

Paper to: Vic Emery

Date: 11th March 2011

Subject: Existing Governance Arrangements & Future Options

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1. Summary

The purpose of the following paper is to set out the existing Governance arrangements between City of Edinburgh Council (CEC) and its arms length companies; TEL Ltd and **tie** Ltd. This includes consideration of the existing governance arrangements for delivery of the construction/commissioning phase and then into post-construction operations of the Edinburgh Tram Network.

Recommendations have been developed which consider the role/purpose, delegated authority, structure, membership and participants in the various Boards and sub-committees currently operating on the project.

2. Governance Arrangements (CEC & Transport Scotland)

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; however, most reporting matters have been reserved to the Full Council meeting resulting in infrequent sub-Committee meetings.

CEC have prepared Operating Agreements and a Memorandum of understanding between the Council, **tie** Limited, Transport Edinburgh Limited (TEL) and Edinburgh Trams Limited (ETL) to codify the arrangements between the entities and the responsibilities of the subsidiaries. The signing of the Operating Agreements creates the authority for **tie** and TEL to execute their responsibilities.

The Operating Agreements also specify certain matters which require the approval of a Council Monitoring Officer. The Tram Monitoring Officer (TMO) 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. The TMO is Marshall Poulton (CEC Head of Transport).

Compliance checks are in place to ensure that TEL/CEC deliver on the requirements set out in the operating agreements.

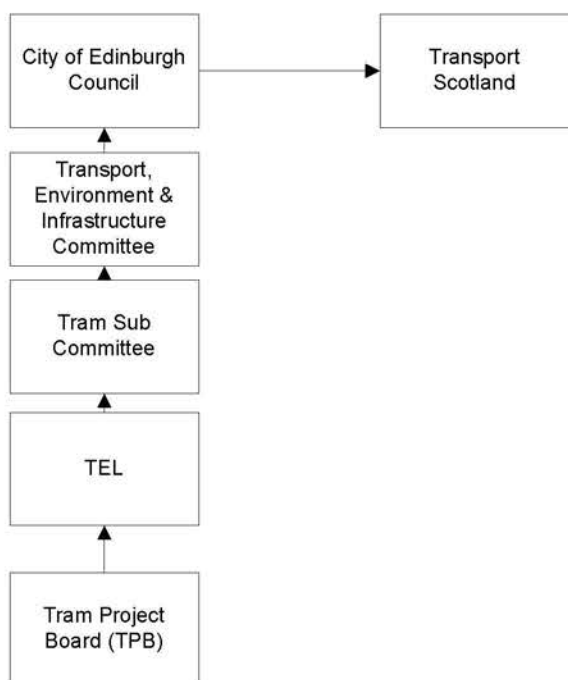
Transport Scotland (TS)

TS exercise their oversight of the project through 4-weekly reporting in a prescribed format and a 4-weekly meeting with the City of Edinburgh Council (CEC). There is also a quarterly review between senior officials of CEC, TS and **tie** limited.

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

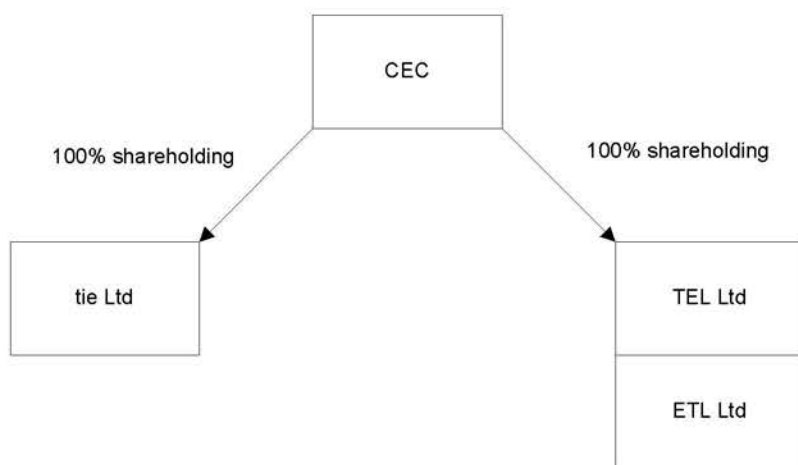
detailed reporting and certification requirements appropriate to the conduct and scale of the project.

