

EXECUTIVE BOARD - 19 JULY 2011

Title of paper:	Nottingham Express Transit (NET) Phase Two Procurement	
Director(s)/ Corporate Director(s):	Pat Armstrong, Director, NET	Wards affected: All
Portfolio Holder(s):	Councillor Jane Urquhart, Planning and Transportation	Date of consultation with Portfolio Holder(s): 16/06/11
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Other colleagues who have provided input:	Sue Tongue/Paul Clarke, Finance Glen O'Connell, Legal	
Key Decision: Yes		
Reasons for Key Decision:		
Expenditure of £500,000 or more in a single year	Y	
Revenue income of £500,000 or more in a single year		
Savings of £500,000 or more in a single year		
Capital expenditure of £1,000,000 or more	Y	
Capital income of £1,000,000 or more		
Significant effects on communities living or working in an area comprising two or more wards in the City	Y	
Relevant Council Plan Strategic Priority:		
World Class Nottingham	NET Phase Two supports the identified priority to deliver an infrastructure to match Nottingham's ambition as a major city, focusing particularly on a world class transport system.	
Work in Nottingham	NET Phase Two will help boost business confidence, act as a catalyst to inward investment, provide improved access to workplaces and generate employment.	
Safer Nottingham		
Neighbourhood Nottingham	NET Phase Two improves access to employment, public services, shops and leisure within neighbourhoods, the city centre and the wider area.	
Family Nottingham		
Healthy Nottingham		
Leading Nottingham		
Summary of issues (including benefits to citizens/service users):		
Subject to approval by Government of a final update of the full business case and the conclusion of negotiations with the Preferred Bidder (Tramlink Nottingham), including confirmation of financial terms, it is proposed to complete, in September, all necessary arrangements and agreements for the procurement of a concession to deliver the NET Phase Two tram project. This report, with appendices, outlines the proposed commercial and financial terms for this procurement and seeks necessary approvals to proceed. A full list of appendices is provided at Appendix 0 .		

Recommendations:	
1	The NET Phase Two project and funding, as described in this report, be approved, subject to the arrangements not diverging significantly from the commercial terms and risk allocation and the costs not being in excess of the amounts set out in the report, and authority be granted to the Director of Legal and Democratic Services to execute all necessary documentation and to the Deputy Chief Executive/Corporate Director of Resources to issue any certification required under the Local Government (Contracts) Act 1997 for the project;
2	The Chief Executive be given delegated authority to finally approve all contractual terms (including any minor changes) within the parameters set out in this report;
3	Approval be given for prudential borrowing of up to £435.7m for scheme capital costs detailed in the report (Financial Implications, Affordability section), to be repaid from a combination of NET Line One PFI grant, NET Phase Two PFI grant and WPL Income (subject to approval of increased prudential indicators; to be endorsed elsewhere on this agenda and submitted for approval by Full Council on 12 th September)
4	Authority be given for the City Council to acquire permanently, possess temporarily and use the land identified within the Nottingham Express Transit System Order 2009, as recently amended by the Nottingham Express Transit System (Amendment) Order 2011 and within agreements reached with third part landowners, as required to build, operate and maintain the NET Phase Two system.
5	The approval by the Secretaries of State for Transport and for Communities and Local Government, regarding the compulsory acquisition for the project of open space land in Chilwell, be noted;
6	The City Council owned open space land described in the report be appropriated for the purposes of NET Phase Two;
7	Trading Account incomes be adjusted downwards to take into account the loss of income of £65,000 per annum from Trading Account property which is required for the scheme and the future years of the Medium Term Financial Plan be revised accordingly.
8	The Head of Service, NET, be authorised to act as the Authority's Representative, who shall exercise the functions and powers of the City Council in relation to the Concession Agreement;
9	The establishment of the Greater Nottingham Light Rapid Transit Advisory Committee (to replace the existing NET Line One body), under Article 87 of the Nottingham Express Transit System Order 2009, be approved;

1 BACKGROUND AND PROPOSALS

- 1.1 The City's ambition for a high quality light rail network has been pursued for over two decades and following the successful realisation of the first line (NET Line One) in 2004, specific proposals for further lines have been developed through to procurement. NET Phase Two will build on the success of NET Line One and extend the network to Clifton via Wilford and to Chilwell via the Queens Medical Centre and Beeston. It will serve key destinations and regeneration areas, particularly to the south of the City Centre, help attract inward investment and have a major positive effect in reducing expected traffic growth and increasing the number of public transport journeys in and out of the City.
- 1.2 Throughout the development of the project there has been significant consultation with people living and working along the proposed route corridors, the wider public, key stakeholders and other interested parties. Public inquiries

were held in November/ December 2007 and October 2008. The inquiries Inspector concluded that there was a compelling need for the scheme in the public interest. This conclusion was endorsed by the Secretary of State for Transport and the powers (The Nottingham Express Transit System Order 2009 and related provisions) to build and operate two more tram lines, to Clifton and Chilwell, were given approval in 2009, as was Conditional Approval for Government funding.

- 1.3 Following the Comprehensive Spending Review last autumn, and in response to the Council being able to secure significant cost reductions, the Government confirmed funding for the project in March 2011.
- 1.4 Subject to consideration of a final update of the business case (Full Business Case), the Government will provide approximately 66% of the estimated £448m (net present value) cost through a Private Finance Initiative (PFI) arrangement; the remaining 34% coming from the City Council (mainly from the Workplace Parking Levy). The Government contribution is a reduction of 25% (again in net present value) from the funding provisionally agreed at Outline Business Case submission.
- 1.5 Under the PFI contract, a private sector consortium will be appointed as 'Concessionaire' to deliver, operate and maintain NET Phase Two as well as taking over the operation and maintenance of NET Line One (the existing NET Line One contract will be terminated). The terms of the new concession contract will generally be in accordance with Government's standard PFI contractual arrangements and is a similar arrangement to that successfully used for NET Line One. The funding for the project will be as capital contributions plus monthly performance related service 'availability' payments over the life of the concession.
- 1.6 The capital contributions are part of cost reduction measures implemented subsequent to the Government's Comprehensive Spending Review, as it has been determined that substantial reductions to the availability payments, with no adverse impact on value for money, will be achieved if these payments are made on completion of specified milestones during and at the end of the construction period. The proposed life of the concession will be 22.5 years which is considered to be the optimum concession period, having regard to the design life and lifecycle requirements of the project assets together with the financial structuring of the project. At the end of the concession period these assets will revert to the City Council.
- 1.7 Following a competitive tendering process in accordance with UK and EU procurement legislation, Tramlink Nottingham ('Tramlink') has been chosen as the Preferred Bidder (see **Appendix 1a** for make up of Tramlink and **Appendix 1b** for a legal statement regarding the procurement process). Final negotiations are ongoing with a target for finalising the contractual arrangements ('Financial Close') in early autumn (currently targeted at 13 September 2011). This would mean that construction could start by the end of the year and services on NET Phase Two be operating from late 2014.

