



**Transport Edinburgh**  
**Trams for Edinburgh**  
**Lothian Buses**

**Tram Project Board**  
**Report on Periods 8 and 9**  
**Papers for meeting 7<sup>th</sup> December 2007**

**09:00am – 12:00pm**

**Distribution:**

David Mackay (Chair)  
Willie Gallagher  
Neil Renilson  
Bill Campbell  
Andrew Holmes  
Matthew Crosse  
Susan Clark  
Steven Bell

Donald McGougan  
Graeme Bissett  
James Stewart  
Jim Harries  
Jim McEwan

TRAM PROJECT BOARD

<b>Agenda Tram Project Board .....</b>	<b>4</b>
<b>Edinburgh Tram Network Minutes .....</b>	<b>5</b>
1 Executive summary .....	10
1.1. Previous period update .....	10
1.2. Key issues for forthcoming period .....	15
1.3. Cost .....	16
1.4. Programme .....	18
1.5. Risk .....	18
1.6. Approvals / decisions / support required .....	19
 <b>Appendices</b>	
Appendix A Procurement milestone summary .....	20
Appendix B Headline cost report .....	21
1.1. Current financial year .....	21
1.2. Next Financial Year .....	22
1.3. Total project anticipated outturn versus total project funding .....	22
1.4. Change Control .....	23
1.5. Summary Breakdown .....	23
Appendix C Risk and opportunity .....	24
1.1. Summary .....	24
1.2. Review project risk register .....	24
Appendix D Primary risk register .....	25
 <b>Supporting papers</b>	
SDS Update – P9 .....	32
Change Management .....	34
Phase 1b – Roseburn to Granton .....	40
Tram Peer Review Group .....	42
Background note – Governance documentation .....	44
Project Governance .....	45
Governance – <b>tie</b> and TEL Operating Agreements .....	59
Draft tie Operating Agreement .....	61
DRAFT <b>tie</b> Operating Agreement – <b>tie</b> note of concerns 3.12.07 .....	74

**Agenda Tram Project Board**  
**Brunel Suite – Citypoint II, 2<sup>nd</sup> Floor**  
**7<sup>th</sup> December 2007 – 9.00am to 12.00pm**

**Attendees:**

David Mackay (Chair)	Stewart McGarrity
Willie Gallagher	Jim McEwan
Neil Renilson	Jim Harries
Bill Campbell	Steven Bell
Andrew Holmes	James Stewart
Matthew Crosse	Susan Clark
Donald McGougan	Andrew Fitchie
Graeme Bissett	Alastair Richards
Geoff Gilbert	Miriam Thorne (minutes)
Colin McLauchlin	

Apologies:

- 1 Review of previous minutes and matters arising
- 2 Presentation:
  - Overview and key issues – WG
  - Financial close programme – GB
  - Design and contractual negotiations – SB / GG / SMcG / AF
  - Grant Award letter – SMcG
  - Governance arrangements – GB
  - Other (NR / Tax structuring / FBC / OGC3 / Council £45m) – SB / GB / SMcG / SC / CEC
  - Council report – WG / CEC
- 3 Project Director's progress report for Period 9 - Papers:
  - Change management – SC
  - Development and Funding of Phase 1b – GB
  - Peer review group – SC
- 4 Picardy Place
- 5 Change requests
- 6 Risk
- 7 CEC contribution
- 8 Date of next and subsequent meetings
- 9 AOB

**Edinburgh Tram Network Minutes**

**Tram Project Board**

**31 October 2007**

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

<b>Principals</b>		<b>Participants:</b>	
David Mackay	DJM (chair)	Matthew Crosse	MC
Willie Gallagher	WG	Graeme Bissett	GB
Donald McGougan	DMcG	Steven Bell	SB
Andrew Holmes	AH	Bill Campbell	WWC
Neil Renilson	NR	Susan Clark	SC
James Stewart	JS	Colin McLauchlan	CMcL
		Jim McEwan	JMcE
		Stewart McGarrity	SMcG
		Jim Harries	JH
		Elliot Scott (minutes)	ES

**Apologies:** Geoff Gilbert, Alastair Richards, Miriam Thorne

<b>1.0</b>	<b>Introduction</b>	<b>Action</b>
1.1	DJM welcomed SMG and JS to the meeting after their absences.	
<b>2.0</b>	<b>REVIEW OF PREVIOUS MEETING</b>	
2.1	The previous minutes were taken as read.	
<b>3.0</b>	<b>Matters arising</b>	
3.1	NR gave an update on concessionary fares, reiterating that the FBCv1 assumes that tram participates in the same fashion as bus, although a change of legislation would be required for this to happen. The Board noted the recent comment from TS to the Evening News that it is their intention to treat tram and bus equally in relation to concessionary fares.	
3.2	DMcG conveyed to the Board that Tom Aitchison could not recall the conversation with DJM regarding Council recharges in 08/09. DJM offered to provide his meeting notes, if necessary, to substantiate the “wooden dollars” conversation which was also witnessed by NR. DMcG and AH to report back to Tom Aitchison.	<b>DMcG / AH</b>
<b>4.0</b>	<b>Presentations</b>	
4.1	WG provided a high-level overview of key elements progressed during the period and the issues to be discussed in detail at this TPB. The full presentation given to staff (on 30 October) on the delivery structure to be circulated to the TPB.	<b>WG</b>

4.2	<b>Governance</b>	
4.3	GB gave an update on the FBC status and indicated that the report on FBCv2 would only update on any changes to FBCv1. AH / DMcG to provide their report for the Council to the next TPB.	DMcG / AH
4.4	<u>Award Letter.</u> Although the amount (£500M) and scope (priority to Phase 1a, surplus to Phase 1b) have been confirmed, the legal drafting regarding protection of CEC is still outstanding. GB confirmed that the parliamentary funding will not count against the £500M. The concern is that TS do not respond in a timeframe that allows the necessary approvals to achieve Financial Close. GB to prepare a summary of key dates for the programme for the agreement of the Award Letter. WG to confirm expectations with Malcolm Reed, John Swinney, Stewart Stevenson, Bill Reeve and Gerry Morrissey. JS also to follow up with Malcolm Reed.	GB / WG / JS
4.5	<u>Pre-close funding.</u> JS queried the impact if Financial Close were delayed. GB confirmed that this is likely to be £10-12M / month and could not be covered within the current funding envelope.	
4.6	<u>Governance structure.</u> GB outlined the roles of the current TPB Committees in the period to Financial Close and confirmed that the Legal Affairs, Procurement and MUDFA Committees would continue, while the DPD would be disbanded. CMcL outlined the <b>tie</b> tram structure in the period to and beyond Financial Close. SB confirmed that he was happy with the shape so far but added that there may be changes as the project moves along. DJM offered his support to SB.	
4.7	AH expressed concern about the role of Communications in the structure – this requires to be shown more clearly in the diagram.	CMcL
4.8	Discussion centered whether there are processes in place to ensure that there are appropriate and vital linkages and communication across workstreams. Both WG and SB are focused on this. JH raised his concerns about the artificial but real communication barriers caused by the first and second floor locations of staff.	CMcL
4.9	<b>MUDFA</b>	
4.10	SB gave an update on the current situation regarding progress, safety and expenditure. He highlighted the on-time delivery of SDS drawings in October and that SDS were on target to meet key deliverables in mid-November. The programme implications of the BT Openreach issue in St Andrew Square were also highlighted as a concern at this time, although more detail will be provided in the coming weeks.	
4.11	<b>Network Rail</b>	
4.12	SB updated that the lease is still outstanding and that a CPO was sent to NWR on 26 <sup>th</sup> October. SB is meeting with Ron McAulay next week regarding equipment relocation. WG suggested that JS could support resolution of this issue.	

4.13	<b>Engineering</b>	
4.14	SB reported that there were areas of minor slippage in SDS deliverables and that the focus is now on the Approvals and Technical Approvals programme which will be a timing and resource challenge.	
4.15	AH reiterated previous statements that the programme (and costs) are dependent on SDS getting it right first time. SB to arrange a session with AH and the planning team to walk through the key issues.	SB / AH
4.16	<b>Procurement</b>	
4.17	MC provided an update on procurement progress and the process to Financial Close. There are two phases – the first between now and the 20 <sup>th</sup> December Council meeting (where materially price-critical elements will be pinned down) and between then and 28 January (where low risk areas will be covered).	
4.18	JS queried the amount of work that was still outstanding on the legal terms. MC stated that although all of the big items were agreed prior to the Preferred Bidder being selected, the schedules and mechanics of the agreement were still outstanding. There is also the option to sell / trade some of the risk in the final deal. The target was to reduce the provisional items in the deal to below 10% by 20 December.	
4.19	DJM questioned the channelling of negotiations and stated that the £498m figure was less important than securing the best possible contract. MC stated that unless there were changes that the Board needed to approve, any changes would go through the procurement sub-committee.	
4.20	<b>Legals and contracts</b>	
4.21	JS queried whether there is a dependency on TS to provide an indemnity to Infraco. GB stated that it lies with CEC, who are reliant on the Award Letter from TS.	
4.22	The Board noted the comment from JS that an independent legal review of the contracts may have been desirable. However, it decided that given the current advanced progress and significant involvement of legal resources, such a review was inappropriate.	
4.23	<b>Value engineering</b>	
4.24	JMcE updated that there has now been progress on a number of items that had been delayed prior to the selection of the Preferred Bidder. BBS are to be supplied with a CD of drawings and will respond by 13 <sup>th</sup> November on the quantum of further VE opportunities.	
4.25	<b>Programme</b>	
4.26	SC presented the programme to Financial Close. SC to check what level of sign off is required by Parsons Brinckerhoff prior to novation.	SC
4.27	JS asked for clarification on the main issues that need to be resolved prior to Financial Close. The items identified were: <ul style="list-style-type: none"> <li>- Closure of the provisional price items;</li> <li>- The Funding Agreement;</li> <li>- Alignment of the SDS, Tramco and Infraco contracts (novation and VE);</li> <li>- The outstanding core contract terms;</li> <li>- The alignment of the key supporting schedules and agreements;</li> </ul>	

	<ul style="list-style-type: none"> <li>- St Andrews Square; and</li> <li>- Network Rail / BAA.</li> </ul> <p>DMcG stated the items that are important for CEC are the Funding Agreement and minimising the risk in the contract.</p>	
4.28	<b>Sign-off criteria</b>	
4.29	SC provided a straw man for the approvals required. If any approvals missing please provide to SC.	All
4.30	<b>Communications</b>	
4.31	CMcL outlined progress to date. DMcG offered his support to help re-start the rates relief programme.	
4.32	AH expressed concern over the lack of use of Edinburgh Open for Business hoardings and questioned the use an alternative route sign on Leith Walk. NR stated that an alternative sign had been designed but this had been rejected by CEC. AH requested that the approval process be escalated.	CMcL to action
4.33	AH also requested to be informed of any issues arising with the Federation of Small Businesses. WG / AH to discuss off-line.	WG / AH
4.34	<b>IPR</b>	
4.35	SC provided a brief update on IPR.	
4.36	NR queried whether any progress had been made on Hermiston Gait or Saughton Park and Ride sites. AH stated that there was no progress to report but he would follow up with NR in due course.	
<b>5.0</b>	<b>Project directors report</b>	
5.1	The report was taken as read. WG highlighted the work that Barry Cross had done with BAA and also the work to unlock the design issues at Lindsay Road and Ocean Terminal.	
<b>6.0</b>	<b>OGC3 and risk review</b>	
6.1	SC briefed the Board on the action plan from the OGC3 review contained in the report. The Board endorsed the action plan and the continued status reporting.	
<b>7.0</b>	<b>Change requests</b>	
7.1	In future a summary of all change requests will be provided to the Board. MC / SC / DJM to action.	MC / SC / DJM
7.2	<p>There was a lengthy discussion on the layout of Picardy Place. Indications are that although any change may be cost neutral (on tram and bus initially, future impacts have not been quantified), the programme effects are yet to be quantified. The main issues are the ability for buses to make a right turn from Broughton Street and the provision of land for development and what drives the decision – transport or urban design. A meeting is to be held on Friday 2 November with the aim of making a decision on the way forward.</p> <p>The discussion highlighted that there may be other critical urban spaces along the route that could become issues in the future. SB to follow up the status and deliverables in relation to Haymarket and the West End.</p>	SB



<b>8.0</b>	<b>CEC contribution</b>	
8.1	DMcG reiterated that although CEC contributions are currently dependent on developer contributions from the waterfront, if these do not materialise, the Council will find the money from elsewhere.	
<b>9.0</b>	<b>Runtime</b>	
9.1	The Board noted the contents of the paper.	
<b>10.0</b>	<b>AOB</b>	
10.1	WG reported that there has been no contact from TS regarding the proposed interchange at Gogar. WG to discuss method of contacting TS so the impact on tram can be assessed.	WG
10.2	The next meeting is to be held on Friday 7 <sup>th</sup> December, starting at 9am.	

Prepared by Elliot Scott, 31<sup>st</sup> October 2007

## **1 Executive summary**

### **1.1. Previous period update**

#### **1.2.1 Commercial and procurement**

##### Infraco / Tramco

Negotiations continue with the selected Preferred Bidders to finalise the contracts for approval in December 07 and award in January 08. The due diligence process by the bidder on the SDS design is continuing with good progress being made so far. Further facilitated negotiations between **tie** and the preferred bidders for Infraco, Tramco and the SDS contractor respectively will be undertaken during the period.

