



**EDINBURGH TRAM  
Highlight Report to the  
Chief Executive's  
Internal Planning Group  
17 March 2010**



## 1 Background

This 'highlight report' is an update to the Chief Executive's Internal Planning Group (IPG) on the Edinburgh Tram Project to inform on the progress on this project and any decisions required.

A redacted version of this report is also to be circulated within the Council as a means of communicating progress with the Tram project.

## 2 Executive Summary

### 2.1 Matters Arising

#### Evaluation of Financial Contingency Measures, Strategic Options and Financial update

An update is provided on the grant funding from Transport Scotland, project 'pitchfork', financial contingency planning, the alignment of the Roads programme, Governance and the Council's £45m contribution.

#### Tram Monitoring Officer Update

An update on the Dispute Resolution Process (DRP) including a summary of DRPs is provided along with progress on agreeing a further on-street supplemental agreement.

#### Communications Update

Information is provided on the communications surrounding the tram project board meeting on 10 March, the tram vehicle testing in Germany, branding and the tram TRO public consultation.

#### Tram Sub Committee meeting on 22 March

A meeting has been called by Councillor Mackenzie and three reports have been produced.

#### Statutory Council Approvals and Consents

As the detailed design continues, there are several statutory consents that the Council must provide. These include Planning Prior Approvals, Building Warrants, Roads and Structures Technical Approvals.

#### Land Acquisition and Certificate(s) of Appropriate Alternative Development (CAAD)

An updated position for the CAADs is provided.

#### Planned Future Tram Council Reports

A list of planned future tram related Council reports is provided.

#### Risk Review

A review of the Council's Tram Risk Management Plan has been undertaken and the risks with the highest impacts are contained within this report.



## 2.2 Matters to Note or for a Decision

- To note the update on project 'pitchfork', the grant award conditions from Transport Scotland, the financial contingency planning, the alignment of roads programme and the financial update.
- To note the Tram Monitoring Officers update on DRP and the further on-street supplemental agreements.
- To note the communications update.
- To note the three reports being considered at the Tram Sub Committee on 22 March
- To note the progress with the Statutory Approvals and consents.
- To note the position regarding land acquisition and CAAD applications.
- To note the planned tram related Council reports planned.
- To note that a review has been undertaken of the Council's tram risk management plan.

## 3 Evaluation of Financial Contingency Measures, Strategic Options and Financial Update (Presented by Donald McGougan)

### Transport Scotland Grant Letter

The grant letter from Transport Scotland sets out a Conditions Precedent (CP) on which Transport Scotland's funding of £500m is dependent. The CP states that the Final Business Case for Phase 1a must contain an affordability assessment within a maximum capital cost of £545m.

Given the current challenges the project is faced with in terms of funding, specific approval would be required from Transport Scotland on their current commitment of £500m in the likely event that the final capital cost for Phase 1a exceed the current approved funding envelope.

The Council will likely have to demonstrate the affordability of the contingency planning options currently under consideration to Transport Scotland to get the required approval.

Discussions will take place between the Council and Transport Scotland over the coming weeks and months to seek the required authority.

Within the context of these discussions the issue of potential re-phasing of the scope of Phase1a will also come under consideration.

### Project "Pitchfork" Update

Following instruction from the Tram Project Board on the 13 January 2010, **tie ltd** have instigated a series of workstreams with the objective of arriving at a recommendation to the board on the best strategic option to pursue to bring about a change in the delivery of the project due to the ongoing commercial disagreements with Bilfinger Berger and to provide a view of the best way forward for the project. As part of this work **tie ltd** adopted a more rigorous and aggressive approach with BSC.



The options under consideration are set out in the table below;

Option	Original number	Option	Description
1	1B		<b>Termination</b> - without cause
2	2B2		<b>BB exit</b> - Infraco Contract remains intact with BB full or partial exit
3	3A		<b>As is</b> - Continued application of the Infraco Contract in its present form with the present players
4	3C		<b>Enforced adherence</b> - Assertive application of the Infraco Contract in its present form but with disputes settled in the short term and a negotiated new way of working

The recommendation from project “Pitchfork” was reported to the Tram Project Board on the 10 March 2010 and contained the following;

*The approach adopted appears to have had a significant impact on BSC and the basis on which tie ltd can seek to achieve an acceptable legal and commercial outcome is now considerably clearer. Accordingly, the recommendation from tie ltd to the Tram Project Board is that tie ltd should:*

- Continue to pursue tie’s rights under the existing contract with vigour and seek acceptable resolution of the main disputes ; both according to the action plan described above ;
- Actively address the opportunity to achieve a partial or full exit of BB from the primary contract role they currently play, on acceptable cost and risk transfer terms ;
- Actively address affordability and re-phasing options, including operational and financial viability;
- Reach a resolution of these matters with BSC in the form of a revised version of the existing contract which remains compliant with procurement regulation ;
- Confirm a new way of working with BSC which mitigates against further dispute risk ;
- Report progress regularly to the Tram Project Board, especially in relation to cost estimates, programme forecasts and potential scope changes in the context of funding availability and the structure of delegated authority which will govern any material changes ; and
- Formally reassess the revised arrangements on or before 30th June 2010.

Resolutions to the key issues are intrinsic in tie ltd’s recommendation to the board. tie ltd have subsequently produced an action plan to close out these recommendations and the work will be conducted over the next three months.



These items are summarised below.

- Action on Clause 80 and 34.1 to find resolution to the change process
- Seek conclusion on impact of utility diversion delays and overall Extension Of Time claim, with consequent revision to a new agreed programme
- Respond to BSC's On Street Supplemental Agreement by using the terms of the contract around notified departures as a way of paying BSC for any change in scope rather than a cost plus basis.
- Refine argument over Design management
- Omnibus approach to resolution of outstanding design disputes
- Quantify and execute amended position on prelims and possible reduction in prelims payments
- Seek to resolve the Airport – Edinburgh Park disputes and expedite work in this section
- Action plan for implementing more collaborative working

In addition to the legal and commercial work that has been produced over the last two months a full financial analysis has been undertaken to assist in the recommendation to the board. The findings of this analysis can be found in Appendix 1. Finance will be working closely with **tie ltd** over the coming months to ensure the robustness of the financial forecasts.