Commercial Arrangements - Transferred Obligations

- 1.8 As with NET Line One, the NET Phase Two procurement is a Design, Build, Finance and Operate (DBFO) PFI Concession with the key project risks passed to the Concessionaire where this offers the best value for money. In relation to all key project risks, an informed decision has been made as to whether it would optimise value for money for each of those risks to be retained by the Council or for it to be transferred to the Concessionaire. The aim throughout the procurement process has been to reduce the likelihood of bidders including unreasonable risk premia in their pricing; for example, through the preparation by the Council of a design to a significantly more developed stage than is normally the case and provision to bidders of detailed information relating to NET Line One, e.g. the current state of the assets, both of which ensured bidders had significant information and confidence in what was involved.
- 1.9 A summary of the works and supply of trams and infrastructure, service levels and performance required of the Concessionaire is attached at **Appendix 1c**. This also outlines proposals from Tramlink that will be provided additional to the minimum scope requirements.
A summary of the main areas of obligation and risk transfer to the Concessionaire is provided at **Appendix 1d**.
- 1.10 The main contractual document, the Concession Agreement, clearly defines the City Council's requirements in respect of the project, the respective roles and responsibilities of the Council and the Concessionaire and the applicable standards. In summary, the Concessionaire will be required to take over operation and maintenance of NET Line One from the day after Financial Close and to design, finance, construct, test and commission the NET Phase Two works. Once the NET Phase Two works are complete, the Concessionaire will be required to operate and maintain the entire extended network.
- 1.11 The majority of the contractual terms had already been agreed with Tramlink during the bidding and negotiation process. There are no substantive legal issues outstanding on the Concession Agreement although there currently remain a handful of minor issues which the parties are in the process of closing out and it is anticipated that these will be resolved over the summer.
- 1.12 Although Tramlink will, at all times, remain responsible to the City Council for the performance of all Concession obligations, in practice Tramlink will transfer most of its obligations to a 'turnkey contractor' comprising Vinci and Alstom, through a sub-contract for design, supply, construction and commissioning, and to an operator comprising Keolis and TrentBarton, through an operations and maintenance sub-contract. This sub-contract structure is very similar to that which was successfully implemented on NET Line One. It is likely that some of the more administrative obligations will be retained by the Concessionaire itself (e.g. the obligation to take out and maintain project insurances). A description of the main legal documents to be completed by Financial Close is provided at **Appendix 1e**.
- 1.13 Notwithstanding the transfer of risks to the Concessionaire, the City Council will retain the strategic and policy risk for the success of the project as a transport system and the achievement of the wider social and economic outcomes. To this end, the Concession Agreement and Specification include provisions for

the attainment of high quality and performance, targets for employment and training opportunities and provision for inter-ticketing and concessionary fares.

- 1.14 The Council's requirements for performance of the service will be incentivised through the monthly service 'availability' payment, whereby deductions are made for underperformance against targets of reliability, punctuality, cleanliness, etc. In addition to making such deductions, the Council has the standard PFI remedies in the event of non performance, including survey/inspection rights, the right to increase monitoring of performance in certain circumstances, emergency step in rights and, ultimately, the right to terminate the Concession Agreement for Concessionaire default. In addition, the Council will have the benefit of various other "security" measures including collateral warranties, parent company guarantees and a performance bond related to the rectification of 'snagging' items.
- 1.15 In respect of employment and training, Tramlink has recognised the importance of providing employment and training opportunities for local people, and supply chain benefits to local companies, and is committed to working with local agencies, including local colleges and the Nottingham Hub employment centre, to maximise the benefits to the Nottingham economy. Dialogue is on-going to further develop Tramlink's proposals through the procurement policy for Employment, Training and Supply Chain Opportunities (ETSO) currently being developed by the Council for future contracts. An outline of the current position is provided at **Appendix 1f**.
- 1.16 As is the situation with the existing NET Line One concession, the Concessionaire will set fares, retain fare income and take all farebox revenue risk. Accordingly, there will be no support from the Council for low revenues (but the Council will share in revenue in excess of forecast). This means that the Council will not impose any controls on fares except to require participation in local joint ticketing and concessionary fares schemes. For inter-ticketing, competition legislation restricts the ease with which the Council can achieve its objectives and any arrangements for multi operator, multi journey tickets will be highly dependent on the commercial position of rival operators and the approval of the competition agencies. Tramlink is already in the process of obtaining clearance from the competition agencies in respect of its proposed arrangements. The ticketing proposed is described in **Appendix 1g**.

Retained Obligations

- 1.17 There are a number of areas where the Council will retain obligations and associated costs and risks. The acquisition of land is perhaps the most obvious, with most compulsory purchase powers contained in the Transport and Works Act Order, as modified by the Amendment Order, recently made by Government, regarding open space land owned by Nottinghamshire County Council. The proposed strategy for dealing with land acquisition and transfer is detailed in **Appendix 2a**.
- 1.18 The matrix at **Appendix 2b** provides a summary of some of the key retained obligations, including those provided for in the current draft of the Concession Agreement and outlines the mitigation and management action proposed to deal with any risks from these obligations. Again, these are broadly similar to those that have applied under the NET Line One concession arrangements.

- 1.19 The position with regard to the County Council is now firm with the imminent signing of the Settlement Deed which provides for the termination of the County's involvement as co-promoter of NET (as reported to this Board on 18 January 2011) and the completion of the County land acquisition requirements.
- 1.20 As regards the County Council owned open space land in Chilwell, letters were received on the 6th June from the Secretaries of State for Transport and for Communities and Local Government respectively approving applications made in Summer 2010 for a Transport and Works Act NET System (Amendment) Order and Exchange Land Certificate to secure compulsory purchase powers over the land, and to provide replacement open space. The Order was made on 13th June and came into force on 4th July (subject to a High Court appeal period until 25 July).
- 1.21 The NET Phase Two alignment will also impact on areas of open space owned by the City Council, including at Queens Walk, Wilford, Silverdale Walk (Clifton) and Kings Meadow. Although the 2009 NET System Order allows open space to be used for the project, section 122 of the Local Government Act 1972 requires the Council to advertise in the local press for two consecutive weeks its intention to change the use of open space land that is owned by the Council (known as appropriation). The Council then has to consider any objections made before it changes the use of the land. The required notice was placed in the local press in two consecutive weeks in late May 2011, and was also posted on the NET Phase Two website. No objections have been received. It should be noted that the Council has already approved the route alignments, which include use of the open space, and the public inquiry inspector and Secretary of State were satisfied with the proposals within the project to take and replace open space. In particular, the inspector and Secretary of State were satisfied that the replacement open space meets the tests in the Government planning policy document PPG17. As such, it is recommended that the necessary open space land is appropriated for the purposes of NET Phase Two.
- 1.22 Other City Council land required for the scheme, and located along the routes already approved by the City Council, includes the site of the former Merrivale Nursery, six commercial properties on Arkwright Street, and seven industrial units at Crocus Place. The capital value of this land has been estimated at £2.1million for Trading Account property, £350,000 for General Fund property, and £10,000 for Housing Fund property. The Trading Account properties required for the scheme produce a rental income of £65,000 per annum and it is recommended that Trading Account income targets are adjusted downwards to take into account this loss of income.
- 1.23 The scheme also impacts on land at Highfields Park adjacent to University Boulevard. This land is owned by the Highfields Leisure Park Trust, a charitable trust of which Nottingham City Council is the sole Trustee. Powers to use this land were secured through the 2009 NET Order, and compensation will be paid to the Trust for the land at market value.
- 1.24 In addition to the key risks detailed in this report, the project maintains a full operational Risk Register which will remain as a project management tool going forward. Continuing current practice, any new, changing and important risks,

and their mitigation and management, will be reported to the NET Project Board.

