

Edinburgh Transport: Integration of Bus and Tram

The City of Edinburgh Council

12 March 2009

Purpose of report

- 1 To update Council on the proposals for integration of bus and tram operations within the context of a future corporate structure in relation to **tie**, TEL and Lothian Buses.
- 2 To seek delegated authority from Council for the Chief Executive and officers to take the necessary steps in implementation of the phased structural changes.
- 3 To provide a brief update on the contractual dispute between **tie** and the consortium.

Main report

- 4 The Chief Executive reported to Council on 18 December 2008 that he would submit a further report in March 2009 setting out the options for a revised company structure, dealing with the delivery and operational aspects of integrated public transport in the city.
- 5 Since that date detailed discussions have been undertaken with the principal stakeholders; **tie**, TEL and Lothian Buses. A number of options have been considered and rejected as unsuitable or impractical. These included **tie** taking over TEL; TEL taking over **tie**; and formation of a new company. A broad consensus has been reached among the stakeholders as to the most appropriate company structure.
- 6 The preferred model recommended for approval is designed to secure the Council's objectives. A single operating company to oversee all aspects of a fully integrated public transport operation for Edinburgh and the wider region. This report recommends that such a company should have a single board, populated on a commercial basis with suitably recruited Non- Executive Directors. The operating company should have a management team equipped with the necessary skills to run such a complex integrated service.
- 7 Moving from the present family of companies comprising **tie**, TEL and Lothian Buses, directly to the single operating company is a major change. There are significant legal, financial and governance requirements which need to be complied with. In particular, the Council requires to obtain ministerial consent to the transfer of shares in Lothian Buses in accordance with the Transport Act

1985. It is therefore considered prudent to phase the re-structuring in manageable steps to ensure that all contractual matters, consents, due diligence etc are completed at each stage. The intention is to seek approval from Council for the final arrangement by Autumn 2010.

- 8 The interim model is set out in the diagram at Appendix 1 to this report. Within phase 1 there will be a transfer of **tie's** shares from the Council to TEL. There will also be a streamlining of reporting and monitoring procedures, allied to a combination of the two Boards. Council will note that there is more than one board in the interim; i.e. a combined **tie** and TEL board, and a separate Lothian Buses board. Inevitably there will be an element of duplication, but there is scope at stage two for more savings and efficiencies to be made.
- 9 The Chief Executive has written to each of his counterparts in Midlothian, East Lothian and West Lothian Councils, respectively, as minority shareholders in Lothian Buses. Each authority has been invited to consider the city's objectives in seeking to integrate the operation of Tram with buses and the associated revised arrangements.
- 10 Council is asked to note that a transfer of shares in Lothian Buses to another entity requires ministerial consent under the Transport Act 1985. This application will be prepared and submitted at the appropriate time, following conclusion of discussions with the minority shareholders. Council is reminded of the very strict terms of the Transport Act 1985 which require that a public transport company must be run commercially and at arms length from the Council as majority shareholder. This has to be reinforced through composition of the board and a clear separation from the Council as majority shareholder. Great care will require to be taken in identifying and recruiting Non – Executive Directors who have the necessary experience and the most relevant skills to run a complex, integrated, public transport company. The new company will operate in accordance with the Combined Code: Principles of Good Governance and Code of Best Practice.
- 11 I am chairing a short life working group, the remit of which is to steer the project plan to completion, following approval by Council, in principle, of the recommendations in paragraph 7. Each of the key stakeholders among the group of companies is clear on the tasks assigned to move the restructuring through the two stages described in this report.

Moving from the interim stage to the final model involves a number of major work streams, summarised as follows: -

- Drafting Memorandum and Articles of Association for the single operating company
- Identifying the most appropriate board composition
- Satisfying the requirements of Competition Law/ State Aid
- Drafting new Operating Agreement between Council and the single operating company
- Satisfying the tax and financial requirements
- Obtaining consent to the share transfer under the Transport Act 1985 and ensuring the requirement of the Act in ensuring arms length status is met
- Trade Union consultation on any material employment contract changes

- Due diligence exercise by Council on all existing contractual obligations prior to any changes, supported by independent legal advice
- 12 Members will be aware of the Chief Executive's report, which was considered by the Policy and Strategy Committee on 24 February 2009, that there is a formal contractual dispute between tie and the Infraco consortium. Whilst that report was considered in private, Council should note that Committee expressed strong support for the position taken on the dispute by the tie Board. The Dispute Resolution Procedure has been invoked and an outcome is awaited. It is not appropriate, at this time, to comment further on this sensitive commercial dispute.