In order to maintain the overall completion date for Phase 1a in Q1 of 2011, advance mobilisation of Infraco and Tramco is required. A scope and programme has been received from the Infraco bidder and it is anticipated that the advanced mobilisation agreement will be signed during the next period.

##### MUDFA

All the potential issues related to the delayed commencement of the AMIS MUDFA utility diversion works have been discussed in detail with AMIS resulting in an agreed way forward and agreement is being finalised.

#### **1.2.2 Approvals / governance / funding**

##### Governance

The detailed committee structures and relationships with CEC for the delivery phase of the project have now been developed and will be presented to the Tram Project Board on 7<sup>th</sup> December. The revised **tie** / CEC operating agreement will be approved by the Council on 20<sup>th</sup> December.

##### Funding letter

All matters of substance regarding the Funding Letter have been agreed between CEC and TS and a revised Draft is expected on 5<sup>th</sup> December. The programme anticipates the letter will be approved at the IDM on 12<sup>th</sup> December and thereafter will be available to the Preferred Bidders and will be a background paper to the Council report on 20<sup>th</sup> December.

Confirmation is awaited from TS regarding a mechanism to fund payments for advance material purchases before the end of the current financial year.

##### Pre-close funding

There is sufficient funding in place to cover requirements until the projected Financial Close in January 2008.

##### OGC

All OGC recommendations have either been implemented or there is a clear documented plan to have them implemented.

### 1.2.3 Design and engineering

#### Design deliverables

To 23<sup>rd</sup> November, of the 344 design deliverables, 236 have been delivered, representing 63% of the tram system design. 66% of Phase 1A detailed design is now complete and it is expected that about 75% will be complete by the date of placement of the construction contract in Jan 2008. Some slippage occurred between V20 and V21 but the rate of progress has been recovered. This slippage is mostly due to the continuing impact of section 1A delays.

SDS design progress will be discussed with Tom O'Neill, the PB President, on the 5<sup>th</sup> December.

Heads of terms have been agreed with Forth Ports and design is progressing on this basis with agreement that any additional works will be funded by Forth Ports.

The formal design reviews are continuing on a weekly basis and good progress is being made to achieve stakeholder buy-in. There is ongoing focus on technical matters and prior approvals with CEC.

#### ROGS

The Tram project is one of the first rail projects in the UK to be run under ROGS and is the first Tram project in the UK to be run under these regulations. The regulations require an Independent Competent Person to formally accept the constructed tram system for use. Work has begun to address the principal matters.

An Evidence File will be compiled before commissioning to present **tie's** case for acceptance. This process will begin immediately. The principal issues which have been raised so far include:

- The basis of the suite of standards which have been used for design and the rationale for the particular combination employed;
- Design integration of inter-related system at the detailed design stage and the degree to which CDM regulations have been properly accommodated;
- Arrangements for the independence of the Safety Verification Scheme (a requirement of ROGS); and
- The acceptability of design features which mix pedestrians, tram and cyclists.

These issues are all under review and will feature in the Evidence File.

#### Value engineering

VE progressed during the period in conjunction with the due diligence and technical clarifications ongoing as part of the preferred bidder process.

**1.2.4 MUDFA**

Progress to end period 8 (Period 9 figures not yet available)

		Period 08 2007/08			Overall performance to date		
		PLANNED	ACTUAL	Variance	PLANNED	ACTUAL	Variance
<b>TOTAL</b>	Metres	1009	831	-178	3722	3915	193
	Chambers	8	14	6	18	28	10
<b>BT/Comm</b>	Metres				1904	2165	261
<b>SGN</b>	Metres				86	86	0
<b>Scot W</b>	Metres				1441	1371	-70
<b>Scot P</b>	Metres				291	293	2

Programme

The revision 06 of the MUDFA programme has been finalised by **tie** and AMIS.

The following key issues have a major impact on the Rev 06 programme:

- BT cabling and jointing programme – working with BT to explore ways of reducing the impact. These include BT working 24/7 and allowing early access for BT cabling and jointing. This required detailed integration with Infraco by sub-area. The program aims to minimise potential interfaces between MUDFA and Infraco to maximise the window of opportunity for the BT works; and
- Traffic Management interface between works in St Andrews Square, the Mound and Lothian Road junction. Several meetings have resulted in way forward, accepted by all stakeholders, with the construction works in this vicinity, whilst minimising disruption to the traffic flow and businesses.

Summary of work section progress:

**Section 1B**

The centre reservation along Leith Walk is being removed and temporary road reinstatement installed to provide a greater working area for the utility diversions and greater flexibility with traffic management along Leith Walk. This work is essential to facilitate the achieving of the Rev 06 programme. Removal of the centre reservation is also required for Infraco works. All the proposals have been discussed and agreed with the Traffic Management Panel, prior to implementation, with local businesses and stakeholders informed.

Jane Street road closure commenced on the 15<sup>th</sup> October 2007 for twelve weeks to accommodate a major exchange BT chamber.

Actual progress in this area is 16% against a planned 29% due to issues related to accommodating the utilities and the congestion of existing utilities. The resources in this area are being increased by 50% to recover the programme. No overall impact is expected on the final completion of the Leith Walk diversions.

### **Section 1C**

A series of 34 trial-hole investigations along Princes Street were undertaken in the period to inform construction and reducing the potential risk of delays to programme.

The utility road crossings in Princes Street at the junctions of Frederick Street and Castle Street commenced 12<sup>th</sup> November with completion of five road crossings prior to the embargo at start of December. The remaining four will be carried out in January 08.

### **Section 1D**

A series of trial-holes requested by EICC in Morrison Street commenced on the 19<sup>th</sup> November – these are non-MUDFA works which will not impact on the MUDFA programme. All trial holes were completed by the 30<sup>th</sup> November as programmed.

45 trial-holes to inform construction along Shandwick Place were undertaken in the period. The remaining 31 planned trial-holes will be completed in the next period.

### **Section 5A, 5B & 5C**

The MUDFA works available within Section 5A were completed on the 5<sup>th</sup> October 2007 amounting to 70% of the utility diversions required in this area. The remaining 30% of utility diversions are being transferred to the Infracore contractor's scope as enabling works, such as retaining walls, are required.

Section 5B and 5C IFC utility drawings are awaited for review by **tie** to confirm these works are likely to be transferred into the Infracore contract.

### **Section 6 (utilities)**

Diversion of the 33kv SP cable was completed and energised. The 250mm watermain diversion is complete under RATs (risk and trade-off) – excluding testing and commissioning. The 800mm watermain diversion final levels are under design. The main will be within the anticipated profile of the adjacent road. These works will be carried out under a RATs proposal – early discussions are underway with SW to this effect.

### **Section 6 (Gogar)**

Earthwork operations have been completed as far as practicably possible. Completion of both the SGN and SW diversions is required to release the land area 'locked-in'. Both are anticipated for completion by end March at the latest. The BAA fence requires realigning into BAA ground. This was due before the end of November but is currently anticipated to be complete early in the New Year. This is contingent on agreement from the CAA that the flight path is not affected by the new fence alignment. The fence realignment will be completed by the approved BAA contractor. The handover of the Gogar depot site was concluded on satisfactory inspection of the area by **tie** team on 13<sup>th</sup> November.

### **Section 7A and 7B**

AMIS have submitted proposals for the utility diversions associated with the above two sections to be commenced as RATs. The submissions are currently under

review and **tie** has arranged meetings with the affected SUCs and BAA to discuss and agree.

### **1.2.5 Delivery**

The land assembly GVD notices are on schedule. GVD6, the final tranche, will be issued mid December 2007.

BAA agreements are in agreed form and will be executed by 10<sup>th</sup> December. It is anticipated that the suite of Network Rail Agreements will be in agreed form by mid December. Final sign off of the APA can only be concluded once the Depot and Station Change processes have been approved by First ScotRail. NR have confirmed that access to the remainder of NR lease land (excluding those plots affected by Depot and Station Change) will be available to Infracore under the agreed terms of the APA. The assembling of relevant information for these change procedures has been initiated.

Works started on site for Ingliston Park and Ride Phase 2.

The Traffic Management (TM) process was reviewed in the period following issues on Leith Walk in respect of alterations to TM works (post installation) and recovery periods. The review identified the need for a critical review of TM performance in early stages of installation to ensure traffic flow and behaviour crystallize as anticipated. The identification of authorised TM reviewers (AMIS / **tie**) and the review process were ratified with key stakeholders (CEC / LB).

The emerging results of modelling the wide area impacts suggest that changes in traffic patterns are likely to be localised around the tram corridor / catchment areas, and do not spread over a wide section of the city. The Traffic Model is expected to be signed off as fit for purpose by CEC during December.

The modelling support to inform the design process is proceeding well, with finalisation of Picardy Place, the Mound and the West End expected in early December.

Approval was received from SNH for destruction of the badger setts. This is programmed for December.

### **1.2.6 Health, safety, environment and quality**

There were two accidents reported in the period to date, both of a minor nature. The investigation reports are on-going. There were three incidents reported in the period, in two cases, there was damage to cables. In the third a member of the public was struck by a plastic barrier which fell over. No injury was reported.

### **1.2.7 Stakeholder and communications**

Stakeholder engagement in the last period related to the ongoing customer interaction for the MUDFA works and the progress of the final tram route design.

Preparation is now well underway for the presentations to frontager and the wider community on the final design for the tram route which will be held from January to April in 2008.

The stakeholder team has continued to meet with groups and individuals affected by the project in particular the MUDFA works. Most of this is based on face to face meetings and is producing real benefits for the project through the reduction of customer complaints.

The communication strategy is focused on the MUDFA works and the drive from the wider media interest for continuing information on progress. As part of the "Edinburgh's Open for Business" strategy, a special sub-committee has been created which is chaired by the Edinburgh Chamber of Commerce. This sub-committee has a clear remit to ensure that the city is marketed as being open for business during the construction works.

Key stakeholder matters arising from the utility diversions are set out below:

- BT cabling, St Andrews Square streetscape works and Picardy Place final alignment are major issues which have been the subject of significant review in the development of the Rev 06 Programme;
- Removal of central reserve along Leith Walk is ongoing;
- Jane Street Road closure commenced 15/10/07 for 12 weeks;
- Princes St utility crossings at Frederick and Castle St were carried out between 12/11/07 and 30/11/07;
- Trial holes for the east-bound carriageway on Shandwick Place ongoing in the latter part of the period; and
- Access agreements for SUC's apparatus which remains within the Dynamic kinematic envelope (swept path) to be agreed between SUC and with both TEL and CEC for Constitution St, Shandwick Place and Haymarket. Ongoing discussions with the affected parties progressing.

## **1.2. Key issues for forthcoming period**

### General

- Progress of the Preferred Bidder process – on price, programme, risk allocation, legals and contract elements;
- Agreement of the funding terms;
- Finalisation of Picardy Place;
- Steps to update the Council Report as agreed in October; and
- Approval of FBCv2.

### MUDFA specific:

- Key performance Indicators for individual sections continue to be refined;
- Complete production of detailed construction programmes for sections 1B, 1C, 1D, 6 & 7A;
- Ratify Section 2A within the Rev 06 programme;
- SGN technical and commercial issues to be resolved with the exception of a 30" gas main at the Mound which is under review and discussion with SGN;

- SGN commercial agreement was finalised for Willie Gallagher / Mel Karam agreement in early November 2007. A letter formalising the agreement was sent and confirmation is awaited; and
- BT issue re programme of cabling and jointing for diversions, particularly for section 1C. Development continues in order to identify critical interface areas with Infraco.

### 1.3. Cost

	COWD Period	COWD (YTD)	COWD YTD + forecast to year end	AFC
Phase 1a	£5.1m	£44.4m	£93.1m	£498.1m
Phase 1b	£0.0m	£ 1.1m	£ 2.0m	£ 87.3m
Phase 1a+1b	£5.1m	£45.5m	£95.0m	£585.4m

The COWD in the year to date primarily comprises continued development of design, advance works at the Gogar depot, utilities works under both MUDFA and direct works by utility companies, project management costs and land costs.

The cost of land included in the year to date totalling £16.6m (comprising both land acquired under the GVD process and land injected into the project by CEC) is included in this report for completeness. However, all payments have and will be made directly by CEC.

The forecast COWD for the year has reduced from £132.7m reported last period to £95m. This is primarily due to the treatment of payments to be made for advance material purchases (£26.7m) as prepayments, following discussion with TS. This is subject to confirmation by TS that there is a mechanism to provide cash to make these prepayments during the current year. The revised forecast also reflects current estimates of contractor mobilisation costs and a further revision to the level of contingency (risk allowance) allocated to the current year.

The new funding required during the current financial year is now **£17.9m** (£95m less £77.1m already authorised). Should this all be granted by TS then the total expenditure for the year of £95m will be funded as £6.5m from CEC and £88.5m from TS.

Forecast expenditure during FY08/09 (now estimated at £162m on Phase1a) and subsequent years is subject to continuing finalisation of tendered costs and related cost profiles with the Infraco and Tramco bidders and the element of the risk allowance allocated to that year. Cognisance is being taken of the current £120m cap on TS funding for FY08/09 to the extent it makes commercial sense.