Aligned to **tie ltd's** work over the coming few weeks there will be important planning required from the Council's perspective with regard to reporting to full Council and ensuring delegated authority levels are aligned with both Council and Transport Scotland. Furthermore CEC response to media enquires and also the interface with **tie ltd** will be crucial. Finance and Legal will work closely on these matters in the coming weeks.

The proposed skeleton to the full Council report could include the following:

Story Board since 20 August 2009 report providing update covering;

- DRP's
- Legal Levers
- Pitchfork work streams
- Utilities
- Princes Street Update and Commercials including reasons why we cannot afford an OSSA under similar terms and also the procurement implications. Further information will also be required on the extent of full depth road reconstruction.





As a result of the above factors consideration also needs to be given to extending the tram project boards authority over the current approved funding of £545m. This will need to be carefully drafted, but a 10% increase would likely be appropriate. Phasing and affordability assessments of the options should to be considered.

### Financial Contingency Planning

Finance has been working on contingency planning options for funding in excess of the currently approved budget of £545m. This work has identified funding up to a maximum level of £600m from a combination of sources.

TEL Business Plan – The current assumptions in the business plan indicate cumulative Net Profit of £166m from 2013 – 2031 which could support the costs of prudential borrowing to the Council.

Further prudential borrowing could be funded from a provision that has been made in the Council's long term financial plan of £2m per annum and from headroom in the Council's Loan Charges.

As stated previously, approval demonstrating the affordability of these contingency options will be required from Transport Scotland.

### Finance Update

Transport Scotland have now contributed £336.9m to the project to facilitate spending to the end of period 1 of financial year 2010/11 (period ending 24 April 2010). The latest cash application to Transport Scotland is for £15.3m with the Council contributing £1.3m.

The current forecast call on Transport Scotland funding for 2009/10 is £105m. It is likely that circa £150m will be made available by Transport Scotland for next financial year, Finance await confirmation of this from Transport Scotland.

The average run rate for the current financial year, based on cost of work done, is £8.6m per period. Based on this run rate there is around 22 months of funding to go on Transport Scotland's commitment of £500m.

### Alignment of Roads Programme

At last months IPG there was discussion around possible alignment of the Council's roads maintenance programme with the on-street tram works where the works align with the priorities identified through the roads programme. This proposal would enable the Council to contribute funding to the tram project where genuine betterment of the Council's roads could be demonstrated, negating the need for maintenance to be undertaken in these areas in future years. To enable examination of this issue to be taken forward a meeting has been set up on 25 March 2010 between Finance, City Development and Services for Communities to examine potential around this proposal. The findings of this initial meeting will be reported back to the IPG.



**Governance**

Governance work is ongoing. Finance are currently evaluating proposals from tax consultants to assist in the Tax Planning work required to ensure that the Council and TEL achieve the optimal tax position from the assets gained through the project.

The next meeting to discuss Governance transition will take place on the 1 April with outputs reported to the IPG.

**Update of Council's Tram Funding Strategy**

The position on the Council's funding strategy has not changed in the current period.

The table below shows the total funding achieved to date:

CEC Contribution Breakdown	Planned Contribution	Achieved Contribution
Council Cash	£2.5m	£2.5m
Council Land	£6.2m	£6.2m
Developer Contributions – Cash	£25.4m	£4.3m
Developer Contributions – Land	£1.2m	£1.2m
Capital Receipts (Development Gains)	£2.8m	£0.0m
Capital Receipts	£6.9m	£2.0m
<b>Total</b>	<b>£45.0m</b>	<b>£16.2m</b>

The next 6-monthly review of the Council's funding strategy should be able to pick up on the wider market indicators based on the market analysis reports due for release from planning consultants.

**4 Tram Monitoring Officer (TMO) Update (Presented by Marshall Poulton)**

The final account for Princes Street Supplemental Agreement (PSSA) has yet to be settled. The costs continue to escalate as a result of poor and inefficient supply chain management of plant from BSC under the PSSA. Costs for overtime working to ensure the 29 November deadline was met has also contributed. The current view is that the costs incurred under the PSSA are a £9m addition to the contract price, though elements of this would have been payable in any case.

The overall project completion is 14.2%, which is an increase of 0.5% for this period against a plan of 4.4%. There are currently three active DRP's. Two of the items relate to design issues for the Depot Access Bridge and Track Drainage and the other item relates to delay resulting from utility works.

The approximate value of each DRP is noted below (though it should be noted that the value of a DRP principle may significantly differ from the value of the DRP dispute itself).



**BSC Dispute Summary (Live and Potential Cases)**

DRP No	Subject	Nature	Decision/Status	Cost Implications
1	Bus lane on Princes Street	Initiate Work	Agreed between the parties – supplemental agreement	
2	% uplift in prelims	Costs	Agreed at Mediation	
3	Hilton Car Park	Contract definition	Awarded in tie's favour	£100k
4	EOT1	Costs	Agreement reached through mediation	£3.5m
5a	Gogarburn	BDDI - IFC	Decision made	£150k
5b	Carrick Knowe Bridge	BDDI – IFC	Decision made	£150k
B / 5c	Russell Road Bridge	BDDI - IFC	Decision made	£2m
5f	Haymarket	BDDI – IFC/ Costs	Agreement reached prior to reaching formal stages – costs reduced substantially	£200k
5i	Baird Drive	BDDI - IFC	Awaiting adjudication	
5j	Balgreen Road	BDDI – IFC/costs	Agreement reached prior to reaching formal stages – costs reduced substantially	£500k
5o	Depot Access Bridge	BDDI – IFC/costs	Recently launched	
A	MUDFA Rev 8	Time	Awaiting mediation	
5l	Section 7 track drainage	BDDI – IFC/costs	Just launched	
5e	Tower Bridge	BDDI- IFC/costs	Just launched	
				<b>£6.6m (to date)</b>







