

EDINBURGH TRAM PROJECT

Governance matters – Summary

Background

New governance arrangements were addressed at the 20 February 2006 TEL Board and the 27 February tie Board meetings. The principles were approved and accepted by the main stakeholders, CEC and Transport Scotland. Since then, the key areas have been subject to further work as set out in the documents which follow. The areas covered are those listed at the end of the governance summary paper discussed at the February Board. This note provides a brief summary of all aspects.

Updated governance summary paper

This is based on the paper submitted in February, but reflects three groups of changes:

1. Removal of different options, amendments suggested by DLA and other updating
2. Some amendments from Neil Renilson
3. An additional section dealing with tie Board approvals as explained below.

The underlying proposal is unchanged from February. A copy of the document with visible track changes is included for reference. Not all of the changes requested by Neil are reflected and some further discussion on these points may be needed.

An area which was not sufficiently exposed in the previous documentation is the relationship of tie Limited to the TEL Board governance model. In particular, there is a question about tie Limited's control over contractual commitments which it is undertaking in its role as principal contracting party until commissioning. A related point is that TEL Board directors will wish to ensure they are not deemed to be shadow directors of tie Limited. This could arise if tie Limited had no independent power over key decisions.

This is not a straight-forward area to resolve as a key driver of the new arrangements has been to eliminate dual decision-making processes. However, the following approach should work.

1. Tie will continue to be the principal contracting party until commissioning.
2. Tie is required by CEC to do all things reasonably necessary to deliver the tram system including entering into contracts
3. The terms of these contracts are subject to approval by the TEL Board in its project board role

4. Since entering into a contract requires the formal engagement of tie Limited, its Board also require to approve new contracts. A practical mechanism to achieve this in between scheduled Board meetings can be implemented if necessary.
5. The same rules will apply to material changes to contract terms.

In order to reinforce the authority of the tie Board on fundamental areas it is also proposed that the tie Board must approve funding requests to CEC and the Executive. This will include business cases submitted to CEC and the Executive.

In the event of any dispute between tie and TEL in these matters, CEC will require to take the final decision.

The governance summary paper now reflects this dimension.

Documenting the new arrangements

The proposal is that CEC will issue letters setting out its requirements of the three companies involved – tie, TEL and Lothian Buses. This removes the need for new or amended formal operating agreements. Drafts are attached which have been reviewed by DLA and by CEC. Comments are awaited from CEC.

Delegated Authority Rules (DARs)

It was agreed that the Tram Project Director DARs would remain intact, but subject to review as the project progresses.

CEC / TEL delegations are encompassed in the funding approval documentation in the same manner as currently for tie. The funding approvals require the authority of both CEC and the Executive.

The essence of the DARs in the period to financial close is as follows :

- Tram Project Director has authority to execute Change Requests (either new contracts or variations to existing contracts) with financial impact up to £0.5m. This limit is increased to £2.5m in relation to future cost estimates where there is no current contractual commitment.
- Tram Project Director can make new contractual appointments or amend fixed price contracts where the financial commitment effect is < £2m. This limit reduces to £150k if the contract is cost-reimbursable.

In the period of construction, these limits are increased but the same principles apply.

Above these levels, TEL Board approval is needed.

Tie reserved powers are limited to those described above :

- Approval of budgets and funding requests
- Approval of material new contractual relationships or material changes to contractual relationships

Any changes to tie's own reserved powers obviously needs tie Board approval also.

TEL operating plan and budget

This is under preparation and will be reflected in the OBC / funding request. The anticipated funding for 2006–07 to financial close is c£1m.

Project programme

These are in the process of finalisation. The programme for the TEL Business Plan and the Tram business case is included in the TEL Board papers.

Funding proposal

This is explained in the tax papers described below.

Legal advice

DLA's report is attached. In essence the report concludes that the following legal issues are adequately addressed in the proposed governance structure :

- Procurement regulations
- Contract structure
- Competition law
- State aid implications
- Transport legislation

The report is based on the previous iteration of the governance summary paper and any legal effect arising from the final amendments to that document will be reported verbally to the TEL Board. However, it is not anticipated that any adverse effects will arise. In this regard, the main outstanding issue is the TEL and tie Directors' authority as described above.

Tax advice

PwC's report is attached. Their report was based on a brief summary of the corporate structure, governance proposal and likely cash flows. This summary is also attached.

The conclusions are that the proposed approach will not lead to any adverse tax consequences for CEC or the three subsidiaries. There are a number of matters for follow up but none which require to be addressed immediately.

Accounting consequences for CEC

CEC Corporate Finance have confirmed that the proposal does not create any accounting difficulties.

Amendments to tie and TEL statutory documents

Once the proposals in this set of papers are approved, it is suggested that CEC's internal legal advisors should examine the Memorandum and Articles of Association of the three companies to ensure that no amendments are required.

Legal and financial advisory relationships

A separate paper addresses this matter

Office accommodation

It has now been agreed that TEL and the full tram team will co-locate in City Point.

Attachments :

- 1, 2 Clean and track-changes versions of the governance summary paper
- 3, 4, 5 Draft letters from CEC to TEL, tie and LB
- 6, 7 Amended copy of DARs - Explanatory document and detailed Authority Matrix
- 8 DLA Report
- 9, 10 PwC Report and Structure Summary paper

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