



EDINBURGH TRAM Highlight Report to the Chief Executive's Internal Planning Group 9 June 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 projects 'Pitchfork' and 'Carlisle', financial contingency planning, Developers Contributions and the Council's £45m contribution.

Tram Monitoring Officer Update

An update on the Dispute Resolution Process (DRP) including a summary of disputes is provided, along with the draft key findings from the TMO Project Assurance.

Communications Update

A media update is provided plus information on the proposed public information.

Council meeting on 24 June 2010

A draft report has been prepared to update the Council on the tram project. The draft report will be tabled at the meeting.

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 projects 'Pitchfork' and 'Carlisle', the financial contingency planning and Financial update, the alignment of roads programme and the update on the Developers Contributions.
- To note the Tram Monitoring Officers (TMO) update on DRP, and the draft key findings and recommendations from the TMO project Assurance review.
- To note the communications update.
- To note the contents of the report being prepared for the Council meeting on 24 June 2010.
- 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 Nick Smith/Donald McGougan)

Project "Pitchfork" Update

tie ltd continue to follow through the recommendations of the Pitchfork report. This involves progressing Project Notice and Project Carlisle on a twin track basis.

Project Notice – This workstream is essentially progressing with the compilation of the legal and commercial evidence required to demonstrate breach of contract by BSC. Subject to the outcome of Project Carlisle, a remedial termination notice may be issued. This will not happen before the next meeting between Messrs Mackay, Wakeford and Darcy on 16 June. **tie ltd** have now issued a letter setting out each of the areas where they feel BSC are in breach but at this stage they have not formally issued a Clause 90.1.2 notice (remedial breach notice). The objective of this assertive approach is to further increase the pressure and encourage sensible settlement under Project Carlisle.

Project Carlisle – The objective of this workstream is to negotiate a mature divorce with Bilfinger Berger and their role within the Infraco Consortium. **tie ltd** have now begun negotiations with BSC on a contractual mechanism to allow Bilfinger Berger to cease their role as the civils contractor and consortium member at an agreed point along the route of Phase 1a, with the remaining part of the project being delivered under an alternative contractual mechanism. As part of the negotiations, it is proposed that the remaining Bilfinger Berger role in the project is dealt with under a Guaranteed Maximum Price (GMP) arrangement.

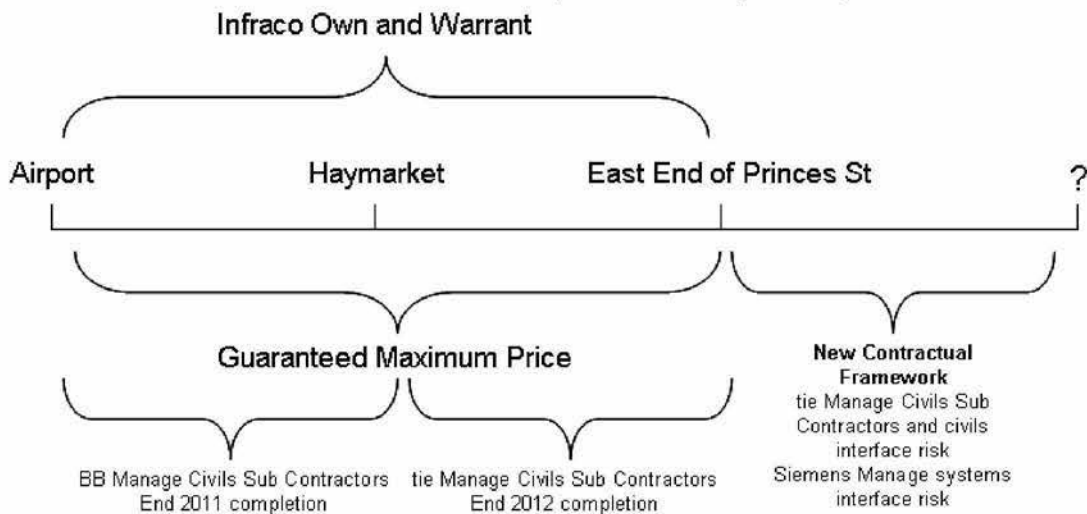


The negotiations are finely balanced at present, with Bilfinger Berger attempting to condition **tie ltd** to agreeing a high price. Pricing details will not be available until early July. These will be critical to any commercial deal.

The working assumption for the purpose of the negotiations is that Bilfinger Berger would continue in their role as civils provider and manager in the Airport to Haymarket section. All matters of dispute would also be settled under any new arrangements.

For the section from Haymarket to the East End of Princes Street, one proposal is that **tie ltd** would take over the management of the civils sub-contractors with Bilfinger Berger warrant the works in this section.

The remaining sections of the tram project would then be delivered under an alternative contractual strategy with the phasing dependant on affordability. The diagram below illustrates the current working proposal and the indicative timing of construction for each section. The illustration shows that a negotiated GMP would be in place for Airport to the East End of Princes Street, though it is possible the GMP could extend to York Place. It is envisaged the remaining construction of Phase 1a would take place under an agreed standard form of contract with Siemens still in place as the systems provider.



Andrew Fitchie of DLA Piper is currently working on the proposals and risk assessment for any new contractual requirements.

It is worth noting that in order to run the tram along Princes Street the turn back facility at York Place would have to be in place as the only other local turn back facility is at Shandwick Place. The major areas that will require to be tackled in order for the GMP to be agreed are the integrated design and attribution of risk relate to unforeseen ground conditions.