As requested at the last IPG meeting, a further review of the Tram monitoring officer duties and records was undertaken. Appendix 5 provides an update on that review and a summary of the actions points are as follows:

Issue	Proposed Solution
No regular reviews undertaken	Additional resources are required to assist the TMO to undertake regular (suggested quarterly) reviews. It is recommended that someone from Finance and City Development be identified to provide dedicated part-time assistance.
Limited documentary evidence held by the Council to ensure proper compliance	Obtain the information from TEL/tie ltd and develop and maintain secure store facility
It is essential that the Council get a better understanding of the AFC	Obtain better understanding from tie ltd on AFC and regular written reports given to the TMO.
No formal Communications Plan	Develop, agree and regularly review Communications Plan

## 5 Communications Update (Presented by Isabell Reid)

### New Communications structure

Lynn McMath has now taken up a secondment at **tie ltd**, as Head of Media. She will report directly to Mandy Haeburn-Little, with weekly feedback to Isabell Reid on key issues. The media relations function previously undertaken by MediaHouse has now been brought in-house and will be carried out by Lynn and two media officers. The team will cover all aspects of tram media, including representing Council issues.

### Media Coverage

The outcome of the Tram Project Board meeting of 10 March attracted intense media scrutiny before and afterwards. At the board meeting members identified Councillor Mackenzie as the main spokesperson for the dispute.

The decision was taken to be more bullish about the problems with the contractor and publicly criticise them for proposing a 30 month extension to the contract.

This tactic produced mixed results with some outlets reporting it accurately and others interpreting it, incorrectly, as meaning a confirmed delay to the project had been announced. Where factual inaccuracies occurred these were swiftly corrected.





Looking forward, it has been recognised that this tactic cannot be used repeatedly as it could prejudice any further negotiations. There is also an issue around Councillor Mackenzie, as an elected member, being the main spokesperson for a contractual dispute. This issue is being reviewed.

### Tram Traffic Regulation Order (TRO) public consultation

The TRO public consultation is well under way and now into its third week. Around 100 visitors have passed through the exhibition doors since opening on Monday 22 February 2010 with around 180 objections submitted to Dundas & Wilson as of 11 March. The majority of objections relate to the banned right turn into Blenheim Place from London Road (161).

### Tram testing

A Press group, which included Marshall Poulton (CEC), Alastair Richards (TEL) and journalists from the BBC, Edinburgh Evening News and New Transit Magazine, visited Wildenrath in Germany to witness the testing of the first tram vehicle.

The trip was organised by Alejandro Urriza at CAF guided the members of the party through the Siemens' test site, factory construction area and for two hours of physical driving on the test track itself. The vehicle ran very smoothly and quietly at speeds up to 50mph. It generated some positive coverage.

### Edinburgh Trams branding

It has been agreed to introduce an interim stage identity for Edinburgh Trams, covering the transition from **tie ltd** to Trams. This interim has been designed to incorporate maroon colours, historically associated with Lothian Region Transport and Lothian Buses. This colour is also part of the palette for the Inspiring Capital.

This brand will replace the **tie ltd** identity in time. Work is also underway at Lothian Buses regarding their own design development and shortly the process of a more co-ordinated identity between Edinburgh Trams and Lothian Buses will take place.

As this is in an interim brand, there are no proposals for a wholesale change. The interim branding will be applied to the following materials and resources:

- Letterheads (printed)
- Compliment slips (printed)
- Business Cards (these will be replaced as stocks run out)
- Powerpoint presentations

This interim brand will also be rolled out and used on any new signage and promotional materials. Branding guidelines have been distributed.





**6 Tram Sub Committee on 22 March (Presented by Dave Anderson)**  
 Councillor Mackenzie has called a tram sub committee on 22 March. The agenda will comprise:

- INFRACO Update
- MUDFA Update
- Tram Vehicle and Branding Update
- A short presentation comprising of photographs of the construction
- The tram vehicle testing movie

**7 Statutory Council Approvals and Consents (Presented by Andy Conway)**  
 There has been no change in the amount of statutory approvals since last month. For completeness that information is contained within Appendix 2.

**8 Certificate of Appropriate Alternative Development (CAAD) (Presented by Dave Anderson)**  
 There is no significant change in the tram CAAD position. The current status is set out in Appendix 4. A further meeting between Planning and CP2 is planned to further address the mitigation measures.

**9 Planned Future Tram Council Reports (Presented by Andy Conway)**  
 The table below identifies the planned tram related Council reports and will be a standing item on the IPG for agenda planning purposes.

In terms of the required report to Council on remuneration in Council owned companies (item 5), it is proposed that this report be presented to the June 2010 Council. This will allow sufficient time to compile and analyse all relevant information, as well as ensuring that there is no clash with the likely period of purdah. It is proposed that a Council sub-committee be set up to deal with all remuneration matters for directors and senior officials of Council arms length companies. It is anticipated that having a single point of oversight will facilitate and integrated and consistent approach to such matters and standardise any anomalies which currently exist as a result of different structures being put in place at different times. In terms of progress it is suggested that once the relevant information is compiled then the Director of City Development and Director of Corporate Services meet to take a strategic overview of the way forward as it relates to the current rationalisation of Council companies.



		2010											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	Update on governance – on ETLMOU					27/5/10							
2	DRP progress, including costs and programme implications					27/5/10	→						
3	Lothian Buses integration proposals				29/4/10								
4	Lothian Buses integration - approval of final arrangements								19/8/10				
5	Remuneration Strategy (for all Council companies) - including TEL and tie ltd						24/6/10						
6	Tram Traffic Regulation Orders		9/2/10				24/6/10						
7	Magdala area traffic calming					4/5/10							
8	Consultation on the future pedestrianisation of Princes St, plus update on the success of winter festivals embargo			29/3/10									
9	Update reports to the Tram Sub			22/3/10									

**Key**

Full Council
Transport, Infrastructure and Environment Committee
Policy and Strategy
Tram Sub Committee

**10 Risk Review (Presented by Andy Conway)**

The major risks identified are included in Appendix 6 of the report. These risks are reviewed every period as part of the CEC's Tram Co-ordination meeting.

