should the Infraco contractor go bust the Council would not be financially exposed. There is dubiety that these agreements are in place to remove any risk to the Council.
- 9.3 As a result assurance must be given by **tie** urgently that the Council will not be exposed to loss as a result of advance purchases.
- 9.4 It is therefore imperative that **tie** provide this comfort to the Council prior to closure of negotiations with the Infraco contractor.

10 Financial Services Workstreams

- 10.1 Financial Services staff are involved in a number of key workstreams and sit on various groups relating to the delivery of the project. This is detailed in Table 2 below.

Table 2

Officer	Current Tram Responsibilities
Alan Coyle/Rebecca Andrew	Provision of financial advice to colleagues in City Development Representation at Legal Affairs Committee Review and scrutiny of financial projections and analysis provided by tie and attending monthly meeting with tie/TS Provision of briefings on Tram Project Board Papers Finance Representative on Property and Legal Internal Group and related workstreams Forecasting of the CEC's contribution to the project in cashflow terms including liaison with Treasury colleagues Providing financial input on papers to tram Internal Planning Group Development of funding agreement with Transport Scotland CEC Finance rep on Final Business Case working group Liaison with tie and Transport Scotland over grant funding issues and monthly reporting Input to and creation of Council Reports on Tram related matters.
Colleen Jennings	Monitoring of CEC staff resource used for tram (both internally funded and charged to tram project) Billing tie for CEC staff Grant claims and reconciliations for the Scottish Executive Processing of tram invoices Reconciliation of CECT bank accounts
Innes Edwards/David King	Managing CECT accounts and transferring monies to tie based on cash flow requirements
Hugh Dunn	Support on issues surrounding £45m, especially the generation of Capital Receipts
David Robertson	Support on issues surrounding the Funding Agreement with Transport Scotland

11 Key Dates

Table 3 highlights key dates on the project.

Table 3- *Robin Goodwin*

20 th December 2007	FBCv2 approved by Full Council.
28 th January 2008*	Financial Close and Tramco/Infraco contracts awarded following CEC/TS approval and cooling off period.
1 st April 2008	Construction Commences on Phase 1a
28 th February 2008	Planning Committee approval of Landscape Habitat Management Plan.
31 st March 2009	Latest date for a decision to instruct <i>tie</i> /BBS to commence 1b
27 th August 2010	Commencement of test running - phase 1a.
Q1 2011	Operations commence - phase 1a.

* Subject to slippage

12 CEC Resources

- 12.1 Funding needs to be identified for additional CEC resources for next financial year. This will need to coincide with **tie's** programme and based upon Version 22, this will likely be approximately £633K. (£37K less than previously reported).
- 12.2 A paper was presented to the Tram Project Board on 9 January 2008 seeking approval for this funding. A meeting to review the situation is to be set up.