Authority's Representative

1.25 For the purposes of the Concession Agreement all formal actions taken by the City Council (the Authority) will have to be channelled through the Authority's Representative. It is essential for the proper administration of the contract that there is one nominated officer who will be responsible for, and be the conduit for, all the City Council's decisions and actions and to exercise the functions and powers of the City Council in relation to the Concession Agreement. It is proposed that the Head of Service, NET, be delegated all necessary powers to perform this role.

Greater Nottingham Light Rapid Transit Advisory Committee

1.26 Article 87 of the Nottingham Express Transit System Order 2009 (the Order) requires that the "promoter" (originally the City and County Councils, but now the City Council acting alone) shall establish a body, to be known as the Greater Nottingham Light Rapid Transit (GNLRT) Advisory Committee, to advise the promoter on the operation of the tram system (NET Line One and NET Phase Two) and to consider representations made to it by members of the public. The Article provides that membership of the committee *shall include representatives of users of the NET system and members of the City Council and the County Council*. This committee will be a replacement for the existing Committee which has had a similar role for NET Line One.

1.27 It is proposed that membership of the GNLRT Advisory Committee comprise:

- 5 City Councillors;
- 3 County Councillors (to represent communities along the three lines where these pass through the County area); and
- 5 (or more) co-opted members, to include representatives from organisations such as the Campaign for Better Transport, the Derbyshire and Nottinghamshire Chamber of Commerce and Industry, the Federation of Small Businesses, the Greater Nottingham Transport Partnership, Pedals, Travelwatch East Midlands and Passenger Focus (alternate or additional representatives to be determined, from time to time, by the committee).

2 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

2.1 The proposals in this report provide for an effective procurement of this important infrastructure. The terms of the procurement are in line with Government guidance and are considered appropriate and good value for the public account. Approval to completion within the costs described, with final terms to be delegated to the Chief Executive, will ensure timely completion of commercial and financial close, allowing the delivery programme to be maintained and work to commence at the earliest opportunity.

2.2 Authority to execute concession documentation and certification is essential, and evidence of authority is likely to be required by Tramlink's bankers.

- 2.3 The increase in borrowing is required to provide a reduced overall finance cost for the Council.
- 2.4 The acquisition and use of land, both temporary and permanent, is necessary to build, operate and maintain the system. The appropriation of open space land is required for the construction and operation of the project and replacement land is to be provided.
- 2.5 The nomination of an Authority Representative is a requirement of the Concession Agreement and the creation of the GNLRT Advisory Committee is prescribed by the Order.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 The delivery strategy for NET Phase Two was developed with due regard to all reasonable procurement options and the commercial arrangements are the outcome of a lengthy competitive procurement process undertaken with due regard to the requirements of procurement law (see **Appendix 1b**) and for Government funding. It is considered that this process has resulted in a situation which provides the best possible balance of risks and value for money. A statement from our lead advisers on this is provided at **Appendix 2c**.

4 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

Background

- 4.1 In 2009 the City Council had received approval for grant to be paid based on a PFI Credit of £530.7m; this was on the basis that the PFI grant would finance 75% of the estimated costs relating to the design, build, financing, operation and maintenance of NET Phase Two, with the assumption that the PFI grant for NET Line One would continue to be paid. The 25% balance of the cost of NET Phase Two was to be funded by the City Council primarily from revenue received through the Workplace Parking Levy (WPL).
- 4.2 Since that time the Government has fundamentally reviewed its approach to PFI funding for projects which has resulted in a significant delay to receipt and reduction in the amount of Government grant that the City Council will receive in respect of NET Phase Two. The letter attached at **Appendix 3a** shows the sums which will now be paid by Government.
- 4.3 Although the Government has revised the level of funding for PFI projects and the grant is no longer driven by the amount of PFI Credit, the other rules such as risk transfer must still be complied with. Although the PFI grant is no longer driven directly by a PFI Credit, the grant payable is equivalent to the amount which would be generated by a PFI Credit of £433.5m (i.e. an 18% reduction).
- 4.4 Prior to selection of the preferred bidder, cost reductions were secured during the competitive process, significantly reducing the funding gap created by the reduction in Government funding. In addition, the project team has considered various opportunities to minimise the impact of the reduction in grant to ensure the project remains affordable, including holding discussions with the European Investment Bank and making up front capital contributions (see **Appendix 3b**).

Affordability

- 4.5 The expenditure in respect of NET Phase Two and the funding sources fall into 4 different phases as outlined below. The expenditure is based upon a number of key assumptions, as detailed in **Appendix 3b**.

(1) Development period

- 4.6 A development budget to Financial Close of £41m was approved as part of the Medium Term Financial Plan on 24th February 2009. **Appendix 3c** shows the costs incurred to 31st March 2011 and the projected cost up to Financial Close, plus the funding sources.

(2) Termination of the NET Line One contract with Arrow Light Rail

- 4.7 It is planned that the NET Line One concession with Arrow will be terminated at the same time as Financial Close is reached with Tramlink. Negotiations with Arrow are ongoing to agree a termination value (to include repayment of bank debt, breakage costs and equity). The City Council will prudentially borrow this amount with the interest and principal repayments to be financed from the ongoing NET Line One PFI grant.

(3) From Financial Close to start of Operation of NET Phase Two

- 4.8 Based upon the terms agreed in the settlement, the County Council will cease to be a funder of the overall tram system should Financial Close on NET Phase Two be reached. As part of this settlement, the City Council will retain all NET Reserves built up to date; however, certain expenses which have been or will be incurred by the County Council relating to NET Phase Two (e.g. highway elements of the TWAO) will be reimbursed to them. The impact that these transactions will have on available NET Reserves is detailed in **Appendix 3e**.
- 4.9 In addition, during this period Tramlink will be paid Availability payments, at 35% of the full service amount, to continue to incentivise the operation of NET Line One services. These will be funded from the ongoing PFI grant. The City Council will also incur ongoing project management, monitoring, and other project related costs including specialist engineering, economics, legal and financial support, plus highways, planning and environmental health fees and third party commitments, which together are estimated at £6.5m during the construction period of NET Phase Two. An analysis of project uncertainties (carried out via a Quantitative Risk Assessment process) estimates the requirement of a £8.6m provision for possible project events (e.g. Authority requested variations, additional third party costs, Line One latent defects that cannot be passed on). It is proposed that if any of these costs are incurred, they are funded by prudential borrowing as they arise.