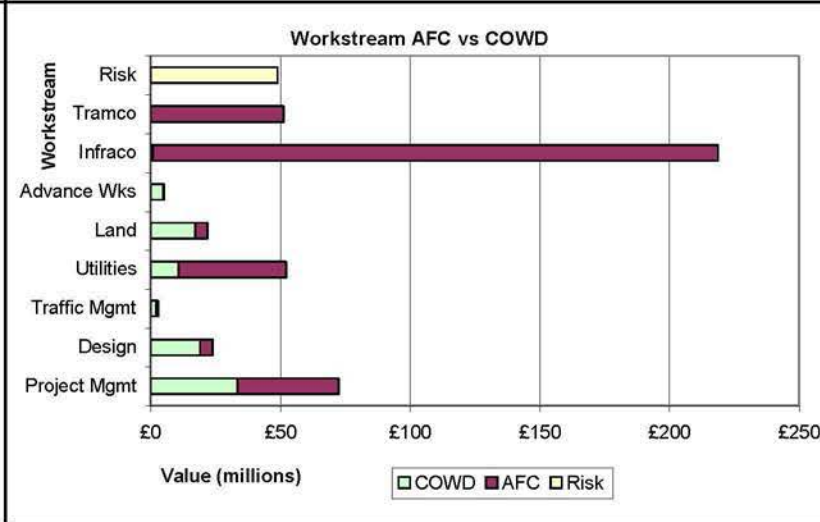
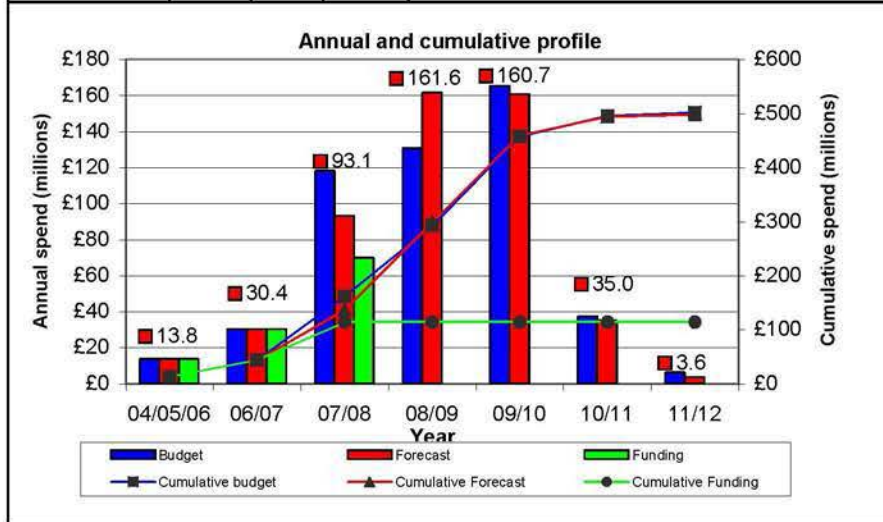
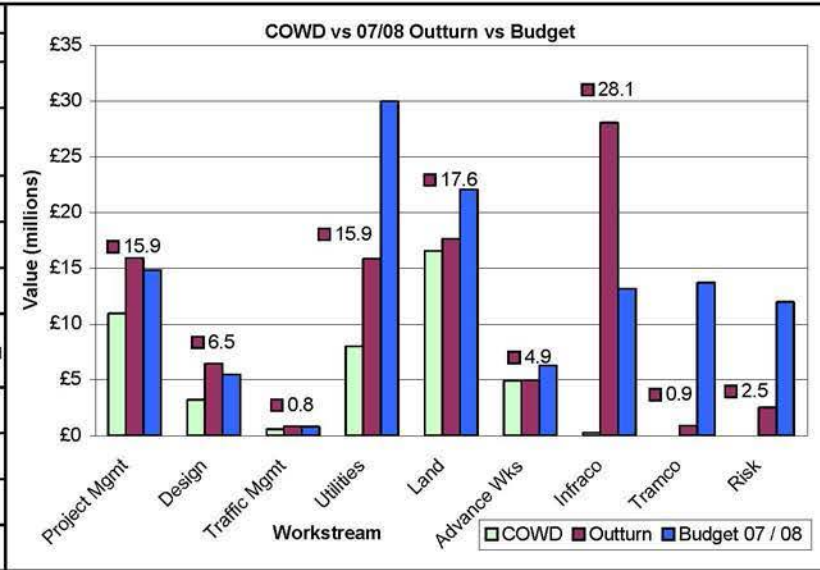
Costs for Phase 1b relate purely to finalising design works, as previously agreed by the Board.



FOISA exempt

Yes  
 No

Period 9 - 07/08 COWD (£000s)				
Workstream	F/cast	Act	Var	Comments
Project Mgmt	1,104	1,110	6	
Design	574	(230)	(804)	Slow progress on DD in sections 1A-FoW, 5A-Murrayfield, and 5C/7AGogar - Airport.
Traffic Mgmt	67	67	(0)	
Utilities	2,286	2,308	22	
Land	2,336	1,671	(665)	S75 - Forth Ports land pushed out to P10. Legal Agreements not signed.
Advance Wks	5	0	(5)	Reflects F/A assessment for Phase 1 mass excavation at Depot. Increase relates to surveys, protection of SW Main & archeological constraints on productivity.
Infraco	60	140	80	Extended Legal negotiations with bidders and impact of tie legal support leaving project.
Tramco	100	0	(100)	Extended bid negotiations defers start date for advanced works.
Risk	0	0	0	
<b>Total</b>	<b>6,533</b>	<b>5,066</b>	<b>(1,466)</b>	



## **1.4. Programme**

MUDFA Rev 6 dates have now been included in the BBS programme and the critical path is becoming more developed as the programme is developed in conjunction with BBS. The visibility of BBS critical skill resource constraints are being worked through. Areas that are on or near the critical path include:

- Critical design activities include those in Section 5a Roseburn Junction to Gogar, particularly structures. Other structures have become critical since the previous period including Section 5b Edinburgh Park Station viaduct and Section 1a Victoria Dock and Tower Place bridges where Issue for Construction design has slipped to October and November 2008.
  - Weekly meetings continue to be held between SDS and MUDFA to assess design progress.
- Network Rail immunisation works are showing as near critical as the final stages are tied to pre-booked possession dates in late December 2008 and early January 2009. This work has to be completed prior to the depot energisation in November 2009. This will remain critical until the scope and programme is confirmed, which is dependent on the modelling and testing strategy being completed.
  - The modelling and testing strategy is expected to be completed by the end of January 2008.
- MUDFA revision 06 construction programme has been reviewed by all major stakeholders and was signed-off on 23<sup>rd</sup> November. This highlights the previously critical area of works at St. Andrew Square particularly now that the impact of BT Openreach programme is better understood.
  - Reviews are continuing on ways to reduce these timescales or to offer protection where possible to existing BT cabling to allow Infraco construction to proceed.
- Other areas that are giving concern in the MUDFA programme and are monitored closely remain Picardy Place, Mound Junction and Lothian Road Junction.
- Infraco areas showing critical include Section 1a around Forth Ports and Tower Bridge, Section 1c, Picardy Place, the depot building and access bridge, Section 5a around the structures at Murrayfield and Section 7 test track activities.

There has been agreement with the stakeholders to the assumptions underpinning the Infraco construction programme, including likely traffic management arrangements.

## **1.5. Risk**

During this period the risk register has been reviewed with regard to updating the exposure period for each risk on the register and confirming the split of each risk with regard to Phase 1A and 1B. This will help ensure that the risk allocation per period within the QRA is as accurate as possible. During this period, there have been no risks added or closed.

### ***1.6. Approvals / decisions / support required***

Decisions / support required from TS

- Finalisation of the funding agreement;
- Confirmation of Ministerial / Scottish Government approval for funding; and
- Cash availability for advance material purchases.

Decisions / support required from CEC

- Approval of FBCv2;
- Finalisation of the funding agreement;
- Agreement on Contract Award; and
- Finalisation of Picardy Place.

Decisions / support required by others

- N/A

## Appendix A Procurement milestone summary

Board date	Milestone	Due date	Delivered date	Comment
12 <sup>th</sup> July	Conclude initial review	03/07/07	05/07/07	Complete
	Return of Update Package 3	06/07/07	07/08/07	Complete
	Initial normalisation of price	15/06/07	29/06/07	Complete
	Draft evaluation	10/07/07	14/09/07	Complete
9 <sup>th</sup> Aug	Conclude negotiation of contract terms	17/07/07	Ongoing	See comment below
	Infraco final bid proposals	07/08/07	07/08/07	Complete
	Updated evaluation	09/08/07	12/09/07	Complete
5 <sup>th</sup> Sept	Conclude negotiations with bidders	27/08/07	14/09/07	Complete
	Presentation of evaluation to evaluation panel	02/10/07	12/10/07	Complete
	Presentation of evaluation to TPB Procurement sub committee	02/10/07	12/10/07	Complete
26 <sup>th</sup> Sept	TPB update on Procurement and FBC	26/09/07	26/09/07	Complete
	OGC 3 Gateway review – final report	05/10/07	05/10/07	Complete
15 <sup>th</sup> Oct	TPB Endorsement of preferred bidder recommendation and FBCv1	10/10/07	15/10/07	Complete
31 <sup>st</sup> Oct	Conclusion of final facilitated negotiations	25/10/07	Ongoing	Nearing completion – outstanding issues generally in relation to novations and third parties.
	Conclusion of negotiations for final deal	25/10/07	Ongoing	
	CEC Council meeting to endorse recommendation	25/10/07	25/10/07	Complete
	Conditional Award – mobilisation	01/11/07		
7 <sup>th</sup> Dec	Conclusion of due diligence on critical design items	19/11/07	12/12/07	
	Conclusion of negotiations for Phase 1b option	27/11/07	12/12/07	

## Appendix B Headline cost report

### 1.1. Current financial year

	COWD (YTD)	COWD YTD + forecast to year end	Funding authorised current year	COWD YTD + forecast to period to Financial Close (end Period 11)
Phase 1a	£45.5m	£95.0m	£77.1m <sup>2</sup>	£60.3m <sup>3</sup>
Phase 1b	£ 0.0m <sup>1</sup>	£ 0.0m <sup>1</sup>	£ 0.0m <sup>1</sup>	£ 0.0m <sup>1</sup>
Phase 1a+1b	£45.5m	£95.0m	£77.1m <sup>2</sup>	£60.3m <sup>3</sup>

Notes:

1. Phase 1b design costs are to be expended against Phase 1a budget as agreed by the Tram Project Board and as previously reported;
2. This comprises £60m Grant for 07/08 plus £10.6m grant carried over from 06/07 for land purchases plus £6.5m free issue land which is an injection of funding by CEC rather than TS; and
3. The forecast costs to Financial Close (end Period 11) includes anticipated costs of £7.25m to be paid to the Infraco and Tramco Preferred Bidders under mobilisation agreements but does not include any allowance for risk.

The forecast outturn expenditure for the year has reduced from £132.7m to £95.0m as a result of:

	£m
Milestone payments to Infraco / Tramco re advance material purchases (see Note)	26.7
Other reductions in forecast Infraco / Tramco expenditure in P12 & 13	10.0
Reduction in level of risk allowed for	2.5
Net other changes	(1.5)
<b>Total reduction in forecast outturn</b>	<b>37.7</b>

Note: Following discussion with CEC and TS, it is now anticipated that the milestone payments for advance material purchases will still be made before the end of FY07/08, but will be classified as prepayments. These will then 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. This is subject to confirmation by TS that there is a mechanism to provide cash to make these prepayments during the current year.

New funding required for during the current financial year is now **£17.9m** (£95m less £77.1m already authorised). Should this all be granted by TS then the total expenditure for the year of £95m will be funded as £6.5m from CEC and £88.5m from TS.

The forecast expenditure for the remainder of the year is summarised in the following table (NB - excludes payments for advance material purchases £26.7m, as explained above):

Nature of expenditure	P10-11 £m	P12-13 £m	Total £m
SDS design	1.06	2.21	3.27
MUDFA and other utilities	2.64	5.20	7.84
Infraco	7.00	20.74	27.74
Tramco	0.25	0.60	0.85
Land	0.51	0.00	0.51
Other	3.04	2.90	5.94
Risk	0.00	2.50	2.50
<b>Phase 1a Total</b>	<b>14.50</b>	<b>34.15</b>	<b>48.65</b>
Phase 1b (Design)	0.26	0.58	0.84
<b>Overall Total</b>	<b>14.76</b>	<b>34.73</b>	<b>49.49</b>

### 1.2. Next Financial Year

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total FYF
Phase 1a	£41.1m	£36.6m	£29.5m	£54.4m	£161.6m
Phase 1b	£ 0.5m	£ 0.1m	£ 0.9m	£ 2.3m	£ 3.8m
Phase 1a+1b	£41.6m	£36.7m	£30.4m	£56.6m	£165.4m

Note: Any variance in summation of table figures is due to rounding.

The forecast for FY08/09 remains highly sensitive to:

- Commencement of Infraco works in February 08;
- Treatment of advance material purchases as prepayments (see above);
- The continued negotiation of the Infraco/Tramco expenditure profiles which will take cognisance of the current £120m cap on TS funding for FY0809 to the extent it makes commercial sense; and
- The proportion of the overall risk allowance allocated to the year (the estimate for FY08/09 includes £23.6m).

### 1.3. 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 <sup>1</sup>	£545m	£498.1m <sup>2</sup>
Phase 1b	£ 0m	£ 0m	£ 0m	£ 87.3m <sup>2,3</sup>
Phase 1a + 1b	£500m	£ 45m	£545m	£585.4m
Phase 1a + 1b concurrent	£500m	£ 45m	£545m	£580.4m

Total anticipated outturn is as per 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. Estimate is valid for Phase 1b if option under Infraco contract is exercised prior to 31<sup>st</sup> March 2009 as per FBC.

Significant work remains through to Financial Close (Jan 08) to ensure the current position is maintained. This will primarily include the pricing of provisional sections contained within the bids as detailed design is issued and targeted savings from value engineering initiatives are realised.