The governance model as it relates to funding and reporting is set out as follows:



3. Arms Length Company Arrangements

The following sets out the current shareholder arrangements:



4. Transport Edinburgh Limited (TEL)

A company formed on 22nd June 2004, registration number SC 269639. TEL Ltd is wholly owned by CEC, and the primary function of TEL is to deliver an integrated tram and bus network for Edinburgh. The TEL 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. The TEL Board is responsible for, and is charged to report to the Council as appropriate on all matters affecting the programme, cost and scope of the Project, except the following which are matters reserved to the Council:

- (i) any actual or reasonably expected delay beyond 3 months after the Baseline Date; or
- (ii) any actual or reasonably expected increase in capital cost which would mean that the Baseline Cost is exceeded by greater than £1,000,000; or
- (iii) Any substantial change to the design, scope or service pattern set out in the Final Business Case.

On the basis of information provided by TEL to the Council, the Baseline Date and the Baseline Cost will be determined by the Council's Chief Executive and notified to TEL from time to time.

The Council Chief Executive will require Council approval to specify (i) a Baseline Date beyond October 2012; or (ii) a Baseline Cost exceeding £545 million. In assessing the source of actual or potential cost increases, the Board of TEL will use best endeavours to ensure that all financial claims are taken properly into account.

TEL may delegate responsibility for all of the matters specified above (other than the matters reserved to the Council) to the Tram Project Board (a sub-committee of the TEL Board) and the TPB may in turn delegate responsibility for all other matters to **tie** as appropriate, but only to the extent that such delegation is already within the remit of **tie** in the context of the **tie** Operating Agreement. The TEL Board shall retain ultimate responsibility for all matters it so delegates.

The Board, as of March 2011, comprises:

Members:	Vic Emery (Non Executive Chair); Richard Jeffrey; Bill Campbell; Ian Craig
NXD:	David Anderson; Donald McGougan; Brian Cox; Kenneth Hogg; Neil Scales; Peter Strachan
NXD (Elected Reps):	Cllr Tom Buchanan; Cllr Maggie Chapman; Cllr Allan Jackson; Cllr Gordon Mackenzie; Cllr Ian Perry; Cllr Phil Wheeler

The TEL Board met on five occasions during 2010, with the last meeting taking place on 9 February 2011. Historically, TEL Board meetings have taken place on the same day as the Tram Project Board given the consistency of membership between the TEL Board and TPB.

5. Edinburgh Trams Limited

A company formed on 4th June 2001, registration number SC 219797. ETL, wholly owned by TEL was formed to manage the transition between the construction and operational phases of the project.

The Board of ETL at March 2011 comprises:

Members:	Vic Emery (Non Executive Chair); Richard Jeffrey; Brian Cox; Alastair Richards
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6. tie Limited

A company formed on 30th April 2002, registration number SC 230949. **tie**'s role is to deliver the tram network. **tie** is currently a single project entity. It maintains a role 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 meets annually to comply with company legislation. As mentioned previously, the TEL Board and TPB are the main decision making bodies in regard to the Edinburgh Tram Network.

The **tie** Board, as of March 2011, comprises:

Members:	Vic Emery (Non Executive Chair); Richard Jeffrey;
NXD:	Brian Cox; Kenneth Hogg; Neil Scales; Peter Strachan
NXD (Elected Reps):	Cllr Allan Jackson; Cllr Gordon Mackenzie; Cllr Ian Perry; Cllr Phil Wheeler

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 Chief Executive to execute its contractual responsibilities for the tram project. The Tram Project Director is given delegated authority by the **tie** Chief Executive to manage and deliver the project.

The **tie** Board maintains its Audit and Remuneration committees, membership of which is restricted to the NXDs.