The timetable for completion of the Project Carlisle deal is set out in Appendix 1. It should be noted that this is a very aggressive timetable subject to slippage. The timetable does not take account of the period required for the Council due diligence and approval from the Council and Transport Scotland. It will be important that there is a full Financial, Commercial and Legal understanding of the GMP proposal prior to signing.



Financial Contingency Planning

Contingency Planning options will be subject to discussion with **tie ltd** and Transport Scotland at the Funders, Operators Group on the 17 June 2010.

Finance Update

Transport Scotland has now contributed £355m to the project to facilitate spending to the end of period 4 of financial year 2010/11. The latest cash application to Transport Scotland is for £4.3m with the Council contributing £391k.

The current forecast call on Transport Scotland funding for 2010/11 is £131m. Transport Scotland funding for 2010/11 is likely to be £130.5m, though official notification has yet to be received. The Council contribution is forecast at £11.8m for 2010/11.

The average run rate for the current financial year, based on cost of work done, is £7.5m per period. Based on this run rate there is around 19 months of funding to go on Transport Scotland's commitment of £500m.

Alignment of Roads Programme

An initial meeting has now taken place attended by Finance, City Development and Services for Communities. Discussions to continue on the valuation and mechanism to allow alignment of CEC's roads programme. SfC will provide an estimated cost, based on new framework rates, for the remaining on-street construction phase of the project.

Review of Council's Tram Funding Strategy

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	£4.5m
Developer Contributions – Land	£1.2m	£1.2m
Capital Receipts (Development Gains)	£2.8m	£0.0m
Capital Receipts	£6.9m	£2.0m
Total	£45.0m	£16.4m



Developer Contributions

During financial year 2009-10, developer contributions for Tram totalling £968k were received. This is broadly in line with the annual collection rate originally estimated, of £1m. In addition, a number of legal agreements have now been entered into with developers, meaning that contributions are more likely to be received. However, as a note of caution, many of these agreements have only been possible due to either reducing the level of contributions or agreeing to defer payments.

Planning's development monitoring has shown, in general terms, an increase during 2009 of development completions and planning consents, however, construction activity is well down on 2008, as a result of the economic downturn. It is likely that this will lead to a drop in the flow of contributions during this year, linked to the drop in site completions.

Should the tram be constructed in an incremental delivery fashion, from west to east, there may be implications for the receipt of developer contributions from developments towards the east. Under the terms of the Tram Developer Contribution Guideline, the Council has until 2020 to utilise contributions received, meaning that as long as the full scope of the scheme from the Airport to Newhaven is constructed by 2020, the Council will not be required to repay contributions to developers at the eastern end of the route.

However, the most material contribution anticipated at the east of the route, is that of Forth Ports (currently forecast at £3.2m for the first phase), who have stated that they will not pay anything until the tram is running to Newhaven. There may therefore be cashflow implications for the Council if such a large sum is not received until the very end of the project, assuming a phased delivery.

Capital Receipts

No receipts were received during the last financial year, and the forecast timescale for disposals is that nothing is expected before 2013, based on the current tram programme. It is likely that the level of developer interest in the residual sites will increase when confidence on the completion of the Tram Scheme is assured, as works are completed and test running commences.

The best value for most of the sites is based on residential value. ESPC reported in April 2010 that house prices in Edinburgh are rising at 11.6% pa, with a 37% increase in transaction volume. This is, however, still below pre-credit-crunch levels.

The improvement in house selling prices will cascade into increased development value, and a positive differential between land value increase and borrowing rate interest. The prudent advice remains to consider the sale of these development sites when the unit value increases. This is expected as both the general housing market improves, and the tram works near completion.

The achievement of increased value remains less risky than the alternative of marketing now and seeking a share of value increases through an agreement – commonly known as gold clauses – which are difficult to enforce with reluctant partners.



Financial Model

Based on the current project cashflow forecast (assuming £533m AFC), and the assumptions on both developer contributions and capital receipts as noted above, the model shows that the Council should still be in a position to cover borrowing costs for Tram over the short-to-mid term. There remains a difficulty in repaying outstanding debt over this period, but the hope would be that in the longer term, the level of developer contributions and capital receipts will recover as the economy picks up, which will allow capital repayments to be made.

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

One of the possible delivery models for Phase 1a, as detailed in project Pitchfork, was the delivery of the on-street works where **tie ltd** step in to manage the civil engineering sub-contractors directly. An area of concern related to this delivery mechanism is the interface risk that could fall on **tie ltd** under this arrangement. A workshop will be set up in the near future with **tie ltd** to assess the apparent risks and the financial exposure of these risks.

As reported previously, BSC have commenced works at Lindsay Road on the retaining wall required in this section. At the Tram Project Board on 2 June it was agreed that **tie ltd** would limit any further construction works in that are until phasing options have been fully considered. Each package of works will therefore be agreed in advance with the TMO.

The TMO's assurance role for the Council on Programme and Project management related issues continues. One of the areas under examination is TEL/**tie ltd**/CEC compliance with the operating agreement. Alan Coyle has worked with Stewart McGarrity in **tie ltd** to devise a framework for compliance with each of the obligations under the operating agreement. The framework sets out owners for each of the obligations and when and what needs to be provided. The draft compliance documents are highlighted in Appendices 2 and 3.

The draft key findings and recommendations from the TMO Project Assurance Review is contained in Appendix 4. The final report will be produced by 18 June 2010.