**List of Appendices:**

- 1 Pitchfork Financial Analysis
- 2 Statutory Council Approvals – Tables 1 and 2
- 3 Statutory Council Approvals – Tracker
- 4 Certificate of Appropriate Alternative Development (CAAD)
- 5 Briefing Note on the Role of the Tram Monitoring Officer
- 6 Extract from CEC Risk Register dated 27 January 2010



# APPENDIX 1

Opening Date	Spend Jan 10	Option 1		Option 2B2		Option 3A		Option 3C	
		Termination / Cancellation		Civils tie step-in On-street		Carry-on No new agreement		Carry-on Settled BSC	
		N/A		Dec-12		Oct-13		Oct-12	
		To Go	Total	To Go	Total	To Go	Total	To Go	Total
<b>BSC Contract</b>	<b>90.4</b>	<b>(10.4)</b>	<b>80.0</b>	<b>105.7</b>	<b>196.1</b>	<b>154.6</b>	<b>245.0</b>	<b>154.6</b>	<b>245.0</b>
<b>New Civils Procurement</b>				<b>58.9</b>	<b>58.9</b>				
<b>Vehicles (CAF)</b>	37.8	20.7	58.5	20.7	58.5	20.7	58.5	20.7	58.5
<b>Design (SDS)</b>	31.1	0.9	32.0	2.6	33.7	2.6	33.7	2.6	33.7
<b>Other Infrastructure</b>	15.3	0.7	16.0	3.8	19.1	3.8	19.1	3.8	19.1
<b>Utilities (incl MUDFA)</b>	62.2	(2.6)	59.6	(2.6)	59.6	(2.6)	59.6	(2.6)	59.6
<b>Project Costs ("tie prelims")</b>	61.6	8.4	70.0	33.4	95.0	35.9	97.5	29.9	91.5
<b>Other Costs</b>	30.2	1.8	32.0	3.6	33.8	3.6	33.8	3.6	33.8
<b>Base Costs</b>	<b>328.6</b>	<b>19.5</b>	<b>348.1</b>	<b>226.1</b>	<b>554.7</b>	<b>218.6</b>	<b>547.2</b>	<b>212.6</b>	<b>541.2</b>
<b>Existing BSC Risks/Uncertainties:</b>									
Design Development				12.6	12.6	12.6	12.6	12.6	12.6
Ground Conditions				5.6	5.6	5.6	5.6	5.6	5.6
Princes Street SA				9.0	9.0	9.0	9.0	9.0	9.0
On Street - Scope changes				11.6	11.6	9.9	9.9	9.9	9.9
On Street - Delay/Disrup/Accel				8.2	8.2	8.2	8.2	8.2	8.2
Risk associated with credit				0.0	0.0	3.0	3.0	3.0	3.0
Client & Other Changes				9.0	9.0	9.0	9.0	9.0	9.0
Prolongation, Delay & Disruption									
- Core Allowance (9mths)				21.0	21.0	21.0	21.0	21.0	21.0
- Remaining on-street				(6.3)	(6.3)	0.0	0.0	0.0	0.0
- <b>On-street 4 mth start delay</b>				<b>4.0</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>
- <b>Further Allowance</b>				<b>8.5</b>	<b>8.5</b>	<b>27.7</b>	<b>27.7</b>	<b>12.1</b>	<b>12.1</b>
VE Deliverability				4.3	4.3	4.3	4.3	4.3	4.3
				<b>87.5</b>	<b>87.5</b>	<b>114.3</b>	<b>114.3</b>	<b>98.7</b>	<b>98.7</b>
<b>Civils Reprocure Risk/Uncertainties</b>									
Siemens & CAF Premia				3.0	3.0				
BB Demobilisation and Premia				0.0	0.0				
Direct Reprocurement Costs				2.0	2.0				
<b>Civils/Systems Interface</b>				<b>10.0</b>	<b>10.0</b>				
<b>Execution Risk</b>				<b>10.0</b>	<b>10.0</b>				
				<b>25.0</b>	<b>25.0</b>				
<b>Cancellation and Reinstatement</b>									
BB Demobilisation and Premia		10.0	10.0						
S Demobilisation & Premia		5.0	5.0						
Reinstatement		15.0	15.0						
Vehicle Disposals		(30.0)	(30.0)						
<b>Execution Risk</b>		<b>40.0</b>	<b>40.0</b>						
		<b>40.0</b>	<b>40.0</b>						
<b>Total outturn including Ph1b w/off</b>	<b>328.6</b>	<b>59.5</b>	<b>388.1</b>	<b>338.6</b>	<b>667.2</b>	<b>332.9</b>	<b>661.5</b>	<b>311.3</b>	<b>639.9</b>



## Statutory Council Approvals

### Summary Table

CEC Statutory Council Approvals and Consents	Total Number of Submissions	Total number of Approvals	% Complete
Prior Approval	64	61	95%
Full Planning Permission	10	9	90%
Listed Building Consent	11	11	100%
Scheduled Monument Consent	1	1	100%
Building Warrant	18	15	83%
Technical Approvals (including Structures, Roads and Drainage)	125	112	90%
<b>Total</b>	<b>229</b>	<b>209</b>	<b>91%</b>

Table 1 - Planning and Building Warrant Approvals

CURRENT STATUS	Sub Totals	Prior Approval	Full Planning Permission	Listed Building Consent	Scheduled Monument Consent	Building Warrant
Informal consultation not started	3	1	0	0	0	1
Informal consultation started	3	2	0	0	0	1
Application submitted	1	0	1	0	0	1
Approval granted	97	61	9	11	1	15
<b>GRAND TOTAL and Sub Totals</b>	<b>104</b>	<b>64</b>	<b>10</b>	<b>11</b>	<b>1</b>	<b>18</b>
<b>% Complete</b>	<b>93%</b>	<b>95%</b>	<b>90%</b>	<b>100%</b>	<b>100%</b>	<b>83%</b>

Table 2 - Roads & Structures Technical Approvals

CURRENT STATUS	Sub Totals	CEC Technical Approval	*Network Rail Form A	*SW Drainage Outfall Consent	*SNH	*BAA Approval	Roads Construction Consent
TA delayed due to recent change	0	0	0	0	0	0	0
Issued for informal consultation	0	0	0	0	0	0	0
Issued for Technical Approval	12	7	0	4	0	1	1
Technical Approval Granted	112	89	12	10	1	0	0
Not Yet Due	1	1	0	0	0	0	1
Delay	0	0	0	0	0	0	0
<b>GRAND TOTAL and Sub Totals</b>	<b>125</b>	<b>97</b>	<b>12</b>	<b>14</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>% Complete</b>	<b>90%</b>	<b>92%</b>	<b>100%</b>	<b>71%</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>

\* These consents are not CEC's responsibility, but for completeness they have been included as they are required to allow construction to commence.



