

Joint Tram Project Board and **tie** Board

26 August 2009

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Chief Executive's Quarterly Review

**Strengths, weaknesses and the way forward
around 5 key themes**

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Building the Tram (Project Director's Report page 10)

- HSQE Report
- Overview of current progress
- Change requests and risk drawdowns (page 17)
- Traffic Regulation Orders (page 20)
- Recap of mediation and progress since last TPB
- Next steps with BSC Consortium strategy
- Cost and programme update

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HSQE



- An accident occurred outside a Carillion site during period 4. An 82 year old woman fell after catching her heel on a temporary ramp on a pavement. This has been classed as a reportable accident by Carillion but was not directly as a result of the construction activities. Taking this into account, the Accident Frequency Rate rises to 0.33, however, if this accident is “ruled out” as it was not as a result of construction works, the AFR remains at 0.26. A joint investigation is underway by Carillion and **tie** with a focus on the temporary pedestrian ramps and where they should be used.
- Project Manager Inspections for MUDFA have been 100% of those planned, however, the joint inspection process for Infracore between **tie** and BSC has proved more difficult to achieve the 100%, with 7 out of 8 inspections completed. Scores are yet to be confirmed. This has also been the case for safety tours with 4 out of the 6 planned taking place.
- A major operation to connect the new gas main at The Mound and abandon the old one went well. Gas that remained within the 120yr old main after diversion was burned off in a controlled manner.

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Overview of current progress

- Tramworks
 - Princes Street
 - Depot
 - Tram manufacture
 - Haymarket / Shandwick Place
- Relationship with BSC
- Utilities

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Utilities

- Residual diversions in Section 7B (Airport) underway using Farrans.
- Section 1A (Forth Ports) diversion out to tender week commencing 27/07/09.
- BT cabling progressing well and ahead of plan.
- Mound gas diversion went well and residual gas in main burned off in a controlled exercise.
- Lothian Road Junction water connections now complete.
- Key areas still to be completed by Carillion are:
 - Annandale St – London Rd – Picardy Pl
 - Broughton St – York Pl
 - Haymarket
- Approval for interim increase in budget sought at next board meeting.

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Change Requests and Risk Drawdowns (p17)

- Drawdown in period - £2,731,806
- Includes for :
 - CEC costs
 - Design estimates
 - Festival costs
 - Tram Inspector
 - Infracore

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Traffic Regulation Orders (p20)

- TRO 1 – result of 4 year design process
- TRO 2 – to capture adjustments/alternatives that arise out of TRO1 process & TAL 505
- TRO3 – post operation adjustments
- Statutory consultation (TRO1) – October 2009
- Public deposit (TRO1) – February 2010
- Report to Council (TRO1) – September 2010

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Recap of Mediation and 8th July TPB

- Mediation held week covered 8 individual items and whilst useful discussions were held and additional information provided, no overall movement or agreements were reached
- 4 options presented to TPB in July :
 - a) **Negotiate settlement of all issues with BSC** – 3 months and mediation has not delivered an outcome which is acceptable in terms of certainty on delivery, engagement, programme and costs
 - b) **Formal contractual approach – DRP and other remedies**
 - c) **Reduce/rephase BSC scope** – instruct or by negotiation and re-procure
 - d) **End BSC contract** – termination or by negotiation and re-procure
- TPB approved **Option b)** and requested an update at this meeting

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Formal Contractual Approach

Outcomes

- Better relationship
- Commitment to progress
- Price for issues to date
- Certainty about the future
- Information from BSC to support changes notified

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Formal Contractual Approach

Pros

- Certainty based upon facts and contract rather than negotiated settlement – decision making more robust against future challenge
- Force the hand of the consortium partners – Siemens and CAF – if replacement of BB in consortium is ever contemplated
- BSC in major/persistent breach if they refuse to continue working

Cons

- Could take many months especially if BSC stick to formal DRP process
- BSC stop work (i.e. obligation to continue is itself in dispute)
- If BSC don't like the adjudicated answer they go to court rather than continue
- If the answer still presents an unaffordable project we have spent additional £m's in the meantime

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Formal Contractual Approach

BSC Strategy to date.....