Further consideration will need to be given to how the full time TMO role will be developed going forward. This has been set out as a section of the revised IPG Remit and has been subject of discussion between the Director of City Development and the TMO. Given the current issues around the project, it will be important, to protect the Council's interest that the role is given greater consideration than has previously been the case. The role should scrutinise all Programme, Quality, Project Management, Commercial, Financial and TMO compliance issues in the future.

There are currently two active DRP's, one related to the delay resulting from utility works (MUDFA Rev 8), on which adjudication is live with a decision expected in July, and the other related to design issues for the Depot Access Bridge, which is still to be referred to adjudication. Recent adjudications relate to design matters at Tower Place Bridge and Section 7 track drainage. The adjudication on Tower Place Bridge went in **tie ltd's** favour though the item on Section 7 track drainage went in BSC's favour.

Baird Drive Retaining Wall item was settled without the need for adjudication at £915k, having originally been estimated by BSC at £3.9m. The final settlement relating to each of the adjudications to date represent 56% of the initial estimates claimed by BSC.



BSC Dispute Summary (Live and Potential Cases)

DRP No	Subject	Nature	Decision/Status	Approx BSC position	Approx Tie ltd position	Agreed Potential Cost saving vs BSC claim
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	£0	Agreed at nil £100k saving
4	EOT1	Costs	Agreement reached through mediation	£7.09m	£3.52m	Agreed at £3.524m £3.57m saving
5a	Gogarburn	BDDI – IFC	Decision made	£300k	£100k	Agreed at £176k £125k saving
5b	Carrick Knowe Bridge	BDDI – IFC	Decision made	£330k	£100k	Agreed at £138k £200k saving
B / 5c	Russell Road Bridge	BDDI – IFC	Decision made	£4.8m	£1m	BDDI-IFC agreed at £1.46m £2.6m (incl contamination) £2.2m saving
5f	Haymarket	BDDI – IFC/ Costs	Agreement reached prior to reaching formal stages – costs reduced substantially	£400k	£96k	Agreed at £195k £200k saving
5i	Baird Drive	BDDI – IFC	Agreement reached before referral to adjudication – costs reduced substantially	Originally £3.9m reducing to £1.9m	£600k	Agreed at £915k £3m saving
5j	Balgreen Road	BDDI – IFC/costs	Agreement reached prior to reaching formal stages – costs reduced substantially	£800k	£300k	Agreed at £298k £500k saving
5o	Depot Access Bridge	BDDI – IFC/costs	BSC dispute; still to be referred to adjudication	£2.5m	£(4m)	Difference of ~£7m between valuations



DRP No	Subject	Nature	Decision/Status	Approx BSC position	Approx Tie ltd position	Agreed or Potential Cost saving vs BSC claim
A	MUDFA Rev 8	Time	Mediation failed. Adjudication live with decision expected in July			
5l	Section 7 track drainage	BDDI – IFC/costs	Decision made on principle (preferring Infraco's classification and part value. Significant value saving expected.	£1.35m	£25k	Expect resolution ~ £650-£750k delivering a saving of ~£600k
5e	Tower Bridge	BDDI- IFC/costs	Decision made in tie's favour	£(369k)	£491k	Valued at £(260k) £750k saving

5 Communications Update (Presented by Lynn McMath/Isabell Reid)

Media / Press Activity

The number of incoming media enquiries has been lower than in previous reporting periods.

Public Information Planning

Work to improve signage along the route and branding opportunities around the project continues. Promotional signage and visuals have been placed at Ocean Terminal and the Forth Ports Ferry Terminal to coincide with the launch of the 2010 Cruise season. In collaboration with key partners, including the City of Literature, DEMA and Festivals Edinburgh, banners have been designed for Princes Street to promote the city during the festivals. Banners are also due to be installed on the Overhead Line poles on Princes Street which will advertise a selection of upcoming festival events, such as Edinburgh Mela, This is My Edinburgh (DEMA summer campaign), alongside Edinburgh Trams banners. Artwork at Starbucks, Haymarket has also been updated.

Regular branding group meetings have taken place throughout Period 2, in order to discuss further promotion of the project through gateway signage along the tram route.

Stakeholder Communications

A number of school visits are being prepared at the moment to inform pupils why we are building the tram route in Edinburgh. These visits have been initiated by individual schools. However, there is a plan to pro-actively engage with schools and libraries later in the year. Napier University has also requested a presentation to Civil Engineering students, in response to the high number of email requests for information over the past few months.



The May Photo update was completed and features pictures of the Gogar Depot, bridge work at Tower Place and also pictures of the official opening of the tram vehicle on Princes Street. The update has been distributed electronically to internal staff and to a list of stakeholders as well as being posted on the trams website.

Communication continues on a regular basis between businesses and residents to keep them informed of the progress being made on the project and of any works due to commence in their area.

Meetings or presentations were given to the following groups during the last month:

- Lothian Assessors
- Cockburn Association
- Napier University
- Assistant Project Managers AGM

Website / Internet Communications

There has been an increase to 703 facebook 'fans' and 709 twitter followers. Links to new content on www.edinburghtrams.com posted on social media sites remains one of the most effective ways of connecting people with information quickly.

"Local Updates" on construction work, traffic management and the route alignment remain in first place for RSS alerts on the website.

6 Council meeting on 24 June 2010 – draft issues (Presented by Nick Smith)

The report proposed for the Council meeting on 24 June is well progressed. The report will be tabled at the meeting for update and discussion.

7 Statutory Council Approvals and Consents (Presented by Andy Conway)

There has no change in the number of approvals completed this period, with the majority of time being spent dealing with resolving the conditioned matters. For completeness, Appendix 5 provides a summary of the current position.