**APPENDIX 3**

Prior Approvals Status					Approved by CEC	IFC	
Section	Batch	CEC Delay	SDS/TIE/BSC Delay	Activity ID	Current forecast (live)	v31	Notes
1	1/02a			Ocean Terminal Bypass Road	TBC		Forth Port require the design to be changed to accommodate their floorplan of a proposed future building. Agreed with Director of City Development on 13/10/09.
5A	5/05c			29 Roseburn Street – JB McLean (Building Warrant)			Pending Consideration. BSC to provide information to SDS. Target date TBC
	5/23			Redesign of Retaining Wall/Roseburn Street Bridge			Application on hold. tie to provide 'as built' details
5C	5/30			Tram Stop Gogarburn	11/09/2008	11/09/2008	Awaiting concept design comments from tie.
7	7/29a			Airport Kiosk – Full PP			Following meeting 15/08 change is on hold. tie to confirm final scope of works
	7/29b			Airport Kiosk – Building Warrant			SDS to confirm with CEC scope of Building Warrant

Technical Approvals Status - Structures

					Approved by CEC	IFC	
Section		CEC Delay	SDS/ TIE/ BSC Delay	Activity ID	Current forecast (live)	v31	Notes
5A				S22B Balgreen Road NR Access Bridge	?	16/01/2009	SDS has responded to NR concerns. NR is re-evaluating its points following clarification and will provide a response. Potential meeting required dependent on NR response.

Technical Approvals Status - Roads & Drainage

					Approved by CEC	IFC	
Section		CEC Delay	SDS/ TIE/ BSC Delay	Activity ID	Current forecast (live)	v31	Notes
1A3	Roads & Drainage				28/08/2009	21/01/2009	TA ongoing
1C1	Roads & Drainage						On hold awaiting drainage design/revised RSA
3A	Roads & Drainage				31/10/09	?	Progressing application in accordance with priority list
3B	Roads & Drainage				31/10/09	?	Progressing application in accordance with priority list
3C	Roads & Drainage				31/10/09	?	Progressing application in accordance with priority list



