

Paper to: TEL Board

Meeting date: 2nd June 2010

Subject: Compliance with Operating Agreements and Conditions of Grant

Preparer: Stewart McGarrity

Background

In December 2009 a revised operating agreement was entered into between TEL and CEC (the "TEL OA") which codifies the relationship between and the respective obligations of TEL and its shareholder. The TEL OA superseded a previous TEL/CEC operating agreement from May 2008.

The TEL OA specifically encompasses the activities of its subsidiary companies **tie** Limited and Edinburgh Trams Limited (ETL) and requires that TEL procures those subsidiaries also comply with the TEL OA. In addition **tie** Limited itself has 2 previous operating agreements with CEC from May 2005 and May 2008 which continue in force to the extent the provisions are not superseded by the TEL OA.

The TEL OA requires that TEL uses best endeavors to ensure that it does not cause CEC to breach the terms of the Grants from Scottish Ministers for delivery of the Tram or the element of the Gogar Interchange being delivered by us.

This paper seeks to provide assurance to the TEL Board regarding compliance with the Operating Agreement and Grant conditions during the year to 31st May 2010 derived from a detailed review of such by the management team. It is expected that this review and checklist completion will take place every 6 months.

Compliance Review and Findings

The management team's review of compliance is documented in the attached checklists where compliance with the principal requirements of the operating agreements is confirmed alongside an explanation of the process or control which ensures compliance where necessary.

The continuing uncertainty regarding outturn costs and programme require that the Board's attention be drawn to our compliance with the requirement that TEL determines and reports to the Council on circumstances where there is an "actual or reasonably expected" (i) delay of 3 months beyond the Baseline Date (currently Oct 2012); (ii) increase in capital cost which would mean that the Baseline Cost (currently £545m) is exceeded by greater than £1,000,000; or (iii) any substantial change to the design, scope or service pattern set out in the Final Business Case.

Uncertainties over programme and resolution of disputes have made it impossible to determine any final cost – full briefings on the range of possible outcomes have been provided as part of briefings to CEC senior officers (and to TS as funders) and in the Pitchfork report to the Tram Project Board of March 2010. Tram Project Board have been fully aware of cost and programme uncertainties throughout the year.

It is now appropriate to formally notify the Tram Monitoring Officer (as required under CI2.24 of the TEL OA) that there is a reasonable expectation the costs of delivering the whole phase 1a scope will exceed £545m and it is proposed that a letter of notification be sent to the Tram Monitoring Officer by the Chairman on behalf of the TEL Board.

Other than the foregoing there were no particular matters arising from the review which require to be brought to the attention of the members of the Board. The completed checklists have been endorsed by CEC officers and form part of the inputs to CEC officers own internal review of compliance with the Operating Agreements and Grant conditions.

Recommendations

1. **Note the assurance with respect to Operating Agreement and Grant Conditions compliance provided by the management review undertaken as documented on the attached checklists.**

2. **Approve the letter from the Chairman on behalf of the TEL Board to the Tram Monitoring Officer notifying a reasonable expectation the costs of delivering the whole phase 1a scope will exceed £545m.**

Proposed	Name: Stewart McGarrity Title: tie Finance Director	Date: 1 st June 2010
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Recommended	Name: Title:	Date:
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Approved: David Mackay on behalf of the Tram Project Board	Date:.....
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