### 1.4. Change Control

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

£m	Phase 1a	Phase 1b	Phase 1a+1b
Project baseline (FBC)	498.1	87.3	585.4
Anticipated changes	-	-	-
Potential AFC	498.1	87.3	585.4

To date there have been no changes identified as part of the change management procedure which might impact upon the baseline estimate presented in the FBC

### 1.5. Summary Breakdown

Latest Estimate / AFC (including escalation)

	Base Cost	Risk	Opportunity	OB	(or)Contingency	Total
Phase 1a	£449.1m	£49.0m	£0	£0 <sup>1</sup>	£0 <sup>2</sup>	£498.1m
Phase 1b	£ 77.7m	£ 9.6m	£0	£0 <sup>1</sup>	£0 <sup>2</sup>	£ 87.3m
Phase 1a + 1b	£526.8m	£58.6m	£0	£0 <sup>1</sup>	£0 <sup>2</sup>	£585.4m

Notes:

1. OB included in risk (QRA at P90 confidence level) as agreed with TS.
2. Contingency included as part of risk at present.

## Appendix C Risk and opportunity

### **1.1. Summary**

#### Programme Director Risks

The above risks were reviewed with the Programme Director, Programme Manager, HSQE Manager and Risk Manager.

#### Infraco Risk Review

The Infraco risk register was reviewed by the Risk Manager, Procurement Manager, Estimating Assistant and Cost Control Manager. The risk profile has been updated to ensure the exposure periods of the risks are correct.

#### Project Risk Register Review

The Project Risk Register and QRA output were reviewed at a meeting with the Project Director (designate), Programme Director, Finance Director and Risk Manager.

#### SDS Risk Review

The SDS risk register was reviewed with the recently appointed SDS Project Manager now attending.

#### Executive Risk Register

As highlighted in the Period 8 report, the Tram Project Risk Manager has assumed responsibility for updating the above and preparing the adjoining report for the **tie** Board. Meetings will be held during the remainder of Period 9 with a view to updating this document.

### **1.2. Review project risk register**

During this period the risk register has been reviewed with regard to updating the exposure period for each risk on the register and confirming the split of each risk with regard to Phase 1A and 1B. This will help ensure that the risk allocation per period within the QRA is as accurate as possible. Therefore, during this period, there have been no risks added or closed.



**Appendix D Primary risk register**

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
286	Infraco lack of confidence in SDS designs or delivery programme	Infraco refuses to accept or fully engage in novation of SDS.	Possible delay to award; Damage to reputation; Possible extra costs or risk transferred back to tie.	B Dawson		Project	Complete designs and allow due diligence to be undertaken by bidders	On Programme	On Programme	31-Dec-07	B Dawson
							Consult with legal on options relating to due diligence to be carried out on design and availability of consents	On Programme	On Programme	31-Dec-07	B Dawson
							Introduce and engage Infraco bidders to SDS as early as possible	Complete	Complete	28-Feb-07	B Dawson
915	Policy or operational decision	Transport Scotland and CEC do not provide indemnities on payment	Bidders will not commit to contract without this assurance; Delay in bid process; Possible bidder withdrawal from negotiations and bid process.	G Gilbert		Project	Ensure Transport Scotland understand implication of not resolving the funding agreement and obtain buy-in from them	On Programme	On Programme	31-Dec-07	G Gilbert

Yes  
 No

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
916	CEC do not achieve capability to deliver	CEC do not honour funding obligations	Potential showstopper to project if contribution not reached; Line 1B may depend on incremental funding from CEC	S McGarrity		Project	CEC has formed a multi discipline Tram Contributions Group to monitor identified sources of £45m contribution including critically developers contributions. <b>tie</b> are invited to that group. (see add info) Tram Project Board to monitor progress towards gaining contributions	On Programme	On Programme	30-Jan-07	CEC
								On Programme	On Programme	30-Jan-07	D MacKay
995	Failure to reach agreement on funding	Short term funding beyond the existing arrangements of £60m plus 2006-07 rollover of £10.6m cannot be agreed.	Future of project placed in jeopardy	G Bissett		Project	Identify extent and timing of potential shortfall including allowance for cost overrun and short term programme slippage and seek agreement with CEC/TS of funding for the shortfall in the context of the New Award Letter anticipated from TS.	On Programme	On Programme	1-Apr-08	G Bissett

Yes  
 No

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
							If short term funding is resisted, assess scope to reduce short term expenditure and the implications for programme and cost. Tram Project Board to determine appropriate action	On Programme	On Programme	1-Apr-08	G Bissett
996	CEC and TS cannot agree on any of the following: Scope of project, quantum of funding, rate of release of funding, contribution percentages, governance arrangements	Funding agreement between CEC and TS not concluded and financial close cannot be achieved	Project unable to proceed	G Bissett		<b>Project</b>	Seek to negotiate mutually acceptable terms between CEC and TS in the context of the New Award Letter	On Programme	On Programme	31-Dec-07	G Bissett
997	Timescale for funding package is unachievable	Components of the funding package cannot be delivered in the necessary timescale	Significant delay which threatens project continuation	G Bissett		<b>Project</b>	Seek agreement that scope of project follows Phase 1a commitment	On Programme	On Programme	31-Jan-08	G Bissett

Yes  
 No

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
998	One or more aspects create a tax exposure	Funding arrangements cannot be concluded because a material tax exposure emerges which cannot be resolved	Failure to achieve financial close	G Bissett		Project	Seek advice from PWC timeously to avoid creating funding arrangements, corporate structure or other aspects which create such a tax exposure.	On Programme	On Programme	31-Mar-08	G Bissett
999	Concessionary fare support from TS is insufficient	Extent of concessionary fare support commitment from TS provides inadequate comfort to CEC	CEC withdraw support for FBC and project fails	G Bissett		Project	Negotiate the terms of Government commitment to concessionary fare support to level which is satisfactory to CEC	On Programme	On Programme	31-Jan-08	G Bissett
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 TRO(s) 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	K Rimmer	High - 25.00		Use of TTROs to undertake construction of permanent works in advance of permanent TROs being approved.	On Programme	On Programme	30-Jan-11	K Rimmer

Yes  
 No

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
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	G Barclay	High - 25.00		Carry out GPR Adien survey	Complete	Complete	31-Oct-07	J Casserly
							Identify increase in services diversions. MUDFA to resource / re-programme to meet required timescales.	On Programme	Complete	23-Nov-07	J McAloon
							In conjunction with MUDFA, undertake trial excavations to confirm locations of Utilities and inform designer	On Programme	On Programme	31-Jan-08	A Hill

Yes  
 No

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
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 obstructions; other contaminated land	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.	I Clark	High - 25.00		Carry out GPR Adien survey	Complete	Complete	31-Oct-07	J Casserly
							Identify increase in services diversions. MUDFA to resource / re-programme to meet required timescales.	On Programme	Complete	23-Nov-07	J McAloon
							In conjunction with MUDFA, undertake trial excavations to confirm locations of Utilities and inform designer	On Programme	On Programme	31-Jan-08	A Hill

Yes  
 No

ARM Risk ID	Risk Description			Risk Owner	Significance	Black Flag	Treatment Strategy	Previous Status	Current Status	Due Date	Action Owner
	Cause	Event	Effect								
870	SDS Designs are late and do not provide detail Infraco requires	Infraco does not have detail to achieve contract close	Delay to due diligence and start on site and need to appoint additional design consultants	T Glazebrook	High - 25.00		Monitor design progress and quality  Obtain Design Progress Dashboard from SDS Review AIPs for Structural Information	On Programme  Complete  On Programme	On Programme  Complete  Complete	10-Jan-08  15-May-07  2-Feb-07	T Glazebrook  T Glazebrook  S Clark

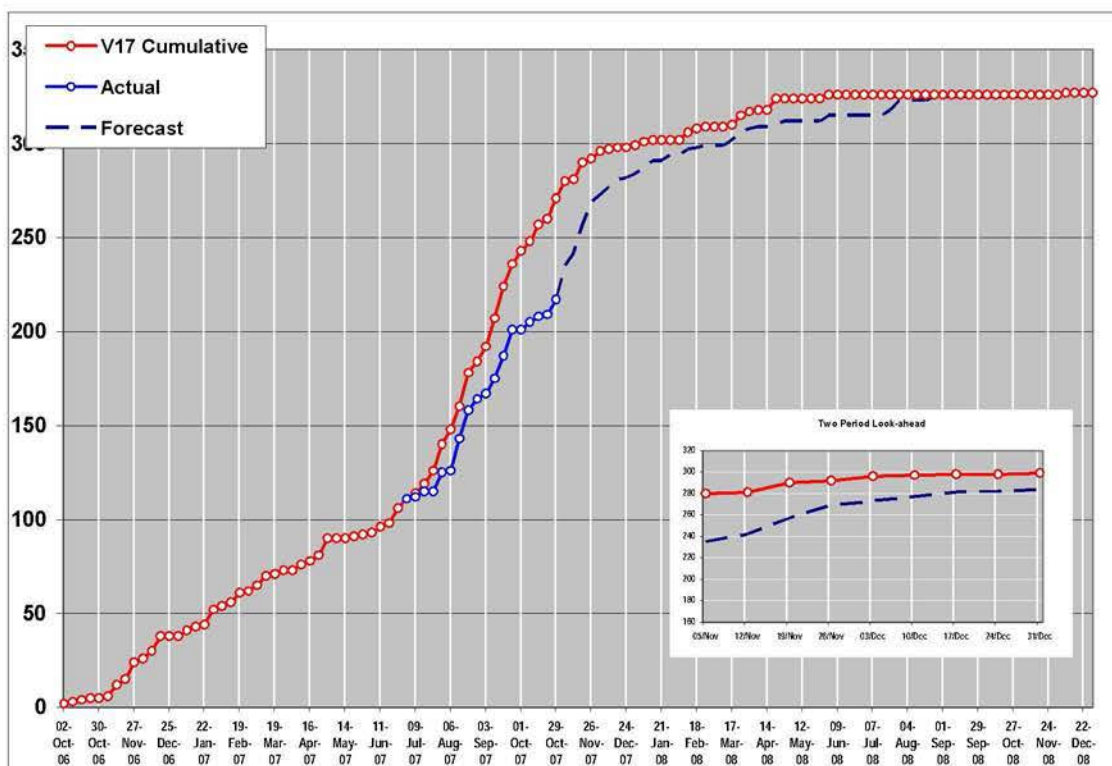
**Paper to:** TPB **Meeting Date:** 27 Nov 2007  
**Subject:** SDS Update – P9  
**Agenda Item:**  
**Preparer:** D Crawley / T Glazebrook

**FOR INFORMATION ONLY**

**1.0 Summary**

The design deliverables summary is shown below. As for last period this is still referred to V17 as this was the first period after removal of all critical issues. The solid line is the record of delivery after this point and the dotted line is the V21 forecast. These figures have not been updated from V21 as this report is out of sequence.

This is shown below at V21 (actual and forecast)



Some slippage occurred between V20 and V21 but the rate of progress has been recovered. This slippage is mostly due to the continuing impact of section 1A delays.

To 23<sup>rd</sup> November, of the 344 design deliverables, 236 have been delivered, representing 63% of the tram system design. 66% of Phase 1A detailed design is





**Paper to:** TPB                      **Meeting date:** 7/12/07  
**Subject:** Change Management  
**Agenda item:** Change Control – Post Financial Close  
**Preparer:** D Carnegie / I Borshcheva

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## Background

The Tram Project is entering a new phase (post Financial Close) with the emphasis on managing the key construction elements of the project.

Pressures will arise regarding budget, programme and scope from 3<sup>rd</sup> Party aspirations (e.g. Forth Ports, CEC – betterment / design changes), feedback from Bidders as well as the implications from the emerging detailed design.

The Change Management Team has reviewed the existing process and procedures and as a result the process has been streamlined to ensure key contributors are fully aware of the requirements to provide comprehensive, detailed and accurate information (Appendix A). To facilitate this, the change management forms have also been revised (Appendix B).

## Types of changes

There are two types of change:

- Project Changes – those that increase the scope, programme, TEL Opex / Revenues, overall project control budget, or involve specified risk draw down and require Project Director or TPB Approval.
- Contract Changes – the change mechanism between **tie** and its suppliers. This will record change at supplier level and will be used to track contract reserve, in addition to reflecting the impacts from approved Project Change Orders at supplier level. In some cases a contract change may also lead to a project change, i.e. where the change increases the overall project control budget.