Financial Implications

- 13 It is anticipated that there will be financial savings and other benefits following implementation of the first phase of the change mechanism, with more significant savings within the final step of the re-structuring of the various companies, due to streamlining of the boards and more efficient working arrangements.

Environmental Impact

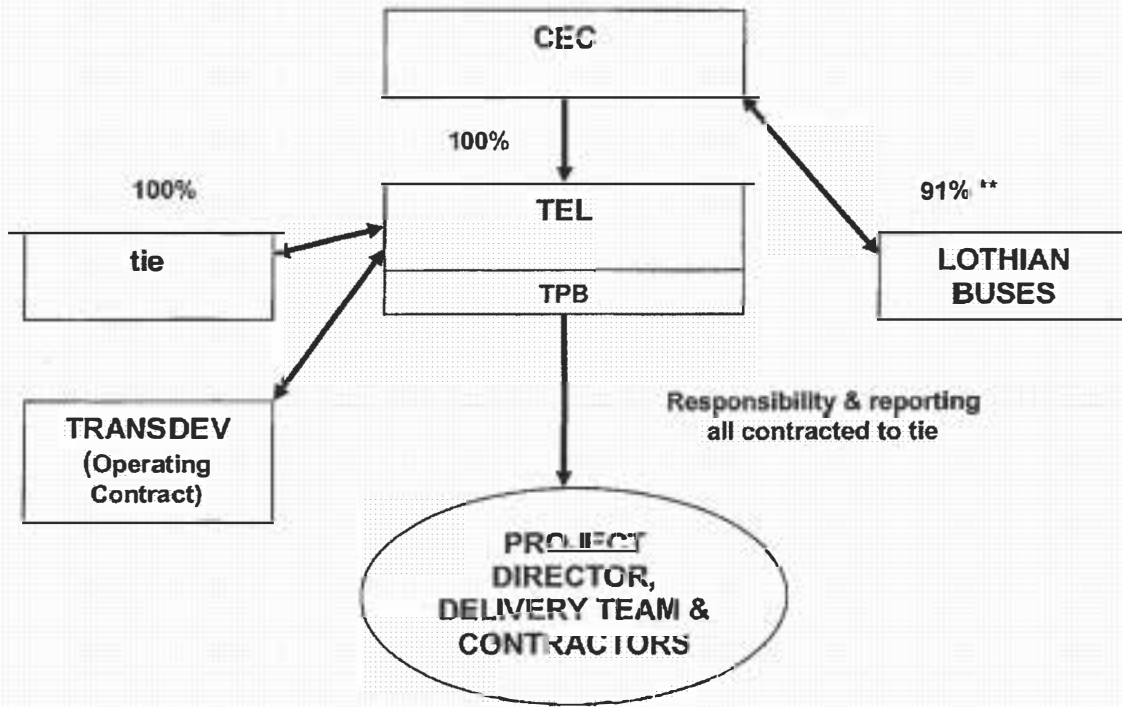
- 14 None.

Recommendations

- 15 It is recommended that Council:
- a) notes the two stage approach to restructuring the family of companies;
 - b) delegates authority to the Chief Executive to put in place the interim structure as described in Appendix 1 of the report;
 - c) delegates authority to the Chief Executive to carry through the Project Plan and secure/meet the necessary requirements and set up the single operating company, the results of further investigations into the second phase to be reported back to Council with appropriate recommendations;
 - d) notes that a further report will be submitted to Council in Autumn 2010 after stage one to update members on transfer of Lothian Buses shareholding and outcome of discussion with minority shareholders;
 - e) notes that a further report will be submitted on the outcome of the DRP between tie and BSC and the implications for the Tram project budget and completion date

APPENDIX 1

EDINBURGH TRANSPORT: INTEGRATION BUS AND TRAM
DIAGRAM OF INTERIM STRUCTURE



(** = subject to ongoing discussions with minority shareholders.)