Planning and Corporate Property have concerns about their capacity to manage tram related approvals and workstreams along with all other Council priorities following the recent staff reductions. The Director of City Development is meeting with the Heads of Service to ensure the tram related workstreams are resourced and prioritised accordingly.

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 6.

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.



Key changes since the last IPG related to items 3, 4 and 5, with all these reports slipping. Revised dates are now included below.

		2010											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	Update on governance – on ETL						24/6/10						
2	DRP progress, including costs and programme implications						24/6/10						
3	Lothian Buses integration proposals and approval of final arrangements										14/10/10		
4	Remuneration Strategy (for all Council companies) - including TEL and tie ltd								19/8/10				
5	Tram Traffic Regulation Orders		9/2/10							21/9/10	14/10/10		
6	Magdala area traffic calming							27/7/10					
7	Update reports to the Tram Sub			22/3/10			3/06/10						
8	Further progress update on dispute and decision on Carlisle							?	?				

Key

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

10 Risk Review (Presented by Alan Coyle)

There is no update to the Risk Register in the current period.

List of Appendices:

- 1 Project Carlisle
- 2 Transport Edinburgh Limited (TEL) and tie Limited Checklist of compliance with Conditions of Operating Agreements w/ CEC - May 2010
- 3 City of Edinburgh Council - Transport Edinburgh Limited (TEL) and tie Limited Checklist of compliance with Conditions of Operating Agreements May 2010
- 4 TMO Project Assurance Review – Draft Summary of Key Findings and Recommendations
- 5 Statutory Council Approvals – Tables 1 and 2
- 6 Certificate of Appropriate Alternative Development (CAAD)



Project Carlisle

Date	Task	Lead
24 May	Agree Open Book market tested scope for Civil Works GMP with BSC	Jim Molyneux
27 May	Preliminary meeting with Siemens to establish scope for Siemens packages in GMP and post Carlisle	Jim Molyneux
28 May	Draft GMP presentation spread sheet	Bill Mowatt
28 May	Production and distribution of <u>initial</u> draft Carlisle Heads of Terms (reflecting current understanding of deal shape and structure) for tie internal review. This would essentially track the tie letter of May 10th to BSC, plus developments/briefings and thinking since that date.	Andrew Fitchie
31 May	Agree "tender" documentation for Civils Work Sub-contractors.	Jim Molyneux
1 June	Release of Draft HoTs to BSC legal/commercial team. Followed by full engagement (legal, commercial and technical) on HoTs.	Anthony Rush/Richard Jeffrey
10 June	Present agreed HoTs for ETN Project Board and BSC Consortium Board ratification and authority to proceed to negotiation. (To include CEC officers' approval and any stakeholder validations/no objections).	Richard Jeffrey
14 June	Receive tenders for Civils Work Sub-contractors	Jim Molyneux
14 June	Siemens GMP for Airport to Princes Street and Princes Street to Newhaven	Jim Molyneux
16 June	Evaluate tenders for Civils Work and consolidate into draft GMP	Jim Molyneux/Bill Mowatt
16 June	Draw up schedule of "Issues for Agreement"	Andrew Fitchie/Jim Molyneux/Bill Mowatt
17 June	Agreement on scope and structure of full legal suite (accompanied by any remaining commercial and technical HoTs) and joint sign off on final version of HoTs.	Anthony Rush
29 June	Finalisation of GMP and estimated cost for Princes Street to Newhaven	Anthony Rush/Richard Jeffrey
1 July	Mobilisation to execute Carlisle/ tie commercial adjustment (bond step down) as firm evidence of reciprocal commitment.	Richard Jeffrey

Transport Edinburgh Limited (TEL) and tie Limited
Checklist of compliance with Conditions of Operating Agreements w/ CEC - May 2010

OA Ref	CONDITION	EXEC TEAM MONITOR	NOTES ON PROCESS & COMPLIANCE
	TEL OA Dec 09 (Obligations of TEL are in practice often met by tie or ETL)		
2.2	TEL 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.	Steven Bell	Addressed as part of contract conditions fully since 2009. Proposal to regularize historical items submitted to TMO 20/1/10 (INF CORR 3198). Follow up information provided regarding Contract values and durations. TMO confirmed by email on 13/5/10 he is content this meets OA requirements and no further action required. Information including duration and value of contract will be updated and sent to TMO every May.
2.14	TEL shall at all times maintain in place appropriate policies of insurance in relation to all elements of its business and in particular the Project. 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.	Susan Clark	All insurances maintained by a duly appointed Insurance Manager. No change or cessation of insurances has taken place.
2.15	TEL 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. 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.	Susan Clark	See answer to 2.2 above.
2.16	TEL will ensure that the Corporate Public & Products Liability and Professional Indemnity policies are to include an indemnity to principals clause protecting the interest of the Council as principal.	Susan Clark	Confirmed that both of these policies include an indemnity to principals clause.
2.17	TEL 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 <i>inter alia</i> details of (i) the contractors or consultants providing insurance cover to TEL 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.	Susan Clark	Annual statement of insurances provided to TMO and Principal Finance Officer on 18/5/10. Information will be updated and sent every May.
2.19	TEL 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.	Stewart McGarrity	Annual review of Corporate Governance reported to CEC Internal Audit on 14/5/10 including Ph1 reorganisation completed in Dec 09. Internal Audit of Governance completed by Deloitte in early 2009. Annual review of Corporate Governance will be updated and sent to CEC every May.