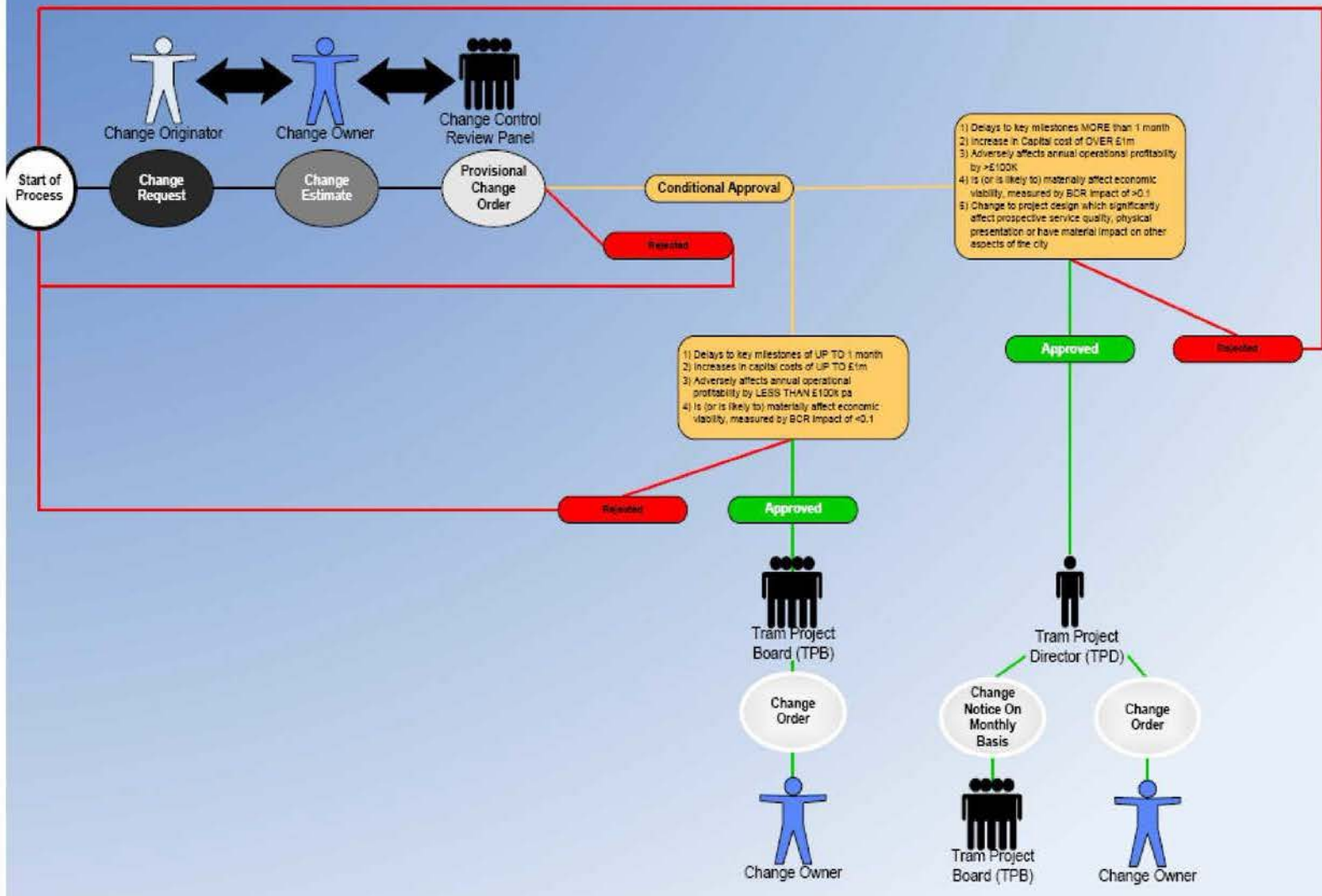
## Monitoring and reporting

The Project Change Control Panel is the critical point through which all changes must be processed. Once a change has been reviewed by the appropriate **tie** personnel, the review panel discuss the key impacts and decide on formal approval or will submit this to the TPB where approval is required. The Change Review Panel consists of, but is not limited to; the Project Director, Risk Manager, Programme Director and Change Control team.

To assist the Board with reviewing those changes which require Board approval a summary register will be provided for the TPB meeting every period giving a financial summary of every Board approved change to the last period (Appendix C), together with full details of those changes that require TPB approval in that period.



# Change Control Process



**Appendix B**

<b>CHANGE ORDER</b>	
Project:	
Date:	Issue:
Change Request No:	
Change Estimate No:	
Change Order No:	
Title:	
Change Originator :	
Change Owner:	
Change Sponsor-TP Board:	

Change Type/Impact					
Impact	Scope	Specified Risk Allowance	Unforeseen Event	Capex	Opex
		Increase	Transfer	Transfer	Transfer

Change Description:

Reason for Change:

If there is a financial impact please complete the table below

Budget Code	Budget Description/Title	£	
		+	-
T01.01	Project management Staff Costs	50,000	
T19.01.01	INFRACO main works	750,000	
T99.00	RISK/OTHER		-800,000
<b>Total:</b>		<b>800,000</b>	<b>-800,000</b>
<b>Overall Effect on Project Budget</b>		<b>0</b>	

Schedule Impact	Days	
	+	-
Description		

Other anticipated impacts:

Supporting Documents/Correspondence:

<b>Edinburgh Tram Project Director Authorisation</b>		Date:	
Change cancelled <input type="checkbox"/>	Revise Estimate <input type="checkbox"/>	Refer to TPB <input type="checkbox"/>	Approved <input type="checkbox"/>
Name:	Signature:		

<b>Tram Project Review Panel Authorisation</b>		Date:	
Change cancelled <input type="checkbox"/>	Revise Estimate <input type="checkbox"/>	Refer to TPB <input type="checkbox"/>	Approved <input type="checkbox"/>
Name:	Signature:		

<b>Edinburgh Tram Project Borad Authorisation</b>		Date:	
Change cancelled <input type="checkbox"/>	Revise Estimate <input type="checkbox"/>	Refer to TPD <input type="checkbox"/>	Approved <input type="checkbox"/>
Name:	Signature:		

## Appendix C

Change Order Summary for TPB

Period : 10
F/Yr : 2007/08

CO Ref	Description	Impact on FBC (000,s)		Comment
		Risk	+/- Funding	

Total Value Approved To Last Period	0	0	
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Current Period Changes for Review			
Total of Current Period Changes	0	0	

OVERALL TOTAL TO DATE	0	0	
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FOISA exempt  
 Yes  
 No

**Appendix D**



TRAM PROJECT BOARD CHANGE LOG

STATUS OF BOARD PROJECT CHANGES - pre Final Business Case

Change Owner/Originator	TPB Change Description	CHANGE REQUEST/NOTICE		Change Estimate	Change Order	Comments
		CR/CH Number	Date Approved by TPB	TP Board Status	Total Value	
TEL	Interchange Design and Cost / Benefit	CNB001	19-May-06	Approved	£408,576	CEB Range given for Capex £ 241k-£484k
TEL	CCTV Arrangements	CNB002	06-Jun-06	Transferred	£0	No Design Fees Impact; Agreed Transferred to Infraco Oct. 2006
TEL	PI Arrangements	CNB003	07-Jun-06	Transferred	£0	No Design Fees Impact; Agreed Transferred to Infraco Oct. 2006
TEL	Back-Office Systems	CNB004	07-Jun-06		£0	No Design Fees Impact; Agreed Transferred to Infraco Oct. 2006
TEL	Inspectors / Conductors - on board security	CNB005	08-Jun-06	Transferred	£0	No Design Fees Impact; Agreed Transferred to Infraco Oct. 2006
TEL	Common Ticketing	CNB006	08-Jun-06	Transferred	£0	No Design Fees Impact; Agreed Transferred to Infraco Oct. 2006
TEL	Stop Locations (If any changes proposed)	CNB007	19-May-06	Approved	£67,596	Infraco absorbed in Estimate pre FBC.
TEL	Princes St. & Leith Walk Tramway Alignment	CNB008	09-Jun-06		£0	Withdrawn, included in CNB014
TEL	St.Andrews Square Alignment	CNB010	09-Jun-06		£0	Superseded by 10A
CEC	St.Andrews Square Alignment	CNB010A	03-Jul-06	Approved	£0	COB010 - COB015 Agreed Package Deal £600k Oct. 2006. Tram Project Board Jan 2007.
CEC	Shandwick Place Stop Location	CNB011	03-Jul-06	?	£0	Superseded by CNS007. Withdrawn and Deleted.
CEC	Princes St. Alignment Confirmation	CNB012	03-Jul-06	Approved	£0	
CEC	Picardy Place Tram / Road Realignment	CNB013	03-Jul-06	Approved	£0	
CEC	Leith Walk Alignment Confirmation	CNB014	03-Jul-06	Approved	£0	COB010 - COB015 Agreed Package Deal £600k Oct. 2006. Tram Project Board 23rd Jan 2007.
CEC	Foot of Leith Walk Stop Location	CNB015	03-Jul-06	Approved	£0	
CEC	Agreed sum for Design Services(SDS) Changes 8, 10, 10A, 12, 13,14, 15 Inclusive	CNB010-15	03-Jul-06	Approved	£600,000	
CEC/A. Holmes	CEC Staffing Costs	CRB017	22-Jan-07	Approved	£935,000	CR Issued to TPB 23 Jan 2007
CEC / TEL (N. Renilson)	Temporary Ingliston Park & Ride Phase 2 - Temp. Car Parking	CRB016	Not Issued	Superseded by CRB028	£0	See CRB028
TEL A. Richards	Update the Operations & Performance Spec.-in accordance with Employer's Requirements and the SDS Stage 3 Runtime Report	CRB018	5th Feb 07	APPROVED	£56,940	
TEL A. Richards	Addition of Crew Relief facilities beneath Haymarket Tramstop Structure	CRB019	5th Feb 07	Approved	£11,669	
TEL A. Richards	Granton Square Bus and Tram Interchange	CRB020	05-Feb-07	Approved	£0	
tie S. Clark	Invasive Species Treatment Programme	CRB021	04-Jun-07	Approved	£295,910	
tie S. Clark	Additional design work required to finalise system branding and branding guidelines to be incorporated into Tram Project	CRB022	18-Jun-07		£0	Not Reqd - Transferred to PR/Comms Budget
tie S. Clark / S. McGarrity	Traffic Management	CRB023	20-Jul-07		£385,400	
tie - S. Healy	City Point Fit-Out 2nd Floor /Amendmentf to 1st Floor	CRB024	20-Jul-07		£0	
L.Murphy /David Burns	Temporary Ingliston Park & Ride Phase 2 - Temp. Car Parking - RE	CRB028	22-Oct-07		£300,000	
					£0	
	<b>Total Changes - TPB</b>				<b>£3,061,091</b>	

**Paper to:** TPB                      **Meeting Date:** 7 December 2007  
**Subject:** Phase 1b – Roseburn to Granton  
**Agenda Item:**  
**Preparer:** G. Bissett

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### Background

The Final Business Case (Version 1) approved by the Council in October 2007 set out the approach to the assessment of Phase 1b. In order to ensure that Phase 1a reached a stage of completion sufficient to support financial close at the end of January 2007, the work to develop Phase 1b was deferred and the following steps agreed:

1. Capital costs for Phase 1b would be quoted by the preferred bidder and negotiated in the period to Financial Close. This would then represent a committed cost, subject to caveats on design development and limited provisional sums;
2. The design process would be prioritised in favour of Phase 1a but with sufficient completion of Phase 1b design to ensure the committed cost was meaningful;
3. The funding agreement with Transport Scotland is focussed on Phase 1a, but accommodates the possibility of applying to Phase 1b any grant award not absorbed by Phase 1a;
4. The construction contract will permit the Council to commit to Phase 1b at any point before 31 March 2009 based on the committed costs; and
5. Work would commence in the period immediately following financial close to develop the incremental funding required for Phase 1b.

### Approach to incremental funding

The preferred bidder has quoted Phase 1b capital cost at £87m, which would require new sources of funding aggregating to £40m if Phase 1b is constructed to budget. In practice, the incremental funding will require to be more substantial in order to preserve adequate headroom against the budgeted capital costs. A process will need to be established following financial close to finalise the capital cost negotiations including outstanding design work.

The potential sources of incremental funding are as follows and are not mutually exclusive:

- Developer contributions relating to the Phase 1b route, especially around the Granton waterfront;
- Council capital receipts;
- Prudential borrowing – repaid through operational cash flows or developer contributions;
- Asset leasing – repaid ditto, potentially incorporating a defeased lease structure to capitalise tax allowances;
- Tax Increment Financing (or equivalent);
- Development of a Business Improvement District model; and



- Value engineering on the capital works for Phase 1b, including the possibility of limited single-tracking.

Other matters which should be addressed include:

- Consideration of the development potential across all three major property owners on the waterfront site;
- Legal basis for continuing S75 contributions under the non-statutory policy and relationship to borrowing levels;
- TEL's ability to borrow and relationship to the 1985 Act; and
- Interaction with Phase 1a funding and grant drawdown.

### Execution

There is a core group of parties which would form a project team, including **tie**, TEL and CEC officials from CDD and Finance.

Other players who would need to be involved include the three main property owners at the waterfront and potentially other interests along the route, including the Western General, Royal Victoria, Telford College and property developers. Community groups will also have a vital role.

The TPB might consider setting up a sub-committee to agree a game-plan and to monitor progress on Phase 1b over 2008.

Approval required:

The TPB, TEL and **tie** Boards are invited to approved the creation of a project team to consider how to develop a funding solution for Phase 1b, with the first reporting point being the TPB meeting on 12 March 2008.

**Proposed**                      Graeme Bissett.....                      Date:5/12/07  
Strategy and Planning Director

**Approved**                      David MacKay.....                      Date:-  
Chairman, TPB

**Paper to:** TPB                      **Meeting Date:** 7 December 2007  
**Subject:** Tram Peer Review Group  
**Agenda Item:**  
**Preparer:** S Clark

Tram Project Peer Review Group

Over the past few months the Tram project has undergone various reviews / audits including:

<b>Review</b>	<b>Frequency</b>
Internal audits by <b>tie</b>	According to audit plan but every period
Internal audit by Scott Moncrieff	Annual, target
Audit Scotland	One-off
OGC Reviews	No more until approach to implementation (OGC4 expected in 2010).
<b>tie</b> Management Review	6 monthly (starting January 2008)

Of these, the internal audits and Audit Scotland review focussed very much on systems and processes using trained auditors albeit not specialists in major complex projects or Trams. The internal audits will continue through the life of the project.