- Keep it simple (high level) and use protection/assumptions of Schedule Part 4
- Argue that the contract is too complex/doesn't work and therefore needs to be changed for our benefit (e.g. Princes St)
- Argue that the contract prevents them from starting any items which they consider are changed until they are agreed
- Argue exclusive access to the works is required and any impact on that needs to be addresses before they can mitigate
- Resist information provision on differences because it is "not available" or "**tie** should have it already"

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Formal Contractual Approach

Elements

- Progress selected issues through formal DRP process to adjudication – prioritised to the high value, risk and delay items and keeping a focus on the detail
- Instruct BSC to implement changes in the meantime – we don't need to instruct on the obligation to progress the works generally
- Drive out information by invoking the Audit and Best Value clauses – especially in relation to programme and design management
- Serve notices of breach of general obligations to mitigate delay , provide information, comply with design review procedure, progress the works, appoint subcontracts and other instances of failure to manage the project for the client.
- Detailed strategy, documentation and programme under preparation – most of the material already exists.

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Formal Contractual Approach

Progress

- Bible of position papers produced by DLA
- Total of 15 new items for DRP referral identified
- Programme for DRP referral documented – split into 5 Tranches
- Items for audit identified and programme for audit requests in place
- Associated instructions under Clauses 80.15 & 60 to be identified for each DRP item
- Audit outputs will confirm requirement for notices of breach to be issued
- Detailed programme/action plan for each DRP and preparation of case documents underway – Tranche 1 will be complete by 3rd August

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Formal Contractual Approach

DRP Tranches

- Tranche 1 : Week commencing 3rd August
 - EOT 1 – (tie Notice of Change 1)
 - Hilton Car Park
- Tranche 2 : Week Commencing 10th August
 - BDDI – Gogarburn Bridge
 - BDDI – Carrick Knowe Bridge
- Tranche 3 : Week commencing 24th August
 - BDDI – Russell Road Bridge
 - BDDI – Earthworks Section 7
 - Value engineering
- Tranche 4 : Week commencing 14th September
 - EOT 2
 - Misalignments
 - SDS – spilt into 5 DRP's
- Tranche 5 : tbc
 - Valuation of Edinburgh Park

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Formal Contractual Approach

Readiness and Governance

- Challenge team in place to challenge each DRP as it is prepared
- Challenge team includes team from McGrigors
- Role is to:
 - Test the strength of the case documents/arguments and identify any weaknesses
 - Anticipate BSC strategy and counter arguments
 - Check readiness for launch of DRP
- Authority to “activate” delegated to CEO using FCL as steering group.

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The Future of **tie**

- SETL
- Governance

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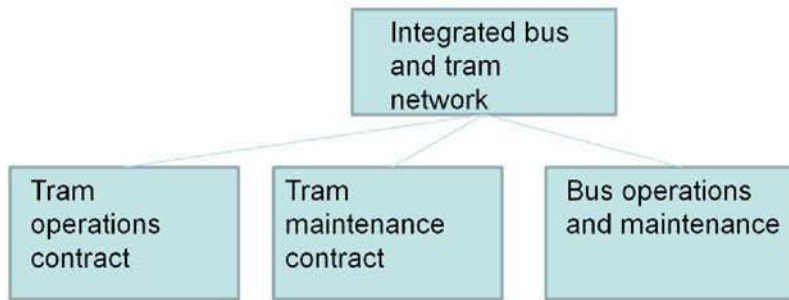
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Preparing for Operations

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Topic 1 – integrated management system



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Development Partnering Operation Franchise Agreement Status (DPOFA)

- DPOFA signed in 2004
- Phase A and B of the DPOFA scope completed.
- Phase C1 has been underway for approx 1 year since contract close.
- DPOFA renegotiated during 2007 to improve efficiency, obtain synergies with TEL and revise the scope to reflect the truncation of the scheme to Lines 1a and option for 1b.
- Further potential savings identified from in-sourcing the DPOFA activities.