APPENDIX 2

2.5	The TEL board shall establish such sub-Committees as it deems appropriate and necessary for the proper execution of its responsibilities and will seek to procure, with the approval of the Chief Executive of the Council, that the Board is composed of directors employing the requisite blend of skills, experience and aptitudes.	Stewart McGarrity	Committees now consist of TPB, Remuneration Committee, Audit Committee and H&S committee. TPB has 2 sub-committees - Financial Commercial and Legal Committee and Business Realisation and Operational Readiness Committee. All committees operating under agreed remits. Board and board committee nominations/appointments are managed by the Chairman in consultation with CEC senior officers.
2.20	TEL will supply to the Tram Monitoring Officer copies of all relevant TEL and other board papers in connection with the governance arrangements set out in Schedule 2 [This reference is to Schedule 2 of the Operating Agreement, not repeated here, but which reflect the governance model presented separately to the TEL Board	Stewart McGarrity	TMO provided with all papers presented to the Board Sept and Dec 09 relevant to the Phase 1 changes in corporate structure.
2.22	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.	Richard Jeffrey	TPB already in existence. TEL has effectively delegated its authority under the Operating agreement (up to the notified Baseline Cost and Baseline Date) to the TPB.
2.22	<p>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>	Richard Jeffrey	<p>All operated in accordance with reserved CEC / TEL matters and in accordance with the Delegated Authority Rules which govern the tram delivery activities of all of TEL, tie and ETL.</p> <p>TEL has delegated authority within these limits to Tram Project Board. The Baseline Date and Baseline Cost as notified in writing by the Council Chief Executive to the Chairman of TEL on 23/12/09 as October 2012 and £545m respectively.</p> <p>Uncertainties over programme and resolution of disputes have made it impossible to determine any final cost – full briefings on range of possible outcomes provided as part of briefings to CEC senior officers (and to TS as funders) and in the Pitchfork report to the Board of March 2010.</p> <p>CEC Officers report to Council in June 2010 will conclude that it can be reasonable expected to exceed £545m to deliver the whole of Phase 1a but adequate certainty will not be achieved by then. Oct 2012 OFRS date cannot be discounted yet.</p>
2.22	TEL may delegate responsibility for all the matters specified above (other than the matters reserved to the Council) to the TPB and the TPB may in turn delegate responsibility for all other matters to tie as appropriate, but only to the extent that such delegation is already within the remit of tie in the context of the tie Operating Agreement. TEL agrees that it shall retain ultimate responsibility for all matters it so delegates.	Stewart McGarrity	Delegations from TEL through the chain to the PM are all codified in the Edinburgh Tram Delegated Authority Rules (DARs) which govern the tram delivery activities of all of TEL, tie and ETL.
2.23	TEL 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	Steven Bell	A weekly TMO report has been provided together with four weekly Tram Project report (TS Report). The Period 13 report includes the

APPENDIX 2

	Council. TEL will liaise with the Council and tie to ensure that duplication in reporting procedures is minimized.		annual 2009/10 summary. This has been produced to the templates agreed with the TMO and / or Transport Scotland and CEC. tie Chief Executive also provides political Group Leaders briefings on a regular basis.
2.24	Immediately that TEL becomes aware of the likelihood of delay to, or overspend in, the Project it will ensure that notification is given to 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.	Steven Bell / Richard Jeffrey	Undertaken through briefings and reports to the Tram Project Board (eg Pitchfork) and on a regular basis directly with the TMO and other senior officers of CEC. AC – Concern over FCL role in this. Briefings work but are very informal. TPB Reports say nothing! CEC Officers do receive Financial Updates on a regular basis from tie FD.
2.25	Immediately TEL 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, TEL 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. All relevant tie remuneration matters will be monitored and controlled by the Remuneration Committee of the TEL Board.	Steven Bell	Undertaken via the TPB and/or directly with the TMO. All tie remuneration matters now fall within the remit of the TEL Audit Committee.
2.26	TEL shall procure that TEL and tie shall develop and have approved by the TEL board a remuneration policy setting out <i>inter alia</i> the benchmarks and procedures for proposed bonus achievement and the project milestone outcomes to which any such bonuses are linked. Such policy for both TEL and tie shall require to be approved by the TEL board, through its Remuneration Committee, in advance of each annual reporting period as it will apply in the succeeding annual reporting period. Notwithstanding that it has already commenced, the first such period will be Financial Year 09/10.	Richard Jeffrey	
2.26	TEL shall ensure that both TEL and tie's performance bonus incentive arrangements are aligned to appropriate Project milestones and reflect performance achievements beyond the level that might reasonably be expected of individual staff in fulfilling their assigned job roles	Richard Jeffrey	
2.26	The remuneration policy principles to be adopted by TEL's Remuneration Committee each year for both tie and TEL will also require to be approved by the Council's Chief Executive in advance of each annual reporting period. In addition to annual approval by the Council Chief Executive, a full review of TEL and tie's remuneration strategy by the Council Chief Executive will take place every three years to ensure that such strategy remains appropriate in the market from time to time.	Richard Jeffrey	Report on remuneration policy principles to be adopted by TEL's Remuneration Committee to be submitted to Council's Chief Executive on an annual basis.
2.27	The setting and any alteration of the remuneration packages, including performance bonus incentive arrangements, for the Chairman of TEL and tie respectively will require the prior approval of the Chief Executive of the Council. The remuneration package, including performance bonus incentive arrangements, for the Chief Executive of TEL and tie will, on appointment, require approval by the Chief Executive of the Council and thereafter any changes will be determined by the Chairman of tie	Richard Jeffrey	Report on remuneration policy principles to be adopted by TEL's Remuneration Committee to be submitted to Council's Chief Executive on an annual basis.