The OGC reviews however, were carried out by a group of individuals who all had experience of major projects including trams. Due to their knowledge and experience, they were able to challenge areas not necessarily covered or understood by the internal audits or indeed Audit Scotland. The next OGC review is not scheduled until Gateway 4 - Readiness for Service. This will take place on the approach to going live with operations / revenue services in late 2010 / early 2011.

Given the gap between now and the next OGC review and the importance of delivering this complex project successfully, it is worth considering the use of a Peer Review Group between now and the Gateway 4 review as a tool to challenge the project team in terms of progress of the project and the decisions being made.

It is recognised that the Tram Project board exists to give challenge to the project meeting every 4 weeks. The Peer Review Group would not replace this but would complement the work of the TPB. It would meet perhaps only every 6 - 12 months and would provide an external challenge process, including challenge potentially to the TPB, particularly focussing on critical stages of the construction and preparation for introduction of services.

It is proposed that the Peer Review Group be constituted as a group of four or five individuals who all have experience in major complex projects including transport.

These could include:

Name	Experience
Mike Heath	Croyden Trams, contracts and operations, client side
Willie Gillan	Major roads, local government
Peter Strachan	Network Rail and rail operations
Andy Sloan	Geo-technical, contractor

We have other names supplied who may be able to add value and we could also investigate the appointment of someone who has been involved in the Dublin Luas project.

**Recommendation**

It is recommended that a Peer Review Group be established to provide external challenge process, particularly focussing on critical stages of the construction and preparation for introduction of services.  
 An initial meeting would be targeted for March/April 2008 following contract award to test that we have implemented the appropriate team and processes for the management of Infraco.

**Proposed**                      Name Susan Clark                                      Date: 3-12-2007  
    Title Programme Director

**Recommended**              Name Steven Bell    Date: 3-12-2007  
    Title Tram Project Director (Designate)

**Approved**                      .....    Date: .....  
    David Mackay on behalf of the Tram Project Board

**Paper to:** TPB                      **Meeting Date:** 7 December 2007  
**Subject:** Background note – Governance documentation  
**Agenda Item:**  
**Preparer:** G Bissett

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The following paper addresses the overall project governance and management model and explains the roles of each governance body. There are a number of important matters which require further work and these are highlighted on the face of the note. An updated version will be submitted to meetings prior to the full Council meeting on 20 December 2007, assuming progress has been made on the underlying documents.

The paper acknowledges that there is an element of duplication within the structure, but this is a necessary evil to ensure all stakeholder bodies are properly included and to ensure that adequate informed challenge and guidance is brought to bear.

The attached calendar (Appendix 4 to the paper) sets out the programme of meetings for all the bodies. We will have a 4-weekly cycle of TPB Committee meetings, finalisation of 4-weekly Report, TPB meeting. The **tie** and TEL Boards comprise substantially the same people and will be held on alternate months. We await a schedule of dates for the Council's Tram sub-committee, but these meetings may usefully be attached to the bi-monthly TEL Board meeting. We also await confirmed dates for the 4-weekly TS / CEC review meetings.

The creation of the schedule has necessitated some changes to the dates for the **tie** Board circulated recently, partly to place those meetings on an alternate basis with TEL and also to avoid clashes. The dates for July, September and December are now revised to the dates on the attached schedule.

It is obvious that not all parties will be able to attend every session, but the structure should ensure that there is always adequate attendance. When the structure is approved in principle, we will do a round up of availability to ensure any difficult dates are flagged in advance and if necessary changed.

A further note explains the position with the operating agreements between the Council and respectively **tie** and TEL.

**Proposed**                      Graeme Bissett.....                      Date:5/12/07  
Strategy and Planning Director

**Approved**                      David MacKay.....                      Date:-  
Chairman, TPB

**Paper to:** TPB                      **Meeting Date:** DRAFT for TPB 7/12/07  
**Subject:** Project Governance  
**Agenda Item:**  
**Preparer:** G Bissett

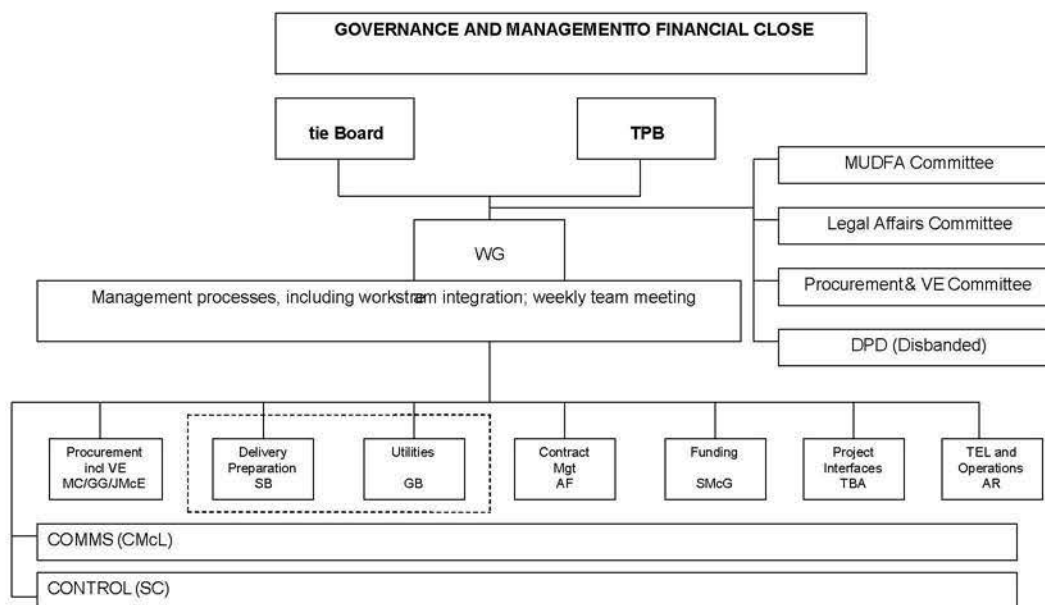
THIS PAPER SUMMARISES THE PROPOSED GOVERNANCE AND MANAGEMENT MODEL AS IT STANDS AT 3 DECEMBER 2007. THE AREAS REQUIRING FURTHER INPUT ARE HIGHLIGHTED IN THE BODY OF THE DOCUMENT, MAINLY FINALISATION OF OPERATING AGREEMENTS AND THE DELEGATED AUTHORITY WHICH FLOWS FROM THOSE AGREEMENTS.

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

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

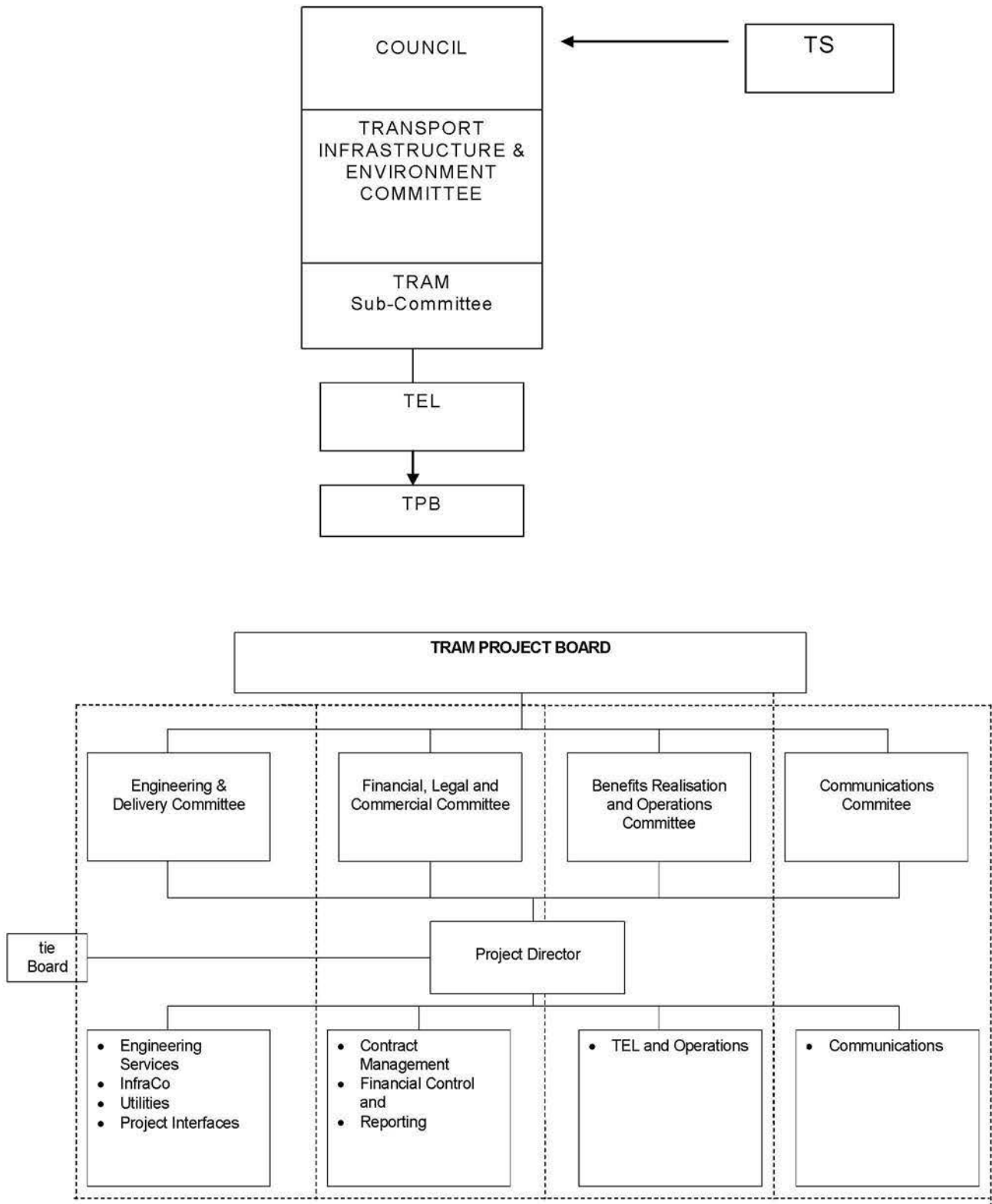
The recipients of this paper approved a governance and project management model for the period to Financial Close (currently assumed to be 28 January 2008) prior to the Council's meeting on 25 October 2007. The purpose of this paper is to present the proposed model for the period from Financial Close to operational commencement, planned for Q1 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.



(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. [TO UPDATE WHEN AGREED FORM CLEAR]

### 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.

[Describe the interface, delegated authority and reserved powers between the full Council, the Council's **tie** Committee, the Tram sub-committee and the two Operating Agreements including authority granted to CEC officials.]

### 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.

[Describe the authority delegated to TEL]

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.

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. This reflects the current structure and requires to be synchronised with the **tie** and TEL Operating Agreements when these are available. The TPD can then ensure that the delegated authority downwards to senior members of the delivery team is also properly aligned.

**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 is 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** Board will delegate authority to its Executive Chairman to execute its contractual responsibilities for the tram project [THIS NEEDS TO BE FINALISED WHEN THE **tie** OPERATING AGREEMENT DELEGATIONS ARE FINALISED]. In turn, the Tram Project Director (a **tie** employee) is given delegated authority to manage and deliver the project. The authority given to the TPD in his role as a **tie** employee will be 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.

[Describe briefly the authority delegated by **tie** to the TPD and relate to the TPB authority]

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; and
- 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; and
- 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; and
- 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 month on a month-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. A calendar setting out the proposed cycle is included as Appendix 4.

The outstanding matters required to finalise the calendar are:

- Dates for proposed CEC Tram sub-committee meeting
- Dates for 4-weekly TS / CEC meetings
- Confirmation from TS of 4-weekly report submission dates

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

Engineering & Delivery Committee (E&D)

- Delivery under contracts - Infracore, Tramco, Utilities / MUDFA, design;
- Health & Safety, Quality & Environment;
- Improvement initiatives – VE, Innovation, ICT; and
- Project interfaces & approvals – Land & Property, Traffic, third parties.

Financial, Commercial & Legal Committee (FCL)

- Financial management – reporting, control, audit, risk management, insurance; and
- Contract management – reporting, compliance, interface with delivery, claims & variations.

Benefits Realisation & Operations Committee (BRO)

- Operational & integration planning;
- O&M contract planning;
- Transdev; and

- 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 3. 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 principle responsibilities can be summarised as follows :

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

1. Comment on and if thought appropriate, 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] WHEN AVAILABLE
3. Confirmation of the proposed members and participants in the governance bodies [UNDER DISCUSSION ON A PERSONAL LEVEL]
4. Confirmation of the proposed meeting cycle
5. Comment on and if thought appropriate, approval of the proposed H&S regime.

**Proposed**                      Graeme Bissett.....                      Date:5/12/07  
Strategy and Planning Director

**Approved**                      David MacKay.....                      Date:-  
Chairman, TPB

## **Appendix 1** Tram Project Board ("TPB") Remit

### **TO UPDATE WHEN OPERATING AGREEMENTS ARE FINALISED**

TPB has full 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.

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. [TO AMEND IN LINE WITH FINAL FUNDING TERMS]
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; and
- 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 observers 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-Coordination and third parties.

The Corporate Manslaughter and Corporate Homicide Act 2007 will come 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.