(4) Operation of NET Line One and NET Phase Two

- 4.10 Following completion of construction, increased Availability payments will be made to Tramlink to reflect the operation and maintenance of NET Phase Two, as well as NET Line One.

4.11 The City Council will also incur ongoing project related costs, such as contract management, marketing and monitoring, of £0.4m pa thereafter.

Sources of Funding

4.12 There are a range of funding sources, split between development and post-Financial Close stages. As stated above, development period funding sources are detailed in **Appendix 3c**.

Post-Financial Close, the key funding sources are as follows:

- Continuing NET Line One government grant of £22.6m pa;
- New NET Phase Two grant of £35.4m pa from 2013/14;
- An ongoing annual revenue contribution which is £1.2m in 2011/12 (increasing by 4% pa) and built into the Medium Term Financial Plan;
- WPL Income from 2012/13;
- Interest on NET Reserve balances during the PFI contract life.

4.13 **Appendix 3d** comprises a schedule detailing the projected Availability payments to Tramlink (from Financial Close to the end of the concession in 2033/34), associated internal costs and the financing sources, which shows the sum which is required to be financed from WPL. Based upon current income projections, and allowing for £1.1m pa required to repay the prudential borrowing approved for funding the Nottingham Station (Hub) Improvements, around £0.65m pa (increasing by inflation) will be available to fund the Link bus network. This is less than previously estimated.

4.14 Due primarily to the Government's decision to pay the NET Phase Two PFI grant from 2013/14, rather than from Financial Close, there are short-term cash shortfalls projected in 2011/12 and 2012/13. It is proposed that these are funded from overall Council Reserves, to be replenished in 2013/14 when the PFI grant for NET Phase Two commences. The risk with this approach is that, should NET Phase Two opening be delayed, then the repayment to Reserves would also be delayed; however the alternative of short-term prudential borrowing for these would carry a similar cashflow risk if operations are delayed. Both options will have interest implications; using Reserves which are invested will reduce interest income earned and prudential borrowing will incur interest charges.

4.15 It will be necessary to seek Full City Council approval to increase the City Council's borrowing limits and Prudential Indicators (PIs) to allow us to borrow to finance the Termination of the NET Line One contract etc. A report recommending an increase to the PIs for NET is elsewhere on this Agenda.

Current Financial Issues and Risks

4.16 There are a number of financial assumptions that will have to be resolved before Financial Close. These include factors such as resolving the termination payment to Arrow, including the amount of tax payable, and receiving confirmation that the EIB have agreed to act as a funder to Tramlink. Regarding the tax issue, following further detailed analysis an option is being explored for the City Council to buy the existing NET Line One holding company (rather than terminate the Line One concession as planned) and then sell it to Tramlink. If achievable this could bring significant tax allowance benefits which could significantly reduce the City Council's funding

requirement. This potential benefit is not included in the current affordability assessment.

4.17 There will also be some residual financial risks outstanding at Financial Close and these risks are incorporated in the overall Risk Register referred to above and are as follows:

- The prudential borrowing cost for the up front capital contribution, land costs and any risk costs that manifest after Financial Close – this is based upon the interest rate charged by the Public Works Loan Board (an increase of 0.1% would cost roughly £0.1m pa).
- Workplace Parking Levy (WPL) income – the amount collected over time can vary based upon inflation and number of registered parking places (a 5% decrease in places would reduce the income by roughly £0.5m pa). The estimated gross income from WPL in 2012/13 is £8.967m. This is set to rise to £10.384m in 2013/14. This income forecast is built into the financial models of the NET project and is a key aspect of the NET business case. There are approximately 500 businesses that are estimated to face a charge within the scope of the WPL scheme and they provide some 38,000 workplace parking places. Any scheme of this innovative nature carries risks, particularly in terms of the actual number of places licensed and the resulting income. The financial modelling assumes a 16% reduction in places, with income assumptions taking this reduction into account.

4.18 Where these risks potentially manifest after Financial Close, they would initially be dealt with by reducing the amount of WPL income available to fund the Link bus network. In the unlikely event of a very significant change in employee parking provision or change in travel behaviour by employees, resulting in a reduction in levy income in excess of this margin, then the City Council would have to meet the contracted NET payments from the revenue budget or other sources. Conversely, any improvement in WPL income or decrease in borrowing costs (including the potential tax savings described at 4.16) would allow an increase in funding to be made available for the Link bus network.

4.19 Should NET Phase Two not go ahead for some reason, the existing NET Line One concession agreement would continue in force and the County Council's withdrawal from the NET Line One contract would not come into effect. This could mean that the development costs up to the date of decision not to proceed would have to be written off to revenue and the Reserves used would need to be replenished.

Financial Conclusion

4.20 There have been a number of changes to the project since procurement began, most notably the withdrawal of the County Council and the reduction and later phasing of Government funding. However, because of the actions described in this report, the project remains affordable but with the following observations:

- If the tax position outlined in 4.16 is not achieved, the estimated funding available from WPL for Link buses is reduced to roughly £0.65m pa;
- Borrowing will be required from Corporate Reserves during 2011/12 and 2012/13 due to the delayed receipt of Government support;

- At Financial Close there remain some financial risks, primarily around WPL income and future City Council borrowing rates.

4.21 It should be noted that not proceeding would have a significant financial impact, including no funding available for Link buses (assuming WPL does not go ahead without NET Phase Two) and the requirement to replenish NET reserves to fund future payments under the NET Line One contract.

5 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)

5.1 The key risk management issues are detailed in the report.

5.2 The design and operation of NET has been developed with due regard to security and public order issues and Tramlink has committed to the 'respect for transport' initiative and active participation in the Nottingham Crime and Drugs partnership.

5.3 NET Line One was designed to be Disability Discrimination Act compliant, with low floor vehicles and level access to facilitate ease of use for people with mobility difficulties. The NET Phase Two network extensions will bring these advantages to a wider area and a larger population.

5.4 Observations of the Director of Legal and Democratic Services:

5.4.1 The City Council has used external specialist legal firms, and in-house resources, to provide legal advice to the project. The City Council has powers to deliver the project derived from the Greater Nottingham Light Rapid Transit Act 1994, The Transport and Works Act 1992, The Nottingham Express Transit System Order 2009 (as amended by the Nottingham Express Transit System (Amendment) Order 2011) and general powers available to local authorities. The pursuit of the 2009 Order and 2011 Order has been the subject of detailed reports to full Council previously.

5.4.2 The City Council will need to acquire and use land for the System, both on the basis of temporary possession and permanent acquisition. The land acquisition strategy has been employed successfully on schemes elsewhere and is proposed for use here; it should be noted that failure to deliver land needed for the project is a key risk for the Council and appropriate systems and resources must be in place to ensure timely delivery of land to the Concessionaire.