APPENDIX 2

	or TEL as the case may be, all subject to approval of the Remuneration Committee of the TEL Board.		
2.28	TEL will provide a business plan for approval by the Council on an annual basis. TEL will incorporate within its annual business plan a full business plan for tie.	Stewart McGarrity / Alastair Richards	With agreement of CEC officers the first annual TEL Business Plan (incorporating tie and ETL) will be submitted late in 2010 following resolution of BSC uncertainties and then annually thereafter.
2.30	TEL shall not novate or otherwise transfer any rights or obligations under any contractual arrangement which the Council has approved and to which TEL is a party without the prior written consent of the Tram Monitoring Officer.	Steven Bell	TMO and TPB would be fully appraised of any such proposal - in any case there have not been any. TMO will be provided with full detail of any such arrangements prior to written approval being sought.
2.32	TEL shall liaise regularly with tie and the Council in the execution of publicity and communications arrangements.	Mandy Haeburn-Little	Regular comms between MHL and Isobel Reid. tie have now appointed Lynn McMath as Head of Media whose role includes close liaison with the Council and will monitor adherence to their policies and procedures as appropriate. This includes a weekly meeting with head of Communications at CEC.
2.33	TEL acknowledge that tie and the Project will be subject to an independent peer review panel concerning the management of the Project (including all the contract documentation) and TEL will implement all reasonable recommendations of the panel once approved under the governance arrangements set out in Schedule 2.	Richard Jeffrey	A Peer Review group was engaged to review OGC stage-gates (eg up to contract) and since the same individuals have been regularly engaged in an advisory basis on BSCdisputes etc. TEL (and tie) will comply with any future CEC requirement for independent peer review.
tie OA May 05 – Surviving matters reserved to CEC			
	<p>Except with the consent in writing of the Council tie shall not:</p> <p>Create, any fixed or floating charge, lien (other than a lien arising by operation of law), security or encumbrance over the whole or any part of the undertaking, property or assets of the Company;</p> <p>Borrow or raise any sum of money other than in the ordinary and proper course of its business;</p> <p>Make any loan or advance or give any credit to any person, other than in the normal course of business;</p> <p>Give any guarantee or indemnity to secure the liabilities or obligations of any person;</p> <p>Sell, transfer, lease, assign or otherwise dispose of a material part of the undertaking, property and or assets of the Company or contract so to do;</p> <p>Issue any shares or any loan stock or any debentures or other securities convertible into shares or debentures or any options in respect of shares in the Company;</p> <p>Acquire, purchase or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any company, trust or other body;</p> <p>Register any transfer of shares in the capital of the Company;</p> <p>Appoint any person as Chief Executive or Chief Finance Officer of the Company;</p> <p>Enter into any partnership or profit sharing agreement with any person;</p> <p>Exceed the total expenditure budget contained in the Annual Business Plan by more than 5%, provided that the Company has sufficient funds to meet additional expenditure when incurred without requiring further funding beyond that provided for in the Annual Business Plan from the council or any third party</p>	Stewart McGarrity	<p>All green items are financially orientated and prohibited by DARs (ie nobody has authority to enter into such arrangements on behalf of tie. Also no such arrangement disclosed by annual internal or external audit.</p> <p>Other two items:</p> <p>Appointment of Richard Jeffrey as CEO of tie and appointment to Board was approved by full Council</p> <p>Due to slippage in programme we fell considerably short of the expenditure forecast in the tie 09/10 Business Plan.</p>

City of Edinburgh Council - Transport Edinburgh Limited (TEL) and tie Limited
Checklist of compliance with Conditions of Operating Agreements May 2010

OA Ref	CONDITION	CEC MONITOR	NOTES ON PROCESS & COMPLIANCE
	TEL OA Dec 09 (Obligations of CEC to tie/TEL or ETL)		
3.2	The Council agrees to guarantee TEL's financial obligations in relation to certain aspects of the Project on terms acceptable to the Council.	Alan Coyle	CEC Guarantee to Infracore executed in May 2007 substantiates CEC's commitment to guarantee TEL's Financial Obligations.
3.3	On the basis that TEL has, in the reasonable 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, the Council will release the funding, or procure that tie releases the funding, which it has secured for such expenditure and shall pass funding to TEL or to tie, as appropriate, to allow TEL to discharge its obligations in terms of this Agreement.	Alan Coyle	Every 4 weeks TEL/tie provides CEC with a detailed application for funding and Cashflow statement. This is used to secure Transport Scotland and CEC Funding and is further substantiated with a transaction list from tie's ledger every period.
3.4	The Council will nominate a Council officer to act as a liaison point for day-to-day communication between TEL and the Council.	Dave Anderson	Letter dated 09/04/09 nominating Andy Conway as liaison point.
3.5	The Council will appoint a Tram Monitoring Officer. The Tram Monitoring Officer will be the Director of City Development or the Director of Finance or their nominee.	Dave Anderson	Letter dated 05/01/09 appointing Marshall Poulton as TMO.
3.6	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.	Marshall Poulton	Through a regular briefings and meetings the TMO will communicate to TEL/tie the required level of approval. This may require approval by a Committee of the Council or approval from the CEC's Chief Executive.
3.7	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.	Marshall Poulton	CEC has a multi-disciplinary team of Engineering, Financial, Legal and Comms professionals working full time on the project. CEC's Tram Internal Planning Group meet once every 4 weeks, Chaired by the CEC's Chief Executive to discuss project matters.
3.8	The Council acknowledges that TEL may work on other projects in addition to the Project, but TEL will use its best endeavours to manage any such projects in such a way as to avoid any conflict with the terms of this Agreement. Any work to be executed by TEL on projects other than the Project must be approved by the Tram Monitoring Officer in advance of commitment by TEL.	Marshall Poulton	Once TEL/tie have written to the TMO requesting permission, the TMO will evaluate approve such projects in writing if deemed appropriate.