### *Operational structure for the construction period*

**Appendix 4**

**Overview of 2008 Meetings calendar**

Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
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KEY :

TPB	AS LEFT
Sub-Committees - E&D, FCL	AS LEFT
tie Board (comms indicates tie Board committee mtgs)	AS LEFT
TEL Board	AS LEFT
LB Board	AS LEFT
Period Report Submission	AS LEFT
CEC Tram sub-Committee	tba
CEC / TS 4-weekly meeting	tba
Weekends - to facilitate weekday identification	

**Paper to:** TPB                      **Meeting Date:** 7 December 2007  
**Subject:** Governance – **tie** and TEL Operating Agreements  
**Agenda Item:**  
**Preparer:** G Bissett

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## STATUS AT 5 DECEMBER 2007

### Background

These are the agreements which will codify the relationship between the Council and respectively **tie** and TEL. There is an existing agreement with **tie**, though none with TEL. To date **tie** has received from CEC and commented on a draft new agreement for **tie** but there are a large number of outstanding concerns. TEL has received from CEC a draft TEL agreement but the drafting is heavily caveated and square bracketed and there are several sections which are plainly not applicable, being drawn from historical drafts.

We have had difficulty making progress on these agreements and the timing is now critical. Theoretically the agreements could be finalised in the run up to Financial Close, but there is no good reason why they should be delayed. As presently drafted, the **tie** agreement appears to be written between two third parties. **tie** and TEL are seeking agreement from the Council that the terms of the agreement must reflect the parent / subsidiary relationship. With this agreement, the terms should reflect the practicalities of the working relationship and the document should be straight-forward. We urgently need to see a useable draft of the TEL agreement, but the same principles should apply to both companies and the main terms agreed for **tie** could be imported into the TEL agreement.

### Legal importance

In addition to good housekeeping, the agreements represent a critical legal interface from three perspectives:

- 1) the agreements will have legal standing and the directors will be bound by the final form of the terms. At present the drafting debate is addressing not only corporate responsibility but the potential for personal liability on individual directors in ways which will not be covered by D&O or other insurance cover. These matters clearly need to be dealt with definitively before directors can be expected to address the agreements formally ;
- 2) the bidding parties have a direct (and increasingly nervous) interest in the wording of the agreements and their relationship to a) the guarantee of **tie**'s performance and financial capacity by the Council to the consortium; and b) the wording of the Council Report on 20/12 and the related resolutions which give **tie** the legal power to enter into the contracts. TEL is similarly involved here as the prospective inheritor of the maintenance obligations. We urgently need feedback on the drafting of these documents which has been provided to the

Council's solicitors before the wording can be offered to the bidders for review ;  
and

- 3) The terms of the empowerment of **tie** and TEL must be documented before any delegated authority to enter into the contracts can be defined and then executed by the **tie** Board through the Chairman. Otherwise, **tie** would be acting ultra vires.

#### Competition law

A further critical dimension is that we have had consistent legal advice from DLA that these agreements will be an important element in considering whether the integrated group of companies can in due course operate Edinburgh's transport system on a fully integrated basis without difficulty under the onerous conditions of competition law. In a nutshell, were the operations ever investigated by the competition authorities, the existence of operating agreements which reflect a third party relationship between the Council and its subsidiaries would be damaging to the argument that there is a "single economic entity" in operation, within which free exchange of information on fares, costs and operational matters may be executed.

The penalties for breach of competition law are potentially draconian and this risk must be addressed in finalising the operating agreements. Clear statements of each entity's legal powers (eg to enter into contracts) are not a concern here, but other aspects of the agreements should reflect the family relationship.

#### Papers attached

The draft **tie** agreement and **tie**'s note of areas of concern follow this paper.

The documents are not good quality from the perspective of normal Board papers, but Board members may wish to skim the note of concerns to get a flavour of the issues under debate. The draft agreement is simply for reference if required.

A verbal update on progress will be given at the meeting.

#### Required from the Board :

In the absence of draft agreements in final form for review, the Board is requested to review the areas of concern and to provide guidance on the principles and critical areas.

## AGREEMENT

between

**THE CITY OF EDINBURGH COUNCIL**, the local authority for the City of Edinburgh in terms of the Local Government etc. (Scotland) Act 1994, having its principal office at Council Headquarters, Waverley Court, East Market Street, Edinburgh, EH8 8BG, or its statutory successors (“**the Council**”)

and

**tie Limited**, a company incorporated under the Companies Acts (registered number SC230949) and having its Registered Office at City Chambers, High Street, Edinburgh, EH1 1YJ (“**tie**”)

**Whereas:-**

1. The Council set up tie in May 2002, to assist the Council with implementing its local transport strategy;
2. Powers were conferred upon the Council in relation to the design, construction, commissioning and operation of the Edinburgh Tram Network in terms of the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006;
3. The Council is the designated planning and roads authority for the City of Edinburgh;
4. In [2003], the Council appointed tie to facilitate the delivery and operation of the proposed tram system for Edinburgh [*Terms of formal appointment TBC*];
5. A general operating agreement between tie and the Council was previously entered into whereby tie agreed to provide services to the Council in developing, procuring and implementing integrated transport projects within Edinburgh;
6. The terms of the tram Final Business Case and the fact that tie was to enter into various agreements in relation to the Project were approved by the Council on 20 December 2007; and

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7. The parties now wish to enter into this agreement to more particularly regulate the relationship between the parties specifically with regard to the procurement and delivery of the trams Project.

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**NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:**

**1 Definitions**

1.1 In this Agreement the following terms and expressions shall have the following meanings:

“Agreement”	means this agreement (including the schedules to it), as it may be amended from time to time;
“ <del>Tram</del> Monitoring Officer”	means the Council Officer nominated by the Council to monitor the Company;
“ <del>Employer’s Requirments</del> ”	means [ ];
“Final Business Case”	means the business case relating to the Project which was approved by the Council on 20 December 2007;
“Funding Agreement”	means the Council-accepted grant offer letter from Transport Scotland to the Council dated [ ];
“Legislation”	means all rules, regulations, by-laws, directives, statutes and other binding provisions in force from time to time;
“ <del>Phase 1A</del> ”	<del>means [ ]</del>
“ <del>Phase 1B</del> ”	<del>means [ ]</del>
“Project”	means the procurement and delivery of a tram system for Edinburgh ( <del>Phase 1A and Phase 1B</del> ), as more

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	particularly described in the Final Business Case and approved by the Council in terms of scope; and
“Services”	means the services, service levels and specification of services set out in the schedule to this Agreement, or as otherwise agreed in writing between the parties from time to time.

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- 1.2. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of it.
- 1.3. In this Agreement, references to clauses are, unless otherwise provided, references to clauses of this Agreement and references to schedules are references to the appropriate schedules to it.
- 1.4. In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice-versa.

## 2. tie’s Obligations

- 2.1 tie hereby agree to provide the Services to the Council throughout the duration of this Agreement in order to assist in, carry out, promote, manage and administer the Project.
- 2.2 tie shall ensure that all third party advisers and contractors engaged by it shall provide a direct duty of care to the Council in terms acceptable to the Council prior to carrying out any work in relation to the Project, failing which the appointment of any such third party will require approval of the Tram Monitoring Officer.
- 2.3 tie shall ensure that it delivers a world-class tram system for Edinburgh as specified in the Final Business Case and the Employer’s Requirements. tie shall comply with all timescales and financial projections detailed in the Final Business Case.
- 2.4 tie shall use best endeavours to ensure that it is at all times suitably resourced to carry out all the Services in relation to the Project.
- 2.5 tie shall use best endeavours to ensure that it does not cause the Council to

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- breach the terms of the Funding Agreement, In particular tie shall ensure that the Council complies with the conditions relating to publicity in the Funding Agreement.
- 2.6 tie shall use best endeavours to ensure that it complies with and, where it acts on the Council's behalf, ensure that the Council complies with, all Legislation (including all health and safety legislation) relevant to the Project at all times.
- 2.7 tie shall use best endeavours to ensure that it does not infringe the intellectual property rights of any third party at any time.
- 2.8 tie shall use, and shall procure that all contractors, employees and other third parties which it engages shall use, all reasonable skill, care and diligence in the provision of the Services. All work undertaken by tie shall be progressed with due expedition and without delay to achieve timeous completion of the Project.
- 2.9 tie shall discharge all its obligations in terms of this Agreement in a proper, honest, faithful and diligent manner and shall at all times act in the best interests of the Council (to the fullest extent permitted by law).
- 2.10 Insofar as permitted by law, tie shall at all times promptly comply with all reasonable requests made of it by the Council.
- 2.11 tie shall at all times maintain in place appropriate policies of insurance in relation to all elements of its business and in particular the Project and shall provide evidence of all such insurances upon request by the Council. [*tie to ensure that all insurance shall be in joint names so that the Council is covered?*]
- 2.12 tie shall ensure that all contractors and consultants engaged or employed by it shall have in place a policy of insurance providing tie [*and the Council*] with appropriate indemnity for all risks relevant to their engagement.
- 2.13 tie shall use best endeavours to ensure best value when providing the Services and in the discharge of all of tie's responsibilities. tie shall use best endeavours to ensure best value in the use of funds or resources provided through or by the Council.
- 2.14 tie shall continue to apply principles of good corporate governance and to adopt and adhere to the Council's Code on Corporate Governance (approved by the Council on 29 June 2006) as it may be amended from time to time.

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2.15 tie shall allow the Council, its auditors or the Council's other delegated appointees to examine the books, accounts and other records kept by tie (and any subsidiary undertakings of tie) and shall supply the Council with such financial and other information as it may reasonably request from time to time to keep the Council fully informed about the business of tie (and any subsidiary undertakings) and to protect the Council's interests in relation to the terms of this Agreement. tie will supply copies of all board papers to the Tram Monitoring Officer.

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2.16 tie shall use best endeavours to ensure that it and all third parties it engages and/or contracts with to carry out any works shall at all times comply with all equalities legislation and shall act in a non-discriminatory manner.

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2.17 tie shall liaise with the Council, and any other bodies which the Council may specify, regularly and shall report to the Council on a four-weekly basis with regard to financial matters and progress generally on the Project in a format acceptable to the Council.

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2.18 Immediately that tie becomes aware of the likelihood of delay to, or overspend in, the Project it shall notify the Council at the earliest opportunity, informing it of the reasons for the potential delay or overspend and any measures (together with costs) which may mitigate such potential delay or overspend.

2.19 Immediately tie becomes aware that it requires a decision or information essential to the continuity of the Project from the Council to achieve key dates in the Project, tie shall give notice of such requirement to the Council with full supporting information to mitigate any delay to the Project to the fullest extent possible.

2.20 tie shall not settle 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 without prior written approval from the Tram Monitoring Officer.

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2.21 tie shall not appoint any employee or consultant with a remuneration or fees over £75,000 without prior written approval from the Tram Monitoring Officer.

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2.22 All bonus schemes proposed by tie require to be approved by the Council. tie shall not award any bonus to any employee or contractor without prior written approval from the [Tram Monitoring Officer] of the bonus scheme terms. tie shall supply the Council all information which the Council may reasonably

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require in order to assess any proposed scheme and the outcomes to which any such bonuses are linked.

- 2.23 tie will provide a business plan to the Council on an annual basis.
- 2.24 tie shall use best endeavours to ensure that it and all contractors engaged by it protect the Council's reputation all at times in matters relating to the Project.
- 2.25 tie shall not novate or otherwise transfer any rights or obligations under any contractual arrangement which the Council has approved and to which tie is a party without the prior written consent of the Tram Monitoring Officer.
- 2.26 tie shall comply with the terms of all agreements to which it is a party, *issue is to ensure tie complies with agreements, but not if it is considered best to breach the terms and the Council agrees with this assessment*
- 2.27 tie shall comply with the governance diagram set out in [Schedule 2] *which issues are to be referred to TPB and which direct to the Council?*
- 2.28 tie warrant that they have at all times complied with the terms of the existing operating agreement between tie and the Council and have at all times acted, insofar as lawful, in the best interests of the Council.
- 2.29 tie shall obtain prior written approval for all announcements or publicity relating to the Project from the Tram Monitoring Officer.
- 2.30 tie will be subject to an independent peer review panel concerning the management of the Project (including all the contract documentation) and will implement all recommendations of the panel once approved by the Council.

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### 3. Council's Obligations

- 3.1 On the basis that tie has, in the opinion of the Council, provided adequate evidence that expenditure has been properly and appropriately incurred in relation to the provision of the Services and the Project as agreed by the Council in advance of expenditure commitment, the Council will secure funding for such expenditure and shall pass funding to tie to allow tie to discharge its obligations in terms of this Agreement.
- 3.2 [*Terms of appointments of Council officers/members to tie Board to be considered*].
- 3.3 The Council will nominate a Council officer to act as a liaison point for day-to-day communication between the Company and the Council.

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3.4 The Council will appoint a Tram Monitoring Officer.

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3.5 The Tram Monitoring Officer will be responsible for determining what approval is required from within the Council to allow him to give any consent or recommendation required in terms of this agreement. The parties acknowledge that the Tram Monitoring Officer may require to obtain approval of his proposed actions from the full Council or from a relevant committee or sub-committee.

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3.6 The Council will ensure that, in the Council's opinion, adequate personnel are made available to the Project to fulfill the Council's role in relation to the Project and that all such personnel shall use reasonable skill and care in executing their responsibilities.

#### 4. Term

4.1 This Agreement shall commence on [ 2008] and shall continue until termination is agreed between the parties, unless otherwise terminated earlier in accordance with its terms.