5.4.3 Appendix 1e provides a list and analysis of the main documents in the suite of concession documents and Appendices 1b and 2c provide statements from DLA Piper, our external commercial/procurement lawyers, as to the appropriateness of the procurement process used and the contractual documentation.

5.4.4 The concession documentation will require certification under the Local Government (Contracts) Act 1997 and a recommendation seeks authority for this.

5.4.5 The Board should note that, in common with other City Council PFI/PPP projects, government funding for NET Phase Two remains at risk until actually provided so development costs will have to be funded by the City Council should, for any reason, Financial Close not be reached.

6 EQUALITY IMPACT ASSESSMENT (HAS AN EQUALITY IMPACT ASSESSMENT BEEN CARRIED OUT?)

Yes – see **Appendix 4**.

7 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

The background documentation involved in the tendering and negotiation process contains information that is confidential at this stage of negotiations and the full business case documentation is in draft form prior to Government approval.

8 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

The Nottingham Express Transit System Order 2009
Nottingham Express Transit – County Council Settlement, Executive Board, 18
January 2010

List of Appendices

<i>Appendix No</i>	<i>Title</i>	<i>Description</i>
Appendix 1a	Preferred Bidder consortium	Description of the companies which make up Tramlink Nottingham
Appendix 1b	Statement by legal advisers regarding procurement	Statement confirming that the procurement process has been conducted in accordance with relevant legal requirements and guidance
Appendix 1c	Scope of Works and Services	A summary of the works and supply of trams and infrastructure, service levels & performance
Appendix 1d	Transferred Obligations	A summary of the main areas of obligation and risk transfer to the concessionaire
Appendix 1e	Legal Documents	A list of the main Legal Documents and summary of what they provide. This should include reference to our powers to enter into the contracts.
Appendix 1f	Local Employment and Training	An outline of the opportunities for the local supply chain and for local jobs and training
Appendix 1g	Ticketing	An outline of the proposals for ticketing
Appendix 2a	Land Acquisition Strategy	A description of the proposed strategy for acquisition of land
Appendix 2b	Key Retained Obligations	A summary of the key obligations retained by the Authority and the risks associated with these, together with an indication of the proposed management and mitigation of these.
Appendix 2c	Legal and Financial Advisers statements	A short statement from advisers that they believe the proposal is the best that could have been negotiated.
Appendix 3a	Department for Transport Letter	Letter dated 24 March 2011 re-confirming Conditional Approval for Government funding of the project, subject to approval of the Final Business Case
Appendix 3b	Financial Modelling Assumptions	Key assumptions made in the financial modelling
Appendix 3c	Development Phase Expenditure and Income	Costs in respect of feasibility studies, early design works, consultation, approval processes, specialist legal and financial advice, land 'blight', plus project management, etc. incurred to 31 st

		March 2011 plus the projected costs for scheme development up to Financial Close, with the funding sources
Appendix 3d	Post Financial Close Expenditure and Income	Payments profile for project management, land acquisition, Line One termination and other project completion costs to be incurred post Financial Close plus Availability payments, with income to match
Appendix 3e	NET Reserves	Composition of the existing NET Reserves and their expected usage
Appendix 4	Equality Impact Assessment	

Preferred Bidder Consortium

NET Phase Two Preferred Bidder Tramlink Nottingham comprises:

VINCI PLC (VINCI Investments Limited, VINCI Construction UK Limited)	A world leader in concessions and contracting with a regional presence throughout the UK where it incorporates Norwest Holst and Taylor Woodrow. Recent UK contracts include the upgrade of Docklands Light Railway and the redevelopment of King's Cross station. The company is also bidding for Crossrail work. More locally, school building contracts in Sheffield and Derby, student accommodation at Nottingham Trent University Clifton campus and the new Nottingham Station car park.
Alstom (Alstom UK Holdings Ltd, Alstom Transport)	With a focus on sustainable transport, Alstom Transport develops and offers the most complete range of systems, equipment and services on the international rail market. Over 1,500 Alstom Citidas trams have been delivered or ordered by 36 cities, including Dublin, Paris, Barcelona and Melbourne.
Keolis (Keolis (UK) Limited)	The UK arm of the world's largest private tram operating company, Keolis is responsible for extensive range of multi-modal public transport systems handling some 2.2 billion passenger journeys per year.
Wellglade (Wellglade Limited) Trent Barton	Wellglade own Trent Barton which is the UK's largest independent bus operator. The award winning company operates a network of routes in Notts, Derbys and Leics.
Meridiam (Meridiam Infrastructure Finance S.a.r.l.)	Meridiam Infrastructure Managers is a leading international fund manager managing funds focused exclusively on investing in equity and junior capital in Public Private Partnership assets within OECD member countries with a strategic focus on Greenfield assets in Europe and North America. Meridiam currently has €1.2bn under management and a team of 30 investment professionals spread across Paris, New York and Toronto.
Infravia (OFI Infravia)	A private investment fund with core business in long term investments in infrastructure and renewable energy.

For further detail go to: www.tramlinknottingham.co.uk

Statement by legal advisors regarding the procurement

NET Phase Two Procurement

- 1 Procurement approach
 - 1.1 The procurement strategy adopted by the City Council in respect of NET Phase Two has been fully developed in conjunction with its advisors and has been approved by the Department for Transport. Prior to commencing the procurement process, the City Council obtained advice from leading counsel Michael Bowsher QC who confirmed that, for the purposes of the Public Contracts Regulations 2006 ('Regulations') and EU procurement law, the project is properly classified as a works concession. As such, the full regime of the Regulations does not apply to this procurement and the City Council has elected to run the procurement under a form of the negotiated procedure, as permitted by the Regulations.
 - 1.2 At all key stages during the procurement process (including the development of the procurement documentation, the evaluation of tenders and the process of de-briefing the unsuccessful tenderer), the City Council has taken due regard of the requirements of procurement law and the principles of fairness, transparency and non discrimination under the EU treaty.
 - 1.3 Whilst it is never possible to guarantee that a procurement law challenge will not arise, the City Council has taken all steps that it can reasonably be expected to have taken to minimise the likelihood of a successful challenge and to ensure compliance with the legal requirements.

- 2 Standard form contractual documentation
 - 2.1 Unlike many other PFI sectors, there is no standard guidance specific to the drafting of contractual documentation for light rail PFI projects. Accordingly, the City Council agreed with the Department for Transport and Infrastructure UK that the NET Phase Two concession agreement should be based on "HM Treasury's Standardisation of PFI Contract Terms version 4" ('SOPC 4'), amended and supplemented where appropriate to deal with lessons learnt from other light rail procurements, including the City Council's experience of delivering NET Line One.
 - 2.2 As part of its tender submission, Tramlink proposed certain amendments to the draft concession agreement issued by the City Council. Following negotiation and consideration, the City Council has accepted such amendments in principle where it considers that they are reasonable, provide the best possible solution in the circumstances or otherwise provide better value for money when compared with the original drafting.
 - 2.3 Some of the proposed amendments constitute derogations from the required drafting of SOPC 4 and all but a small handful of these derogations have already been approved by Infrastructure UK. As such, the process of obtaining derogations approval is more developed at this stage than may ordinarily be expected in a procurement conducted under the negotiated procedure.