TMO Project Assurance – Draft Summary of Key Findings and Recommendations

Issue	Key Findings	RAG Status	Recommendations
Project Management	<ul style="list-style-type: none"> There has been a significant improvement in the management of the project since the new CEO and Director of Communications were appointed. The stakeholder involvement, openness and a one-team approach has dramatically improved, and this is despite the poor performance of the contractor. Initial findings suggest that the lack of a fully co-ordinated complete design is the significant factor that has caused many of the contractual difficulties. If the design has been completed on time, and managed better prior to financial close, then many of these issues would not have arisen. 		<ul style="list-style-type: none"> Whilst there have been significant improvements in tie ltd's approach to project management, it is recommended that a lessons learnt exercise is undertaken to understand why the project is in its current position. This should particularly focus on Procurement, Financial Close and the design stage.
Health & Safety	<ul style="list-style-type: none"> Good monitoring and reporting procedures in place in accordance with industry standards. Significant improvements made since early 2009 with proper processes in place. ROSPA Gold Award recently awarded which recognises this. 		<ul style="list-style-type: none"> None.
Quality	<p>Structures</p> <ul style="list-style-type: none"> Acceptable processes in place for the Design Approvals, Inspection Test Plans and the quality of workmanship appears good. 		<ul style="list-style-type: none"> None
	<p>Roads</p> <ul style="list-style-type: none"> Limited records available for utility reinstatements, particularly in the city centre, and there are concerns about the quality of reinstatements, particularly in the city centre. Variable quality of workmanship is present for the main infrastructure works and consideration should be given to reviewing the site supervision. With regard to the Princes Street works, initial investigation suggests that the substructure is of good quality, but the surfacing and track bonding requires major remedial work. 		<ul style="list-style-type: none"> Carry out a review to compare the quality of the works undertaken against the design standards and the thresholds contained in the Contract. Although the contract is based around 'self assurance, it is recommended that a review of the site supervision resources is carried out, which includes consideration of using Council resources, where appropriate.

Issue	Key Findings	RAG Status	Recommendations
Programme	<ul style="list-style-type: none"> A review of the programme information and Acutus reports demonstrates that it is possible to complete the tram works by December 2012, however this is based upon a <u>fully committed contractor</u>. This judgement is based upon commencing on-street works in earnest by the end of July 2010. A delay beyond this date would extend the timescale. 		<ul style="list-style-type: none"> The programme of works is totally predicated on a committed contractor undertaking the works. To date, this has not been demonstrated and it is recommended that should Project Carlisle be adopted as the best way forward for the project, then close monitoring of the progress made should be undertaken. It is recommended that if progress is not forthcoming that swift steps are taken to address this rather than continue with protracted negotiations and limited progress.
Design	<ul style="list-style-type: none"> There remains a lack of a co-ordinated design, particularly between the individual design disciplines and system integration. The lack of a completed co-ordinated design may impact the ability of a contractor building the infrastructure on time. 		<ul style="list-style-type: none"> A detailed investigation on the status of the Interdisciplinary Design Checks should be carried out. This should include obtaining the status of the Issue for Construction Drawings. It is essential that the Council be provided with a programme of the planned outstanding Planning and Technical approvals and informatives to allow the Council to plan its resources and to minimise delays in any formal consents required.

Summary Table

CEC Statutory Council Approvals and Consents	Total Number of Submissions	Total number of Approvals	% Complete
Prior Approval	65	61	94%
Full Planning Permission	15	9	60%
Listed Building Consent	11	11	100%
Scheduled Monument Consent	1	1	100%
Building Warrant	19	15	79%
Technical Approvals (including Structures, Roads and Drainage)	129	91	70%
Total	240	188	78%

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	10	2	6	0	0	2
Informal consultation started	1	1	0	0	0	0
Application submitted	3	1		0	0	2
Approval granted	97	61	9	11	1	15
GRAND TOTAL and Sub Totals	111	65	15	11	1	19
% Complete	87%	94%	60%	100%	100%	79%

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	13	8	0	4		1	1
Technical Approval Granted	114	91	12	10	1	0	
Not Yet Due	33	30	2	0	0	0	1
Delay	0	0	0	0	0	0	0
GRAND TOTAL and Sub Totals	159	129	14	14	1	1	1
% Complete	71%	70%	85%	71%	100%	0%	0%