# APPENDIX 4

COMPULSORY ACQUISITION														
LOCATION	PREVIOUS OWNERSHIP DETAILS	PLOT NO	AREA (m2)	DV VALUE	PLANNING BASIS	PLANNING CAAD RISK	RISK VALUE	COST RISK	ADDITIONAL FEES	ADDITIONAL INTEREST	TOTAL AT RISK	BUDGET RISK	ACTION TO MITIGATE	LIKELY OUTCOME
FORTH PORTS	CALA Management Ltd	47												
	CALA Management Ltd	48	598	£ 10,000	transport reservation/amenity	residential	£1,500,000	£ 250,000	£ 30,000	£ 130,296	£ 1,910,296	£ 1,900,596	CAAD appeal in front of reporter	
HAYMARKET YARDS	CEC	49	3101		transport reservation/amenity	residential	not in above							
	Haymarket SPV Ltd	516	206	£ -	transport reservation/amenity	office/business	60	£ -	£ -	£ -	£ -	£ -	risk arises from CAAD decisions where different from planning advice given to District Valuer when estimates were prepared. BAA have application for CAAD currently lies CALA at appeal and likely to go further to appeal. Thereafter to Lands Tribunal, considerable costs already incurred and not recoverable possibly substantial third party costs to meet. Statutory obligation to pay. CEC defending actions. Planning dept confirming Negative CAADs appropriate. All legal routes of defending applications being employed.	
	Haymarket Yards Ltd	517	1056	£ 26,750	transport reservation/amenity	office/business	£250,000	£ 75,000	£ 5,000	£ 21,726	£ 351,726	£ 322,976		
V	The Institute of Chartered Accountants of Scotland, 1 unknown owner, & Begbie Traynor (as liquidator for Braemar Homes Ltd in respect of 21 m2)	518	1000	£ 50,000	transport reservation/amenity	office/business	£250,000	£ 75,000	£ 5,000	£ 21,726	£ 351,726	£ 301,726		
	CEC & Jones Lang LaSalle Ltd as agents for the Universities Superannuation Scheme Ltd	523	1245	£ 45,104	transport reservation/amenity	office/business	£250,000	£ 75,000	£ 5,000	£ 21,726	£ 351,726	£ 306,822		
GYLE	CEC & Jones Lang LaSalle Ltd as agents for the Universities Superannuation Scheme Ltd	478	1956	£ 57,500	transport reservation/amenity	retail	£1,000,000	£ 50,000	£ 20,000	£ 36,904	£ 1,155,904	£ 1,095,404	Risk caused by changes to planning framework value regarding retail developments. This land previously thought of as amenity land now has potential to be considered an extension to car park, to permit larger shopping centre so much more valuable. Rapidly claimants have not picked up on this so we may not have to pay, no claim lodged yet so nothing we can do as yet, no real betterment issue here, although fixing the train stop will help value of centre.	
	CEC	479	111	£ 1,150	transport reservation/amenity	retail	60	£ -	£ -	£ -	£ -	£ -		
	CEC & Jones Lang LaSalle Ltd as agents for the Universities Superannuation Scheme Ltd	490	69	£ -	transport reservation/amenity	retail	£36,000	£ 50,000	£ 700	£ 3,842	£ 89,742	£ 86,742		
	CEC	491	5619	£ 33,900	transport reservation/amenity	retail	50	£ -	£ -	£ -	£ -	£ -		
	CEC & Jones Lang LaSalle Ltd as agents for the Universities Superannuation Scheme Ltd	492	1196	£ -	transport reservation/amenity	retail	£50,000	£ 50,000	£ 12,000	£ 62,142	£ 714,142	£ 714,142		
AIRPORT/AB	CEC	495	505	£ 7,256	hope value	hope value	60	£ -	£ -	£ -	£ -	£ -	7,256	
	Haslemere Estates as agents for Meadowfield Developments Ltd	496	10024	£ 153,941	hope value	hope value	£450,000	£ 50,000	£ 9,000	£ 39,107	£ 648,107	£ 394,266		
	CEC	497	26017	£ 213,645	hope value	hope value	50	£ -	£ -	£ -	£ -	£ -		
	Haslemere Estates as agents for Meadowfield Developments Ltd	299	14551	£ 96,430	hope value	hope value	£90,000	£ 80,000	£ 12,000	£ 52,142	£ 714,142	£ 627,712	Risk here arises from the existing planning position with prospect of development now more realistic than when estimates were done. Land valued on a hope value basis and hope element is increasing. Risk being managed by betterment issue which could offset any compensation amounts.	
	BAA plc, Edinburgh Airport Ltd, & Scottish Airports Ltd	499	41905	£ 779,174	hope value	hope value	£2,100,000	£ 50,000	£ 42,000	£ 182,490	£ 2,374,490	£ 1,995,324	likelihood that no claimant will accept that without Lands Tribunal decision so we are looking to pick our case. EAL currently form no view as we consider it would be very difficult politically for them to claim that the tram was of no benefit to the airport. Consider CEC applying for CAAD on future basis so we are on the front foot.	
	Haslemere Estates as agents for Meadowfield Developments Ltd	498	16016	£ -	hope value BAA?	hope value	£350,000	£ 50,000	£ 13,000	£ 56,488	£ 769,488	£ 769,488		
	Pinnacle Towers Ltd, Royal Bank of Scotland plc	273	4418	£ 115,000	hope value	hope value	£250,000	£ 50,000	£ 5,000	£ 21,726	£ 326,726	£ 211,726		
	Haslemere Estates as agents for Meadowfield Developments Ltd	299	1130	£ 69,000	hope value	hope value	£120,000	£ 50,000	£ 2,400	£ 10,426	£ 162,826	£ 113,826		
	New Ingliston Ltd	291	6046	£ 175,000	hope value	hope value	£350,000	£ 50,000	£ 17,000	£ 73,662	£ 503,662	£ 315,500		
	New Ingliston Ltd	323	10561	£ 150,000	hope value	hope value	£1,100,000	£ 50,000	£ 22,000	£ 99,694	£ 1,261,694	£ 1,112,594		
New Ingliston Ltd	312	17720	£ 150,000	hope value	hope value	£1,500,000	£ 50,000	£ 36,000	£ 166,427	£ 2,042,427	£ 1,862,427			
New Ingliston Ltd	318	6616	£ 100,000	hope value	hope value	£90,000	£ 50,000	£ 12,000	£ 52,142	£ 714,142	£ 614,142			
FSH Airport (Edinburgh) Services Ltd	322	29477	£ 650,000	hope value	hope value	£4,000,000	£ 50,000	£ 80,000	£ 347,616	£ 4,427,616	£ 3,927,616			
		327	3390	£ 75,000	hope value	hope value	£450,000	£ 50,000	£ 5,000	£ 39,107	£ 648,107	£ 473,107		
		TOTALS		£ 2,891,847			£ 16,855,800	£ 1,225,800	£ 337,900	£ 1,464,767	£ 19,881,867	£ 17,235,395		

Notes

- 1 No allowances for Injurious Affection
- 2 No allowances for severance
- 3 No offset for betterment
- 4 No allowance for change of Planning

FORTH PORTS RISK OF ADVERSE CAAD REQUIRING REVISED BASIS OF VALUATION CALA CAAD at appeal stage. Avoiding appointment of Reporter.  
 HAYMARKET YARDS RISK OF ADVERSE CAAD REQUIRING REVISED BASIS OF VALUATION BAA CAAD being considered  
 GYLE RISK FROM CHANGING PLANNING REQUIREMENTS FOR SHOPPING CENTRES PERMITTING ADDITIONAL DEVELOPMENT THEREFORE INCREASED VALUATION  
 AIRPORT/AB ONGOING PLANNING DISCUSSIONS INCREASING HOPE VALUE PLUS CHANGE OF PLANNING CONSENT WITHIN 10 YEAR PERIOD ALLOWS CLAIMANT TO REVISIT CLAIM  
 EAL NOW SUBMITTED CLAIM  
 GENERAL CONSIDERABLE EXPOSURE TO COSTS FOR CAADS, LANDS TRIBUNAL AND COURT REFERRALS  
 ADDITIONAL SETTLEMENTS ALSO RESULT IN ADDITIONAL FEES AND INTEREST PAYMENTS

CLAIMS LODGED	DV ESTIMATE	SHORTFALL
WEST CRAISS	£ 8,500,000	£ 240,271
NIL	£ 11,500,000	£ 1,445,500
BAA	£ 2,000,000	£ 20,790
BAM	£ 1,600,000	£ 10,000
CALA	£ 4,600,000	£ 666,626
EAL		£ -
TOTAL	£ 26,000,000	£ 2,361,346

**Briefing Note on the Role of the Tram Monitoring Officer  
19 February 2010**

Following the IPG meeting on 17 February 2010, a review of the duties undertaken by the Tram Monitoring Officer (TMO) has been undertaken.

In October 2008 a review was also undertaken that identified similar actions that were required. Whilst action was taken at that time, there remains outstanding information and documentary evidence. A copy of the 2008 review is attached as Appendix 1.

The attached tables 1 and 2 detail the obligations for both TEL/tie ltd and the Council with regard to the Operating Agreement and the duties of the TMO. A dashboard status has been used to highlight areas where improvements are required.