7. Tram Project Board (TPB) and it's sub-Committees

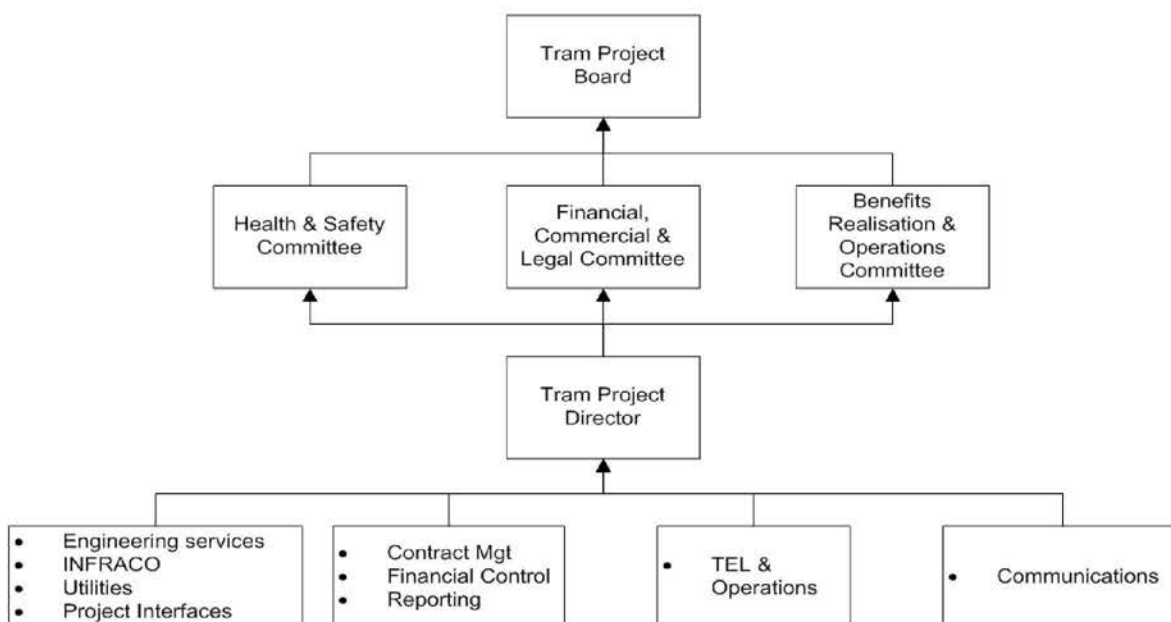
The TPB is the pivotal oversight body in the current governance structure. The TPB is established as a formal sub-Committee of the TEL Board. The TPB has full delegated authority to take the actions needed to deliver the project to the agreed standards of cost, programme and quality within the authority delegated to the TEL Board.

The TPB meets on a 4-weekly cycle, in sync with the CEC reporting to Transport Scotland which a requirement of the Grant Funding arrangements.

The Tram Project Board (which will next meet on 16th March 2011) is attended by a wide range of participants (up to 25 in number, though 18 to 21 is typical), this comprising:

Members:	Vic Emery (Non Executive Chair); Richard Jeffrey; Donald McGougan; Bill Campbell; Cllr Gordon Mackenzie
NXD:	Brian Cox; Kenneth Hogg; Neil Scales; Peter Strachan
Elected Reps:	Cllr Allan Jackson; Cllr Ian Perry; Cllr Phil Wheeler, Cllr Maggie Chapman; Cllr Tom Buchannan
Other Attendees (CEC):	Dave Anderson; Marshall Poulton; Alan Coyle; Andy Conway
Other Attendees (tie):	Steven Bell; Susan Clark; Mandy Haeburn-Little; Gregor Roberts; Alasdair Sim (minutes)
Other Attendees:	Alastair Richards (TEL); Ian Craig (LB)

A number of sub-committees report to the TPB, as well as the reports prepared by the Tram Project Director (which form the basis of the CEC reports to Transport Scotland). The structures supporting the TPB are set out below:



8. Roles & Responsibilities

In summary, the roles of each of the parties involved in the governance of the Edinburgh Tram Network 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 Ltd

- 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 Ltd

- 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

Transport Scotland

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

9. Practical Considerations & Options Review

It is acknowledged that the application of the current governance arrangements may not represent the most appropriate use of resource or application of decision making processes.

Antecedent	Behaviour	Consequence	Mitigation Proposal
In practice, there is no clear differentiation between the role of the TEL Board and the TPB.	Decisions are made within the TPB forum - though it will be noted that these are made by TEL Board members, whom are authorised to do so.	As a result, need for the TEL Board can be somewhat diluted.	Review the remit of the TEL Board and the TPB. A clear reporting line to be established and delegated authority of both Boards to be clarified.
In practice, there is no clear differentiation between the role of the TEL Board and the TPB.	Both detail and strategic issues are debated in the TPB	Risk of dilution in strategic direction, which was the intended remit of the TEL Board	Review the remit of the TEL Board and the TPB. A clear reporting line to be established and delegated authority of both Boards to be clarified.
The makeup of the TEL Board includes	At least two members of the TEL	There is an increased risk for the misuse of	Reconsider the constitution of the TEL