2.4 The City Council is working with Tramlink to finalise the contractual terms and to obtain Infrastructure UK's approval to the final derogations and it is not expected that this will delay financial close.

3 Legal opinions

3.1 The City Council has been granted the power to enter into the concession agreement pursuant to the Nottingham Express Transit System Order 2009.

3.2 As Keolis S.A is a foreign legal entity, to the extent it is deemed appropriate and offers value for money, the City Council will request a legal opinion from Tramlink's relevant advisors in respect of the capacity of Keolis S.A to enter into the parent company guarantee described in Appendix 1e, the due execution by it of such documentation and the enforceability against it of the relevant obligations.

DLA Piper

Legal advisors to the City Council

Scope of Works and Services

NET Phase Two comprises two additional tram routes to the south west and west of Nottingham city centre, linking directly into NET Line One at Nottingham railway station, and so allowing through running passenger services over an expanded Network.

The 9.8 km Chilwell route will serve the Meadows, the ng2 business park, the Queen's Medical Centre, The University of Nottingham, Highfields science park and sports facilities, Beeston Town Centre and Chilwell before terminating at a 1300(approx) space Park and Ride site at Toton Lane adjacent to the A52.

The 7.6 km Clifton route will serve the Meadows, Wilford and Clifton before terminating at a 1000 (approx) space Park and Ride site adjacent to the A453.

The following summarises the works required by the Concession Specification, include:

- Demolition and site clearance works.
- Construction and installation of double tramway track. The trackwork will incorporate a number of switches, crossings and turnback facilities to ensure the robust and dependable operation of the services.
- Provision of new and altered structures necessary for the implementation of the two routes, including bridges, retaining walls and embankments.
- Construction of all associated highway works along the routes to enable the safe integration of NET with other highway vehicles, cyclists and pedestrians, which includes highway reconstruction, paving, drainage, lighting, traffic signals, signage and road markings.
- Construction of all ducting and drainage systems and installation of communication and control equipment necessary for the operation of the system.
- Diversion or protection of statutory utility and private apparatus necessary to accommodate the tramway and future access.
- Accommodation works to fit the tramway within the local environment including that required through agreements, commitments and obligations provided to third parties by the Authority and which are expressly transferred to the Concessionaire.
- Construction and installation of noise mitigation measures, such as barriers or special trackform, at various locations along the routes.
- All ground works to support the tramway, including removal or remediation of contaminated land associated with the works.
- Environmental mitigation works, including the modification of existing watercourses, flood alleviation measures, protection of habitats during the works, replacement tree planting and other landscaping measures.
- Construction of tramstops at 28 locations and installation of all associated equipment, including ticket machines, shelters, seating, lighting, signage, cctv, passenger information displays, emergency help points and passenger address.
- Construction and installation of sub stations and overhead line electrification, including the interface of the overhead line equipment with street lighting and the use of support structures such as buildings

in order to minimise clutter and improve the aesthetic design of the network within the local environment.

- Construction of major Park and Ride sites at Toton Lane and Clifton, including highway works to link the car parks to the A52 and A453 respectively.
- The supply of sufficient trams to operate the required services on the combined Network (22 new, with 15 existing trams).
- Extension to the depot and tram stabling area to accommodate the increased fleet.
- Consequential changes to the Line One infrastructure.

The Minimum operating and maintenance requirements defined in the Concession Specification include:

- Continued operation of the existing passenger services on NET Line One prior to completion of the extensions.
- Operation of passenger services every day except Christmas Day, approximately between the hours of 6.00 am to midnight Monday to Saturday and 8.00 am to 11.00 pm on Sunday.
- Provision of a minimum peak service of 8 trams per hour in each direction between Nottingham Station and Hucknall, Chilwell and Clifton respectively and 6 trams per hour in each direction between Nottingham Station and Phoenix Park.
- Whole life maintenance of all Network assets over the concession period.

In addition to providing the minimum scope of supply outlined above, Tramlink proposals also include the following:

- early enhancement of the NET Line One passenger services to 8 trams per hour between Nottingham Station and both Phoenix Park and Hucknall providing early relief of existing peak period crowding issues;
- an enhanced service between Phoenix Park and Nottingham Station of 8 trams per hour per direction;
- incorporation of interactive journey planning information into the ticket machines at all 50 tramstops;
- provision of real-time public transport information displays for buses, trams and (where appropriate) trains at key sites;
- introduction of customer information points alongside the existing emergency help points at all tramstops providing access to information on services;
- passenger information and interchange screens on all new trams providing location specific interchange information in addition to the usual next stop displays and announcements;
- introduction of Ambassadors to fulfil customer relations and information role;
- a new car park security team with a dedicated control room to secure the seven NET Park and Ride Sites; and
- Improved bus interchange and passenger amenities at Toton Lane Park and Ride sites and Clifton Park and Ride site;
- possible improved interchange at Beeston Town Centre (subject to highway and planning consents).

Transferred Obligations

The main areas of obligation and risk transfer to the Concessionaire are summarised below. In accordance with standard PFI principles, the Concessionaire is afforded relief from its obligations in certain circumstances beyond its control (e.g. Relief Events, Force Majeure Events and Compensation Events, as defined in the Concession Agreement):

Area	Risks Transferred to Concessionaire
NET Line One Operation & Maintenance	<p>Transfer from Arrow Light Rail to Tramlink at Financial Close or at an agreed date thereafter. TUPE of existing operating staff where applicable.</p> <p>Performance of NET Line One operations (payment mechanism operating at 35% of full service amount, subject to performance, during NET Phase Two works)</p> <p>Roll-out of enhanced services on NET Line One and subsequently through-services on the Network.</p> <p>Acceptance of the condition of the existing assets and trams subject to prior rectification of issues specified in the NET Line One termination survey.</p>
Design of NET Phase Two	<p>Design Risk.</p> <p>Obligations within Order and Third Party Agreements (save for certain obligations retained by the Authority – see Appendix 2b below) transferred to the Concessionaire.</p>
Construction, supply, interface and commissioning	<p>The Concessionaire has responsibility for Construction, supply, interface and commissioning, including obtaining all necessary consents (i.e. planning, highway, safety and environmental), to the extent not already obtained by the Authority, and programme risk.</p>
Integration of new works with NET Line One	<p>Integration of new works (including works at the depot and at Station Street) with NET Line One operations.</p> <p>The Concessionaire is obligated to minimise disruption to the NET Line One Services during such works.</p>
Patronage & Fares	<p>The Concessionaire has patronage responsibility and risk and is able to set fares and retains all incomes (except if any exceptional operating revenue is generated, of which 30% is payable to the Authority).</p> <p>Authority responsible for reimbursing the Concessionaire for Concessionary Fares in respect of the Authority's concessionary scheme. The County Council has agreed to permit the Concessionaire to participate in its scheme for a fixed period of time, after which</p>

	arrangements will be reviewed
Operation and Maintenance of completed Network	<p>The Concessionaire is responsible for introducing an integrated operation, delivering a service that meets the Concession Specification, along with appropriate maintenance of the network, for the life of the concession.</p> <p>Availability payments by the Authority are based on operating performance measures (reliability, punctuality, cleanliness, etc) and are independent of patronage.</p>
Network Extensions	<p>The agreement contains a mechanism whereby the Concessionaire and Authority will work together to ascertain and (subject to approval) potentially develop future extensions to the network.</p>
Handback Standard	<p>The Concessionaire is obliged to ensure that the network is handed back to the Authority on expiry or termination in accordance with the specified Handback Standard.</p>

Legal Documents

The diagram attached to this Appendix provides an overview of the legal structure of NET Phase Two and demonstrates how the majority of the main legal documents that will be entered into for the purposes of NET Phase Two fit together.