In general, the obligations from the Council to TEL/tie ltd are fully met, but there remains information required from TEL/tie ltd to comply with operating agreement. In many areas, there is very limited documentary evidence available held by the Council, and there is no secure document control system in place for those records.

A summary of the key areas that require improvement are noted below including proposed action.

<b>Issue</b>	<b>Proposed Solution</b>
No regular reviews undertaken	Additional resources are required to assist the TMO to undertake regular (suggested quarterly) reviews. It is recommended that someone from Finance and City Development be identified to provide dedicated part-time assistance.
Limited documentary evidence held by the Council to ensure proper compliance	Obtain the information from TEL/tie ltd and develop and maintain secure store facility
It is essential that the Council get a better understanding of the AFC	Obtain better understanding from tie ltd on AFC and regular written reports given to the TMO.
No formal Communications Plan	Develop, agree and regularly review Communications Plan

Table 1 – Obligations from the Council to TEL/tie ltd

Obligations from the Council to TEL/tie ltd	Current Status	Last Reviewed	Documentary Evidence
The Council will nominate a Council officer to act as a liaison point for day-to-day communication between the Company and the Council.	Complete	05/01/08	Yes – However this was executed by letter nominating Duncan Fraser.
The Council will appoint a Tram Monitoring Officer. The first Tram Monitoring Officer will be the Director of City Development or their appointed nominee. The Council will use all reasonable endeavours to procure that the Tram Monitoring Officer will be a member of the TPB and a director of TEL.	Complete	05/01/09	Yes
The Tram Monitoring Officer will be responsible for determining what approval is required from within the Council to allow them 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 their proposed actions from the full Council or from a relevant committee or sub-committee as appropriate.	Complete	?	?
The Council acknowledges that tie continues to work on other projects in addition to the Project, but tie will use best endeavours to manage such projects in order that they do not conflict with the terms of this Agreement. Any work to be executed by tie on projects other than the Project must be approved by the Tram Monitoring Officer in advance of commitment by tie.	Ongoing	?	Has consent been given for those current small projects?

**APPENDIX 5**

Obligations from TEL/tie ltd to the Tram Monitoring Officer (TMO)	Current Status	Last Reviewed	Documentary Evidence
<p>TEL/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 the written approval of the Tram Monitoring Officer.</p>	<p>This has been provided but in an unsatisfactory form on 20/01/10. We have gone back to tie to ask for further info detailing duration and value of each contract. This has not been provided to date.</p>	<p>?</p>	<p>?</p>
<p>TEL/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, provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as TEL. TEL shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms. In this event, the Parties shall meet to discuss the means by which any risks previously covered by insurance should be managed, mitigated or controlled. TEL shall provide evidence of all such insurances upon request by the Council. In the event that TEL becomes formally responsible for these matters, TEL shall ensure that the Council is covered as an insured party under the Edinburgh Tram Network Owner Controlled Insurance Programme covering the material damage and third party liability sections and under all other policies of insurance which tie or TEL has arranged, where it is possible to do so at reasonable commercial cost.</p>	<p>This is in place – but there has been no occasion for this to be triggered, though it relies on tie providing evidence when required.</p>	<p>?</p>	<p>?</p>
<p>TEL/tie shall ensure that all contractors and consultants engaged or employed by it in any capacity shall have in place a policy of insurance providing TEL with appropriate indemnity for all risks relevant to their engagement provided that each insurance is available in the United Kingdom insurance market at commercially reasonable rates and on commercially reasonable terms to businesses of the same status and discipline as the contractor or consultant. TEL shall promptly inform the Tram Monitoring Officer in writing if any insurance ceases to be maintained and/or ceases to be available in the United Kingdom market at commercially reasonable rates and or commercially reasonable terms. In this event, the Parties shall meet to discuss the means by which any risks previously covered by insurance should be managed, mitigated or controlled.</p>	<p>This is in place – This is in place – but there has been no occasion for this to be triggered, though it relies on tie providing evidence when required.</p>	<p>?</p>	<p>?</p>

## APPENDIX 5

Obligations from TEL/tie ltd to the Tram Monitoring Officer (TMO)	Current Status	Last Reviewed	Documentary Evidence
<p>TEL/tie shall provide to the Tram Monitoring Officer upon request, and in any event not less than annually, a report providing full details of all its insurances, including inter alia details of (i) the contractors or consultants providing insurance cover to tie and the Council and level of cover provided; and (ii) contractors or consultants not providing insurance cover and details of the authorisation obtained from the Tram Monitoring Officer in this regard.</p>	<p>It is believed that insurances are in place but there has been no annual report.</p>	<p>?</p>	<p>?</p>
<p>TEL/tie will supply to the Tram Monitoring Officer copies of all relevant tie and other board papers in connection with the governance arrangements.</p>	<p>Ongoing, but process in place</p>	<p>At each board meeting</p>	<p>Yes, but no document control in place</p>
<p>The Parties acknowledge the terms of the governance arrangements set out in Schedule 2 and TEL shall use best endeavours to comply with the governance diagram. The Parties agree that where this Agreement refers to TEL reporting to, or obtaining approval from, the Council or as the case may be the Tram Monitoring Officer, all such activity shall be made in accordance with this governance diagram. TEL shall establish the Tram Project Board as a Committee of the TEL Board and shall define the responsibilities of the TPB and shall delegate appropriate authority to the TPB to enable the TPB to carry out its responsibilities in accordance with the terms of this Agreement. The following matters will be for the TEL Board to determine and report to the Council as appropriate in terms of the governance arrangements set out in Schedule 2:</p> <p>All matters affecting the programme, cost and scope of the Project except the following which are matters reserved to the Council:</p> <p>(i) any actual or reasonably expected delay beyond 3 months after the Baseline Date; or (ii) any actual or reasonably expected increase in capital cost which would mean that the Baseline Cost is exceeded by greater than £1,000,000; or (iii) any substantial change to the design, scope or service pattern set out in the Final Business Case.</p> <p>On the basis of information provided by TEL to the Council, the Baseline Date and the Baseline Cost will be determined by the Council's Chief Executive and notified to TEL from time to time. The Council Chief Executive will require Council approval to specify (i) a Baseline Date beyond October 2012; or (ii) a Baseline Cost exceeding £545 million. In assessing the source of actual or potential cost increases, the Board of TEL will use best endeavours to ensure that all financial claims are taken properly into account.</p>	<p>A report to Council in May is required to resolve this. Thereafter close monitoring will be required, along with appropriate records.</p>	<p>N/A</p>	<p>N/A</p>
<p>tie shall liaise with the Tram Monitoring Officer, the Council, and any other bodies which the Council may specify, regularly and shall report to the Council on a four-weekly and annual basis with regard to financial matters and progress generally on the Project in a format acceptable to the Council.</p>	<p>Information provided to apply for TS funds, but information is required on an updated AFC.</p>	<p>At each board meeting</p>	<p>Yes, but no document control in place</p>