representation from each political party.	Board do not attend meetings, but TPB papers are still circulated to these individuals.	information or materials for political purposes, which is unhelpful in delivering the project.	Board in consideration of attendance and limit the distribution of TPB papers to those requiring them.
The individuals of the TEL Board are all generally involved as either members, non executive directors or in the case of the elected members, as participants in the TPB.	Some members of the TEL Board attend the TPB on a voluntary basis, where reports on the detail of the project are discussed.	This may not be best use of time, and could lead to mixed messages given the complexity of some of the engineering or contractual matters presented in that forum.	Reduce the number of participants attending the TPB to those whom add value or hold decision making authority in the in terms of making recommendations for the TEL Board to consider.
There are often more than 20 participants attending the TPB.	A mixture of over-debate on some matters or not enough on others.	Rigorous challenge is engaged in on some matters and not enough challenge on others. There is a risk of inconsistent decision making.	Limit the participants in the TPB to authorised decision makers supplemented where necessary with technical experts in the particular area of debate.
There are often more than 20 participants attending the TPB.	The majority of attendees of the TPB do not hold decision making authority.	Not all participants add meaningful value to the process.	Those making presentations on particular areas of the project need not attend the whole meeting, particularly if they do not hold decision making authority. This will limit numbers.
The majority of attendees of the TPB do not hold decision making authority.	Attendance at the TPB should be used as opportunity for people without decision making authority to be informed about the current issues surrounding the project.	The balance of the TPB is skewed in favour of information exchange rather than decision making.	Continue to circulate a comprehensive status update in the form of TPB papers to a wider selected audience, but limit participation in the TPB meetings to those whom are required to be there.
TPB Papers are issued electronically on a 4 weekly cycle.	TPB Papers are circulated to wide audience (all TPB & TEL Board members and a range of CEC and tie staff).	There is a risk that sensitive information could find its way into the public domain and be either misinterpreted or misrepresented, which could have negative commercial consequences.	Reconsider the circulation of papers to a selected audience, and ask those included to sign a confidentiality undertaking. Send out hard copies only, and not by email.
The TPB meets every 4 weeks in sync with the reporting cycle to	Repetition of standing items or long lead items is	Not most effective use of time either at the meeting or in the	Consider reporting on a by exception basis to the TPB.

Transport Scotland.	commonplace.	compilation of reports and presentations.	
The TPB Agenda covers a wide range of subject matter.	Non direct project delivery items are discussed at the TPB. These include items which, whilst important in their own right; eg staffing, morale, comms, City branding initiatives etc, these do not fit with the stated remit of the TPB.	The TPB typically operates from 09:30 to 12:00, and within this limited timeframe, better use of time could be given to the challenge and debate on delivery focussed matters.	Refer these more strategic matters to the TEL Board for review.
The TPB meets every 4 weeks in sync with the reporting cycle to Transport Scotland. The TS reporting cycle is fixed.	The current scheduling of the TPB is for the meeting to be held 5 days after the TS reports are delivered (every fourth Wednesday)	The TPB members have insufficient time to review, digest and challenge the content of the TPB reports in advance of the meetings. This could lead to issues which should be debated at the TPB not being included in the Agenda.	Consider rescheduling the TPB by either pushing the meeting dates out by one week, to allow more time for the papers/materials to be reviewed, or reconsider the principle of holding 4 weekly meetings.

10. Recommendations

The following is recommended:

1. Redefine the Terms of Reference and remit of the TEL and Tram Project Boards, adjusting the reporting mechanisms and presentation materials as appropriate.
2. Reconfirm the membership and participants attending both Boards.
3. Reduce the participation of the TPB to those individuals whom are either:
 - Recognised members of the Board or nominated substitutes with decision making authority;
 - Making presentations to the Board and would then leave the meeting following their specific input.
4. Move the TPB schedule back by one week, but maintain sync with the Transport Scotland reporting cycle.
5. All persons identified to receive a TPB papers pack to sign a confidentiality undertaking.

6. Allow a minimum of 10 days for TPB members/attendees to review the papers in advance of the meeting. Presentation materials to be circulated at least two days in advance of the meeting. All materials to be circulated in hard copy only.