Set out below is a summary of the main legal documentation required for the purposes of NET Phase Two:

1. Concession Agreement

- 1.1 There will be one main project agreement, entitled the "Concession Agreement" that will be signed by the City Council and Tramlink Nottingham ("**Concessionaire**") on financial close of the project. The term of the Concession Agreement is around 22.5 years (unless terminated earlier). The Concession Agreement will cover all aspects of NET Phase Two, including the design, build, finance, operation and maintenance.
- 1.2 The Concession Agreement will cover the operation and maintenance of NET Line One from an agreed date (which is currently envisaged to be the day after signature of the Concession Agreement).
- 1.3 The Concession Agreement contains a number of provisions dealing with scenarios such as termination and ensures an appropriate pass down of risk to the Concessionaire. Further detail of the key obligations which are retained by the City Council can be found in Appendix 2b to this report.
- 1.4 The Concession Agreement contains other important documents which shall be inserted as schedules. These include the Concession Specification, the Payment Mechanism and the Concessionaire's Proposals.

1.5 Concession Specification

The Concession Specification is the output specification for the works and services to be undertaken by the Concessionaire. The specification sets out the Authority's strategic objectives for the scheme and is supported by:

- general management requirements applicable to the works and the services for quality, health & safety, environmental, sustainability, and marketing and communications, progress and reporting;
- implementation requirements for the NET Phase Two works (i.e. standards, design, construction, testing and commissioning and completion);
- operational requirements for both the services, including the minimum passenger service, provision of passenger and journey planning information, network security, ticketing, customer satisfaction, and the handling of complaints and enquiries;
- maintenance requirements applicable to the life-cycle of the network, including asset management, cleaning, and maintenance planning;
- technical requirements in the form of minimum functional standards for individual elements of the network, such as tramstops, trams, ride quality and noise;

- the Design Guide.

The Design Guide, which has been endorsed by the three local planning authorities, sets out the Authority's design quality objectives to promote: the NET identity; convenience and ease of use; accessibility; interchange; safety & security; passenger comfort; integration and sustainability. The guide sets out against these objectives, the Authority's minimum design quality standards for tramstops, park and rides sites, structures, buildings, the tramway environment, landscaping and trams, together with guidelines on use of the NET brand.

1.6 Payment Mechanism.

The Payment Mechanism is one of the key schedules to the Concession Agreement. It is closely aligned to the Concession Specification which sets out the services that the Authority requires the Concessionaire to provide. The Payment Mechanism then sets out how the Concessionaire will be paid by the Authority for delivering those services. The Payment Mechanism establishes a number of service performance criteria. Where the Concessionaire performs to these minimum service levels it will be paid the unitary charge in full. Where performance falls below these service levels a deduction will be made from the unitary charge proportionate to the service failures.

1.7 Concessionaire's Proposals

The Concessionaire's Proposals are a set of proposals submitted by the Concessionaire during tendering, demonstrating the solutions the Concessionaire proposes to develop during the design and/or implement as part of the works or services. Whilst the Concessionaire is able to vary its proposals, it may only do so in consultation with the Authority, and provided that certain criteria are met, such as not reducing the quality or standard of the works or services offered and maintaining compliance with the Concession Specification.

2. Ancillary Documents

2.1 There will be a number of ancillary documents to be entered into between the City Council and members of the successful consortium. The main ancillary documents to which the City Council is a party are as follows:

- § the Funders' Direct Agreement;
- § the Independent Certifier's Collateral Agreement;
- § the Design and Construction Sub-Contractor's Collateral Agreement;
- § the Operating Sub-Contractor's Collateral Agreement;
- § Parent Company Guarantees; and
- § Third Party Agreements.

2.2 Funders' Direct Agreement

2.2.1 This document will be entered into by the City Council, the Concessionaire and certain of the funders who provided the senior debt required for the project. The purpose of it is to govern the relationship between the City Council and the funders, particularly in circumstances where the Concession Agreement has terminated or is threatened with termination. The Funders' Direct Agreement is a very standard document which is similar on most PFIs across different sectors.

2.2.2 The key feature of the Funders' Direct Agreement is to entitle the funders to step-in to (i.e. take control of the performance of) the Concession Agreement in place of the Concessionaire in two scenarios: firstly, where the City Council has notified the funders of its intention to terminate the Concession Agreement; and secondly where the Concessionaire has defaulted under the contracts which provide the debt for the project.

2.2.3 If the funders elect to exercise their step-in right, they will then seek to rectify the failures that have caused the proposed termination or event of default. They may do this by remedying underlying problems and then stepping-out, or by arranging for the Concession Agreement to be novated to a new concessionaire. Any such new concessionaire must have appropriate expertise and resources, and must not be what is defined as "Unsuitable Third Party".

2.3 Independent Certifier's Collateral Agreement

2.3.1 This document will be entered into by the City Council, the Concessionaire and the Independent Certifier. The Concessionaire will appoint the Independent Certifier to perform various services, including certifying that the new system is complete, pursuant to a separate contract.

2.3.2 By virtue of the Collateral Agreement, the Independent Certifier undertakes and warrants that it has performed the services using professional care and skill and the City Council can rely on this warranty, meaning that (subject to an agreed cap on liability) it will have protection and recourse against the Independent Certifier if it transpires that the Independent Certifier has not fulfilled its obligations.

2.4 Design and Construction Sub-Contractor's Collateral Agreement

2.4.1 This document will be entered into by the Design and Construction Sub-Contractor (who will be an unincorporated joint venture created by Vinci Construction UK Limited and Alstom Transport), the Concessionaire and the City Council. The main purpose of this agreement is to provide the City Council with a warranty that it can rely on in respect of the standard to which the Design and Construction Sub-Contractor has carried out its obligations under the Design and Construction Sub-Contract. In addition, the document will suspend the Design and Construction Sub-Contractor's rights to terminate the Design and Construction Sub-Contract until the City Council has been given the opportunity to step-in to the Concessionaire's role under such sub-contract and rectify any outstanding breaches.