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

APPENDIX 6

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	224	£ 10,000	transport reservation/amenity	residential	£1,200,000	£ 250,000	£ 30,000	£ 130,356	£ 1,910,356	£ 1,900,356	CAAD appeal in front of reporter	
HAYMARKET YARDS	CEC	49	310		transport reservation/amenity	residential	incl in above							
	Haymarket SPV Ltd	516	306		transport reservation/amenity	office/business	£0							
	Haymarket Yards Ltd	517	1056	£ 20,750	transport reservation/amenity	office/business	£250,000	£ 75,000	£ 5,000	£ 21,726	£ 351,726	£ 322,976	risk arises from CAAD decisions where different from planning advice given to District Valuer when estimates were prepared. BAM have application for CAAD currently in CALA ad appeal and likely to go further to appeal. Thereafter to Lands Tribunal, considerable costs already incurred and not recoverable possible substantial third party costs to meet. Statutory obligation to pay. CEC defending action. Planning dept continuing Negotiate CAADs appropriate. All legal routes of defending applications being employed	
	The Institute of Chartered Accountants of Scotland, 1 unknown owner, & Douglas Traynor (as liquidator for Braemar Homes Ltd in respect of 21 m2)	518	1000	£ 80,000	transport reservation/amenity	office/business	£250,000	£ 75,000	£ 5,000	£ 21,726	£ 351,726	£ 301,726		
	CEC & James 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	£ 306,622		
GYLE	CEC & James Lang LaSalle Ltd as agents for the Universities Superannuation Scheme Ltd	478	1966	£ 52,500	transport reservation/amenity	retail								
	CEC	479	1111	£ 1,160	transport reservation/amenity	retail	£1,000,000	£ 50,000	£ 20,000	£ 86,904	£ 1,166,904	£ 1,189,804	Risk caused by changes to planning framework rules regarding retail developments. This land previously thought of as amenity land now has potential to be considered as extension to car park to permit larger shopping centre so much more valuable. Hopefully 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 having the tram stop will help value of centre.	
	CEC & James Lang LaSalle Ltd as agents for the Universities Superannuation Scheme Ltd	480	69	£	transport reservation/amenity	retail	£35,000	£ 50,000	£ 700	£ 3,042	£ 88,742	£ 88,742		
	CEC	481	5619	£ 33,660	transport reservation/amenity	retail	£0							
	CEC & James Lang LaSalle Ltd as agents for the Universities Superannuation Scheme Ltd	482	1196	£	transport reservation/amenity	retail	£600,000	£ 50,000	£ 12,000	£ 52,142	£ 714,142	£ 714,142		
	CEC	483	3152	£ 14,407	transport reservation/amenity	retail	£0							
AIRPORT/AB	CEC	496	506	£ 7,266	hope value	hope value	£0							
	Haslemere Estates as agents for Meadowfield Developments Ltd	496	10734	£ 153,841	hope value	hope value	£450,000	£ 50,000	£ 9,000	£ 39,107	£ 548,107	£ 394,266		
	CEC	497	25817	£ 213,645	hope value	hope value	£0							
	Haslemere Estates as agents for Meadowfield Developments Ltd	258	14551	£ 86,430	hope value	hope value	£800,000	£ 50,000	£ 12,000	£ 52,142	£ 714,142	£ 627,712	Risk here arises from the evolving planning position with prospect of development now more realistic than when calculations were done. Land valued on a hope value basis and hope element is increasing. Risk being managed by betterment issues which could offset any compensation amounts. Unlikely that no claimant will accept that without Lands Tribunal decision so we are looking to pick our case. EAL currently from position as we consider it would be very difficult publicly 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	
	DAA plc, Edinburgh Airport Ltd, & Scottish Airports Ltd	499	41805	£ 779,174	hope value	hope value	£2,100,000	£ 50,000	£ 42,000	£ 182,498	£ 2,374,498	£ 1,535,324		
	Haslemere Estates as agents for Meadowfield Developments Ltd	498	18015	£	hope value BAA?	hope value	£850,000	£ 50,000	£ 13,000	£ 56,488	£ 769,488	£ 769,488		
	Pinnacle Towers Ltd, Royal Bank of Scotland plc	273	4419	£ 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	289	1186	£ 89,000	hope value	hope value	£130,000	£ 50,000	£ 2,400	£ 10,428	£ 182,828	£ 113,828		
	New Ingliston Ltd	291	8046	£ 176,000	hope value	hope value	£980,000	£ 50,000	£ 17,000	£ 73,889	£ 990,889	£ 816,889		
	New Ingliston Ltd	303	10064	£ 150,000	hope value	hope value	£1,100,000	£ 50,000	£ 20,000	£ 86,494	£ 1,266,494	£ 1,117,994		
	New Ingliston Ltd	312	17,728	£ 180,000	hope value	hope value	£1,850,000	£ 50,000	£ 36,000	£ 156,427	£ 2,042,427	£ 1,862,427		
	New Ingliston Ltd	318	5615	£ 100,000	hope value	hope value	£600,000	£ 50,000	£ 12,000	£ 52,142	£ 714,142	£ 614,142		
	PSM Airport (Edinburgh)	322	24477	£ 460,000	hope value	hope value	£4,000,000	£ 50,000	£ 80,000	£ 347,616	£ 4,477,616	£ 3,927,616		
	Saracens Ltd	327	3560	£ 75,000	hope value	hope value	£450,000	£ 50,000	£ 9,000	£ 39,107	£ 548,107	£ 473,107		
	TOTALS			£ 2,894,847			£ 16,855,000	£ 1,225,000	£ 337,100	£ 1,161,767	£ 19,881,867	£ 17,725,395		

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. Awaiting appointment of Reporter

HAYMARKET YARDS RISK OF ADVERSE CAAD REQUIRING REVISED BASIS OF VALUATION BAM 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 LOGGED	DV ESTIMATE	SHORTFALL
WEST CRAIGS	£ 8,500,000	£ 240,271
WB	£ 11,500,000	£ 1,445,500
BAM	£ 2,000,000	£ 26,750
CALA	£ 1,500,000	£ 10,000
EAL	£ 4,500,000	£ 666,825
TOTAL	£ 26,000,000	£ 2,391,346