## APPENDIX 5

Obligations from TEL/tie ltd to the Tram Monitoring Officer (TMO)	Current Status	Last Reviewed	Documentary Evidence
Immediately that TEL/tie becomes aware of the likelihood of delay to, or overspend in, the Project it shall notify the Tram Monitoring Officer at the earliest opportunity, informing them of the reasons for the potential delay or overspend and detailing any measures (together with costs) which may mitigate such potential delay or overspend.	Ongoing, but process in place	Ongoing	Limited written documentation and no document control in place
Immediately TEL/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 Tram Monitoring Officer with full supporting information to mitigate any delay to the Project to the fullest extent possible.	Ongoing, but process in place	Ongoing	Other than board meeting and minutes, no formal information is held
TEL/tie shall not novate or otherwise transfer any rights or obligations under any contractual arrangement which the Council has approved and to which TEL/tie is a party without the prior written consent of the Tram Monitoring Officer.	Although the TMO attends the TPB no formal written approvals are in place for recent changes e.g. PSSA or the Mudfa contractor change.	?	?
TEL/tie shall comply with the terms of all agreements to which it is a party unless authorised in writing by the Tram Monitoring Officer to do otherwise.	It has been some time since a review has been undertaken on the 3 <sup>rd</sup> party agreements. It is recommended that the regular reviews are undertaken.	?	?
TEL shall liaise regularly with TEL/tie and the Council in the execution of publicity and communications arrangements.	Communications have improved but a formal communication plan should be prepared and reviewed regularly.	?	?

## APPENDIX 6

### Extract from CEC Risk Register dated 27 January 2010

Date Added	ID	Risk Category	Risk Description	Likelihood	Impact	Score	Existing Controls	Likelihood	Impact	Score	4 Ts	Relevant Actions	Ownership	Potential Cost	Likely Cost
22Jan10	5	Commercial	Adverse commercial stance of BSC	10	10	100	Infraco Contract, DRP	9	9	81	Treat	Further DRP, de-scope BB, use audit mechanism to build case for breach of contract	Marshall Poulton	£80,000,000	£30,000,000
22Jan10	2	Commercial	Failure to agree supplementals risk of continuing intransigence of BB	9	10	90	Existing Contract	9	9	81	Treat	Continue DRP process and evaluation of Strategic Options	Marshall Poulton	£100,000,000	£40,000,000
22Jan10	19	Finance	Cost over runs lead to increased scrutiny by 3rd parties e.g. Audit Scotland, TS, political groups, public and media	10	9	90	Periodic meetings with third parties and political groups	8	7	56	Treat	Proactive Press coverage and media briefings. Continuation of meetings/briefings with political leaders and stakeholders.	Marshall Poulton/LynnMcMath		
15May07	29	Legal	Delays caused by constraints from the Network Rail Bridge Agreement. --- Delay to Tram Operations	9	9	81	Letter to ORR	5	6	30	Tolerate	Report being prepared by Legal and Properties Services to be presented to ORR.	Dave Anderson		
22Jan10	17	Finance	Failure to take timely decision on re-phasing of construction	8	10	80	Tram Project Board as the strategic decision making body, greater Council Officer involvement.	7	9	63	Terminate	Robust assessment of strategic options needed. Potential De-scoping of BB at Haymarket following completion of off street sections. Remaining on street works completed via smaller package contracts to gain more control.	TPB	£60,000,000	£40,000,000
22Jan10	18	Finance	Inability of council to afford cost over runs	8	10	80	Infraco Contract, Dispute Resolution Process, Strategic Options considerations	7	9	63	Treat	Use all possible mitigations to ensure cost overrun does not happen. Reduce costs within the project budget where appropriate/achievable. Contingency Planning - Examine TEL Profits to finance prudential borrowing, TF for funding Ocean Terminal section, Inclusion of additional borrowing costs in CEC's long term financial plan. Approach TS for additional funding.	Donald McGougan	£100,000,000	£50,000,000
08Jan07	38	TRO. Political. Comms.	Risk of delays due to the Public hearing process for TROs with potential for a large number of objectors. Delay in final design holding up promoting TROs. Potential legal challenge due to TROs mirroring TTROs. Members may support objections to traffic management proposals. --- Delay to INFRACO completion. Increase in costs.	9	8	72	TRO strategy approved by Transport, Infrastructure and Environment committee. TROs being divided into four sets of orders with the first set being considered 'core' orders which are required to run the tram as the business case, and the regulations now do not require a public hearing.	3	8	24	Treat	Minimise voluntary public hearing called by Members for core orders.	Andy Conway		
22Jan10	1	Commercial	Supplemental agreements required to deliver original contract terms. Using the experience of the Princes St supplemental agreement could expose the project to cost increases related to Full Depth reconstruction and an over engineered design.	7	10	70	Site Supervision/Daily record sheets requiring sign off by construction directors	6	6	36	Treat	Ensure greater site presence is in place. Take greater control over design solutions and ensure that further on-street sections are not over engineered. Further secondments from CEC agreed to supplement the Ltd resources.	Marshall Poulton	£30,600,000	£12,100,000