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Out sourced or in-house tram operations

Evaluate possible ways forward based on 3 options:

- A - continue with Transdev under the DPOFA;
- B - take the DPOFA scope back in-house;
- C - as option (B), but retain Transdev as an advisor to in-house operation;

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Reputation

- Tram is an integrated element within integrated transport network
 - to general public and key stakeholders success or failure of the tram and buses will be synonymous
 - in sourced then TEL gains direct control over focus of expenditure and effort
- Transdev's business strategy based upon good relations with public sector.
- To protect reputation Transdev would want to agree rational explanation to explain their departure from the project.
- Achievable in low key manner now, after:
 - significantly prolonged period up to and post Contract Close, and
 - prospect of extended period before operational service;
- To avoid high profile media from termination post opening.

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Competence

- TEL requires sufficient tram management and safety competence to effectively manage DPOFA and Infracore maintenance contracts.
- If operations in-sourced = duplication streamlined + full ownership.
 - flexibility to react to changes of Project Programme, take advantage of phased opening and shortened periods of trial running of the trams.
 - commercial tension, in that for Transdev during Phase C1 they may be motivated to create a higher workload, to maximise their profit.
- To undertake the responsibilities 7 key functions must be filled.
- Some functions, eg finance, draw upon shared resources.
- Other short-term resources eg. Commissioning/testing support, will be contracted staff.
- Discussions have been held with number of organisations that could assist should we require support.

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Strategic

- Transdev plc has a mandate from parent company to expand business in the UK primarily through acquisitions.
- To date this has mostly been in the bus sector.
- Bidding performance on light rail franchises has shown them to be non-competitive on price and averse to commercial risk.
- Transdev's other light rail operation in the UK, Nottingham in the process of being re-tendered.

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Outcomes

- TEL has an overriding commercial requirement and the commitment that the tram service will be at least as good, and ideally better than, the high standard of the existing TEL bus operations.
- With the DPOFA in place TEL gains the benefit of input from Transdev's wider experience,
- Without the DPOFA TEL would be freer to craft the tram service it requires without having to do this through an 'Agent'.
- TEL would certainly maintain and improve its links with other tram systems and experience sharing forums.
- This would mitigate the loss of direct access to the experience under contract with Transdev.

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Conclusion

- If decision taken to terminate the DPOFA then two logical windows of opportunity:
 - mid 2009 to late 2009 and
 - then three years post-opening in 2015.
- Otherwise the risk profiles are changing and critical outcomes have to be realised.
- Clear benefits from seizing earliest window of opportunity as:
 - lower demobilisation compensation entitlement;
 - provides TEL with best opportunity to prepare high quality operation and synergy with bus.
- TEL already has many skills and abilities required.
- Opportunity to streamline number of parties involved in the project.
- Savings and benefits that would accrue offset additional mobilisation costs that would otherwise arise from the delayed opening.

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Recommendation

- TPB authorise the Executive Team to engage with Transdev and inform them of intent to terminate the present DPOFA contract during the current Phase C1.
- It is believed highly likely that they will not wish adverse impact of public announcement at a critical time for them.
- Believe that they will seek to be able to claim association with Edinburgh Project, whilst reluctantly relinquishing the operational scope.
- Negotiate a 'son of DPOFA' agreement with Transdev to provide technical support. i.e. Option 'C'
- If this is not achievable then agree timing and approach to press announcement. i.e. Option 'B'
- Take appropriate steps to transfer key staff.

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Building the Brand

- Leith Walk – compensation continues to be an issue for Leith Walk
- West End – support being given to new West End web-site
- St Andrews Sq – use of empty windows for awareness campaign with Essential Edinburgh
- Haymarket – banner/signage being developed with CEC
- City Centre – participation in Festival updates
- Working with CEC FOI Manager during the period

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The Team

- Work to commence in August to create an engaging Vision to be used in the context of communicating the **tie** Organisational effectiveness Model (OEM)
- The 5 key themes are being used to ensure delivery of organisational and exec team objectives for cascade through the organisation
- Organisational values will be developed during August
- Review of HR processes/procedures underway

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