#### 5. Indemnity

5.1 tie is wholly responsible for meeting timeously all obligations, liabilities or claims of whatsoever nature arising out of or in connection with the implementation of its obligations under this Agreement. [tie shall indemnify the Council, its officers, employees and agents from and against all costs, expenses, actions, claims, demands and other liabilities which the Council or its officers, employees and agents may suffer which arise from tie, its employees or its other appointed representatives breaching the terms of this Agreement. [[TBC]

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#### 6. Termination

6.1 Either party may terminate this Agreement immediately by giving notice to that effect to the other if the other party is in material breach of its obligations and has failed to remedy that breach (assuming it is capable of remedy) within

14 days of receiving such notice.

## 7. Dispute Procedure

7.1 Any dispute or difference between the parties as to the meaning or intent of this Agreement or the implementation thereof or as to any other matter in any way arising out of or in connection with this Agreement shall be referred to the decision of an Arbiter to be mutually agreed between the parties or, failing agreement, to be appointed by the President for the time being of the Law Society of Scotland. The decision of such Arbiter shall be final and binding on both parties. The application of Section 3 of the Administration of Justice (Scotland) Act 1972 is hereby expressly excluded.

## 8. Transfer and Sub-contracting

8.1 This Agreement is personal to tie and tie shall not assign, novate, sub-contract or otherwise transfer by any means whatsoever any right or interest or obligation which it may have in or under this Agreement without the prior written consent of the Tram Monitoring Officer.

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8.2 For the avoidance of doubt, the Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement.

## 9. Notices

9.1 Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally, by fax or first class post or by email. In the case of posting, such notice will be deemed to have been given three working days after the date of posting; in the case of fax or email, the next working day; and in the case of personal delivery, at the time of delivery. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or at any other address or fax number notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement. All email notices shall be sent to either [ ] at tie or [ ] at the Council.

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10. **Freedom of Information**

10.1 The parties acknowledge that they will fully comply with, and will assist each other in complying with, the terms of the Freedom of Information (Scotland) Act 2002.

11. **Nature of Relationship**

11.1 This is an Agreement between two independent contracting parties and nothing in this Agreement shall create a relationship of agency or partnership between the parties with regard to its subject matter.

11.2 Nothing in the Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a local authority or in terms of any Legislation.

12. **Entire Agreement and Variations**

12.1 This Agreement and the attached schedules constitute the entire agreement between the parties in relation to their subject matter. Each party confirms that it has not relied upon any representation, undertaking or warranty not recorded in this document in entering into this Agreement. No variation of this Agreement shall be effective unless confirmed in writing and signed by authorised signatories of both parties to this Agreement. This agreement supersedes any prior agreement in relation to its subject matter.

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13. **Severability**

13.1 If any term of this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such term or part shall to that extent be deemed not to form part of this Agreement but the legality, validity or enforceability of the remainder of this Agreement shall not be affected.

14. **Waiver**

14.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided for in this Agreement) are not exclusive of any rights or remedies provided by law.

15. **Governing Law and Jurisdiction**

15.1 This Agreement is governed by the Laws of Scotland and, subject to the terms of clause 7, the parties submit to the exclusive jurisdiction of the Scottish Courts.

**IN WITNESS WHEREOF** this Agreement consisting of this and the preceding [ ] pages and the attached Schedules are executed as follows:

Subscribed for and on behalf of The City of Edinburgh Council at \_\_\_\_\_ on  
day of \_\_\_\_\_ 2007

Witness.....

Full Name.....

.....  
Proper Officer

Address.....

.....

Subscribed for and on behalf of tie Limited at \_\_\_\_\_ on \_\_\_\_\_ day of  
2007

Director.....

Director/Secretary.....

## SCHEDULE 1

[Terms and scope of “Services” to be provided by tie to the Council require to be further defined in this schedule – further discussion required as to whether a schedule is required]

### Services to be provided

- Procurement of SDS, MUDFA, Infraco & Tramco, including due diligence/audits [this will be done coterminously with close and signing the Operating Agreement, to the extent not already done, so the requirement can be removed. See also comments about an over-arching approval to enter into the contracts in my email]
- Tie will comply with Transport Scotland’s four week reporting requirements and payment application terms in relation to the Project [Covered by the compliance with the Funding Agreement clause 2.17]
- Tie must provide the Council with four-weekly cash flow forecasts and financial statements, in the agreed format in relation to the Project and also provide annual figures [Covered by 2.5]
- Provide accurate and current information to Tram Project Board, Transport Edinburgh Limited and the Council for appropriate decision making and approvals [as for peer review ?]
- Manage, financially control and timeously execute the SDS, Mudfa, Infraco and Tramco contracts, including managing change controls [add change control to the body of the document ?]
- Effectively and efficiently identify and manage the Project risks and appropriately advise the Council (including reputational, financial, design, third party, etc) [as for change control ?]
- Employ where appropriate the Traffic Management Team so as to effectively control the temporary and permanent traffic management both on and off line, as necessary
- Provide Health & Safety assessments (including HMRi, CDM etc) [include in body]
- Provide Design & Systems assurances [not sure what this means]
- Provide effective communications, consistent with the agreed strategy [include in body]
- Ensure that all contracting parties meet all their obligations (including protocols, traffic management, contract conditions, employer’s requirements, site supervision and testing etc) ditto
- Provide the necessary site supervision and management to ensure the assured quality outcomes consistent with the contract requirements, protocols and other agreements with the Council, transport stakeholders and other third parties.
- Deliver the agreed Value Engineering
- Implement and manage the Traffic Regulation Order process ditto
- Effectively liaise with Transport Edinburgh Limited through to the handover ditto
- Take responsibility for the Project land in a manner acceptable to the Council
- Act with due diligence towards the Council’s interest and specifically to enact the agreed recommendations from OGC already in the document, OGC will be history

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Tie will be subject to an independent peer review panel concerning the management of the Project (including all the contracts) and will implement all recommendations of the panel once approved by the Council [Include in body of document ?]

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- Manage all third party agreements relating to the Project in an effective manner and in the Council's best interests include in document
- Enactment of the project consistent with the agreed Final Business Case already covered
- Procure appropriate legal advice so as to enable the Council to comply with its statutory obligations
- Carry out other duties as instructed by the Council

DRAFT **tie** Operating Agreement – **tie** note of concerns 3.12.07

The note below is an extract from an email to Nick Smith of CEC Legal. The more important issues are highlighted by underlining, unfortunately this is most of them. The paragraph references relate to the attached draft document, but the points below should be largely self-explanatory.

Nick, here are my comments on the v9 version received on 28.11.07.

I have not yet received a workable copy of the TEL agreement so there will need to be a parallel set of comments when it emerges. Some TEL matters are highlighted below but these cannot be regarded as exhaustive.

1. A fundamental issue to address is the medium by which **tie** receives delegated authority from CEC to enter into the contracts – you have seen the emails which highlight BBS’s request for urgent clarification on this. Andrew’s advice is that this is enshrined in the Operating Agreement; we understand that the Council wishes to create the authority by Council minute on 20/12. Either way the wording needs to be developed and agreed on our collective side and communicated to BBS urgently.
2. In a similar vein, BBS are now expressing disquiet about the lack of confirmation from CEC on the performance guarantee terms. Again you have the detail. The Operating agreement will need to reflect the arrangement when the final form is agreed.
3. Does this agreement encompass all of **tie**’s projects and the possibility of future projects? If not, we must develop an agreement which does in tandem with the agreement for trams, as the other projects are underway and **tie** cannot be in a position of acting ultra vires. Do you anticipate that the current agreement will run in parallel with this new one, even though it accommodates EARL ? The logical approach would be to have a single new agreement.
4. Following point 3, the “Tram monitoring Officer” is defined as the person who monitors “the company” – we need to be clear about this: is he /she active on tram matters only or all projects plus other corporate matters?
5. What delegated authority does the TMO have, or does **tie** assume he / she has full power to commit the Council? I now see #3.5, but this is open-ended and gives no steer on what authority the TMO has ; it will therefore not be clear day-to-day what authority **tie** can act upon. Can there not be a clear statement of the TMO’s delegated authority?
6. As noted previously, I think the attempt to define a full menu of specific services provided by **tie** will prove futile and potentially dangerous as it cannot be comprehensive. The operational services required of **tie** can be summarized in relation to the tram project and the other projects **tie** is undertaking. Mechanics like reporting and audit together with specific prohibitions on action can be properly defined in addition to the operational services required of **tie**.

7. #2.1 defined as project, not company; see 3 above. Ditto 2.4.
8. #2.3 tie cannot “ensure” delivery of a world-class system – this needs a best endeavors qualification. I also don’t like the attribution of a judgemental phrase like “world-class” in a legal document, the reference to the Business case is sufficient to define the quality standard.
9. #2.5, tie cannot “ensure” that the Council complies with the publicity conditions in the Funding Agreement, needs a best endeavors qualification. I acknowledge the relationship with the Funding Agreement where similar requirements exist and we need to make sure these are sensibly aligned.
10. #2.6 – as point 9 in relation to Council compliance with legislation.
11. #2.8 – as point 9 in relation to third party performance ; tie cannot procure a level of efficiency from third party contractors, but it can be required to seek that this is delivered, failing which tie will be required to take action appropriate in the circumstances.
12. #2.11 and #2.12 - you have suggested wording for these two clauses from Tracey Kinloch to codify responsibilities for insurance arrangements, with the addition of a new clause (“2.15” on Tracey’s note) relating to Liability and PI insurance.
13. #2.21 requires all hiring of people with salary > £75k to be approved by the Tram Monitoring Officer. However, the Business Case sets out the resource plan for the project and it is tie’s responsibility to take best endeavors to ensure adequate resourcing under #2.4. The responsibility for recruitment and the relative level of pay and rations should be a tie responsibility not requiring specific approval. The Remuneration Committee formally handles all senior level remuneration, including new recruits.
14. #2.22- similar to 2.21, but this catches all “bonus schemes” which require approval by “the Council” not simply the TMO. This is a very intrusive proposal and effectively means the Remuneration committee has no role in this area. It also raises questions of confidentiality. I understood the concern was to have tie commit to bonus schemes only where the performance measures were aligned with project milestone achievement. I would doubt if anyone would resist that requirement, but individual by individual approval is unlikely to be appropriate.
15. #2.26 – agree the concern and suggest we revert to the previous wording which prohibited tie from knowing breach of contract compliance unless with approval from the TMO.
16. #2.27 – this is also affected by the point at 3 above. For tram matters, all issues outwith tie’s delegated authority will be referred first to the TPB, then it is the TPB’s responsibility to deal with matters requiring TEL or Council approval. The

current structure of delegated authority between the **tie** team, TPB and TEL will be reviewed and if thought appropriate re-approved by the TPB this Friday. We don't expect the limits to change, based on informal discussions to date. We are awaiting the terms of the authority delegated by the Council to its **tie** and Tram committees and then to the TMO to ensure these matters are all properly aligned.

17. #2.28 – this new clause asks **tie** to warrant that it has complied at all times with the present Operating Agreement and (with or without a materiality qualification) will necessitate a wholesale review of its terms and of the actions taken by the Board since the agreement was enacted. This cannot be a good use of resource and it is not clear to me what the Council is trying to achieve here. The lack of this clause would not prevent the rest of the agreement standing on its own feet, so I suggest it is deleted. I appreciate that it may help confirm in the mind of BBS that everything to date has been done with proper process, but we should be able to argue that this is so, in the absence of any contrary evidence.
18. #2.29 – See also 9 above. I do not believe it is in the interests of **tie** and the Council to have every announcement / item of publicity (undefined) approved in writing by the TMO before issue. Needs some qualification, aligned with TS deal.
19. #2.30 – what is the scope and frequency of the proposed “review by a peer review panel”? The **tie** directors will need to know what they are agreeing to comply with.
20. #3.1 – you have removed my suggestion that the Council must act reasonably in assessing the validity of **tie**'s expenditure before providing funding. This will cause difficulty because the directors must have a reasonable basis for assuming they have the funding to cover expenditure commitments they undertake. A lack of any codification of the Council's approach to approval leaves this more exposed than it should be. Please reconsider the inclusion of the reasonableness requirement.
21. #3.2 – can you suggest wording to cover appointment to (and removal from ?) the **tie** Board.
22. #3.3 the “liaison officer” appears not to be the same as the TMO, so can the relationship be addressed, including delegated authority if any, so that people know what the role of the liaison officer is.
23. #5.1 – I doubt if the directors will be prepared to enter into an open-ended indemnity to the Council. Moreover, it has no balance sheet. The real value of the indemnity is therefore zero and I'd suggest the clause is removed. In addition, you have wording from us which requires that the Council agrees not to claim against any individual director, officer, employee or self-employed contractor, which we believe is a necessary protection.
24. #8.2 – the one-way assignation ability in favour of the Council underlines the need for **tie** to ensure that it is under no potentially onerous conditions. Can

assignment not require mutual agreement; **tie** is a wholly-owned subsidiary so the Council can empty the **tie** Board whenever it wishes, if an assignment were resisted by the **tie** Board.

25.#11.1 states that the agreement is between two independent parties, please see comments in final paragraph below about competition law.

There is an underlying point to all of this. The more we try to draft the agreement as if it were between two third parties, the more difficulty there is in agreeing the language. More importantly, we have had legal advice against the development of a comprehensive agreement of a third party nature because it mitigates against the concept of a "single economic entity" in the context of a competition law and the proposed integrated operations. We must bear this in mind when addressing the wording. A more informal approach will enable us to reach agreement quickly and help to reduce the risk under competition law. Andrew will advise us on this, my interest is in reflecting the reality of the parent / subsidiary relationship to enable us to finalise these matters quickly.

I hope this is a comprehensive view of all the issues. Please let me know if you can attend the proposed meeting at 8.30am on Wednesday morning.

Regards  
Graeme

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Graeme Bissett

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