2.4.2 The City Council will be able to rely on this collateral agreement for a period of 12 years after completion of the works and if after termination of the Concession Agreement it is discovered that the Design and Construction Sub-Contractor has not performed its obligations to the required standard, the City Council will (subject to any agreed cap on liability) be protected and able to seek recourse against the Design and Construction Sub-Contractor.

2.5 Operating Sub-Contractor's Collateral Agreement

2.5.1 This document will be entered into by the Operating Sub-Contractor (who will be an incorporated joint venture created by Keolis (UK) Limited and Wellglade Limited), the Concessionaire and the City Council. It is

very similar in form and content to the Design and Construction Sub-Contractor's Collateral Agreement described above. The main purpose of this agreement is to provide the City Council with a warranty that it can rely on in respect of the standard to which the Operating Sub-Contractor has carried out its obligations under the Operating Sub-Contract and it also provides the City Council with step-in rights akin to those described above in respect of the Design and Construction Sub-Contractor's Collateral Agreement.

- 2.5.2 The City Council will be able to rely on this collateral agreement for a period of 12 years (after the expiry or termination of the Concession Agreement) and if it is discovered that the Operating Sub-Contractor has not exercised its obligations to the required standard, the City Council will (subject to any agreed cap on liability) be protected and able to seek recourse against the Operating Sub-Contractor.

2.6 Parent Company Guarantees

- 2.6.1 The warranties, obligations and liabilities of the Design and Construction Sub-Contractor and the Operating Sub-Contractor to the City Council under the Collateral Agreements referred to in paragraphs 2.4 and 2.5 above will be guaranteed to the City Council by their respective parent companies:

- Vinci plc and Alstom UK Holdings Ltd, in the case of the Design and Construction Sub-Contractor; and
- Keolis S.A. and Wellglade Limited, in the case of the Operating Sub-Contractor.

- 2.6.2 The liabilities of these parent companies under the guarantees will be no greater than those of the Design and Construction Sub-Contractor and Operating and Maintenance Sub-Contractor (respectively) under the Collateral Agreements and the limits of liability under their respective sub-contracts will apply.

2.7 Third Party Agreements

- 2.7.1 There are numerous agreements that the City Council has entered into with different third parties. These agreements came about as a consequence of objections received to the proposals for the construction of both NET Line One and NET Phase Two and such objections were received by third parties who would be affected by the construction of NET Line One and NET Phase Two.

- 2.7.2 The Third Party Agreements were entered into to address the objections of the relevant third party by agreeing to perform certain obligations in exchange for the withdrawal of the objection. Examples of the typical obligations agreed with third parties would be agreeing to minimise noise levels, constructing a different temporary access to property/land during the construction period, or use reasonable endeavours to agree the design of a boundary fence to replace an existing boundary fence.

- 2.7.3 The majority of the obligations agreed with third parties in the Third Party Agreements will be passed to the Concessionaire. In limited cases, the City Council has determined that it is more appropriate and offers better value for money for it to retain certain of these obligations and further detail in this regard is provided at Appendix 2b to this report.

3. Powers

- 3.1 NET Line One was constructed using powers under the Greater Nottingham Light Rapid Transit Act 1994. The powers to construct NET Phase Two and operate the integrated Network are contained in the Nottingham Express Transit System Order 2009, which repeals the majority of the 1994 Act. As is common on PFIs, a Local Government (Contracts) Act 1997 certificate will be given in respect of the powers under which the City Council enters into the Concession Agreement and the Funders' Direct Agreement.

4. Sub-Contracts and Interface Agreement

- 4.1 There will be two sub-contracts: one in respect of the Design and Construction Sub-Contract and one in respect of the Operating Sub-Contract. The Design and Construction Sub-Contract will cover the design, construction, testing, completion and bringing into operation of NET Phase Two. The Operating Sub-Contract will cover the operation and maintenance of both NET Line One and NET Phase Two (in the case of NET Phase Two this will commence once it has been constructed).
- 4.2 The Concessionaire will enter into the Design and Construction Sub-Contract with the Design and Construction Sub-Contractor which shall be an unincorporated joint venture created by Vinci Construction UK Limited and Alstom Transport. The Concessionaire will enter into the Operating Sub-Contract with the Operating Sub-Contractor which shall be an incorporated joint venture created by Keolis (UK) Limited and Wellglade Limited.
- 4.3 In respect of the Design and Construction Sub-Contract, we would expect to see a full passdown of the Concession Agreement so that the obligations, risks and rights borne by the Concessionaire under the Concession Agreement relating to the design, construction and completion of the Works and the other matters relevant to the Works and/or construction phase to be undertaken by the Concessionaire are passed down in full to the Design and Construction Sub-Contractor.
- 4.4 In respect of the Operating Sub-Contract, we would expect to see a full passdown of the Concession Agreement so that the obligations, risks and rights borne by the Concessionaire under the Concession Agreement relating to the provision of the Services are passed down in full to the Operating Sub-Contractor.
- 4.5 We understand from Tramlink Nottingham that there has already been detailed negotiation of the Sub-Contracts within the consortium and that the documentation is well developed. We expect to have received full drafts of the Sub-Contracts in early July, at which time we will undertake full due diligence to ensure that the terms of the Sub-Contracts reflect what was included in the heads of terms submitted during the procurement process and, in particular we would review to check for the following:
- § how risk is flowed down to check whether there are any risks which will remain at the Concessionaire level e.g. insurance;
 - § how contractual liability is dealt with e.g. caps on the sub-contractors' liabilities and areas where the sub-contractors' liability are not limited;
 - § the triggers for termination;
 - § levels of payment on termination and caps on loss of profit in the event the City Council terminated the Concessionaire; and
 - § whether the levels of any liquidated damages are appropriate.

4.6 The Concessionaire, the Design and Construction Sub-Contractor and the Operating Sub-Contractor will also enter into an interface agreement governing how the parties will manage key Project interfaces between the two sub-contractors and so as to create a direct contractual relationship between them.

5. Equity Structure including the Shareholders Agreement

5.1 We will carry out due diligence on the equity documentation once it has been more fully developed. Examples of typical documents which we would review are: the shareholders' agreement, the subscription agreement and the loan notes (which are the documents which evidence the money subscribing for the shares in the Concessionaire). We would review these documents to check that the identities of the shareholders of the Concessionaire and the amounts are the same as we expected as well as checking that nothing in the documents cause problems under the Concession Agreement.

6. Finance Documents

6.1 There will be a number of finance documents required in respect of the project including:

6.1.1 the Senior Credit Agreement (which is the contract containing the bespoke terms pursuant to which the funders (excluding the European Investment Bank) lend to the Concessionaire in order for the Concessionaire to meet its payment obligations under the Design and Construction Sub-Contract);

6.1.2 the EIB Finance Document (which sets out the bespoke terms on which EIB will lend to the Concessionaire);

6.1.3 the Common Terms Agreement (which sets out the common terms which apply to both the Senior Credit Agreement and the EIB Finance Document, for example representations, covenants and insurance requirements);

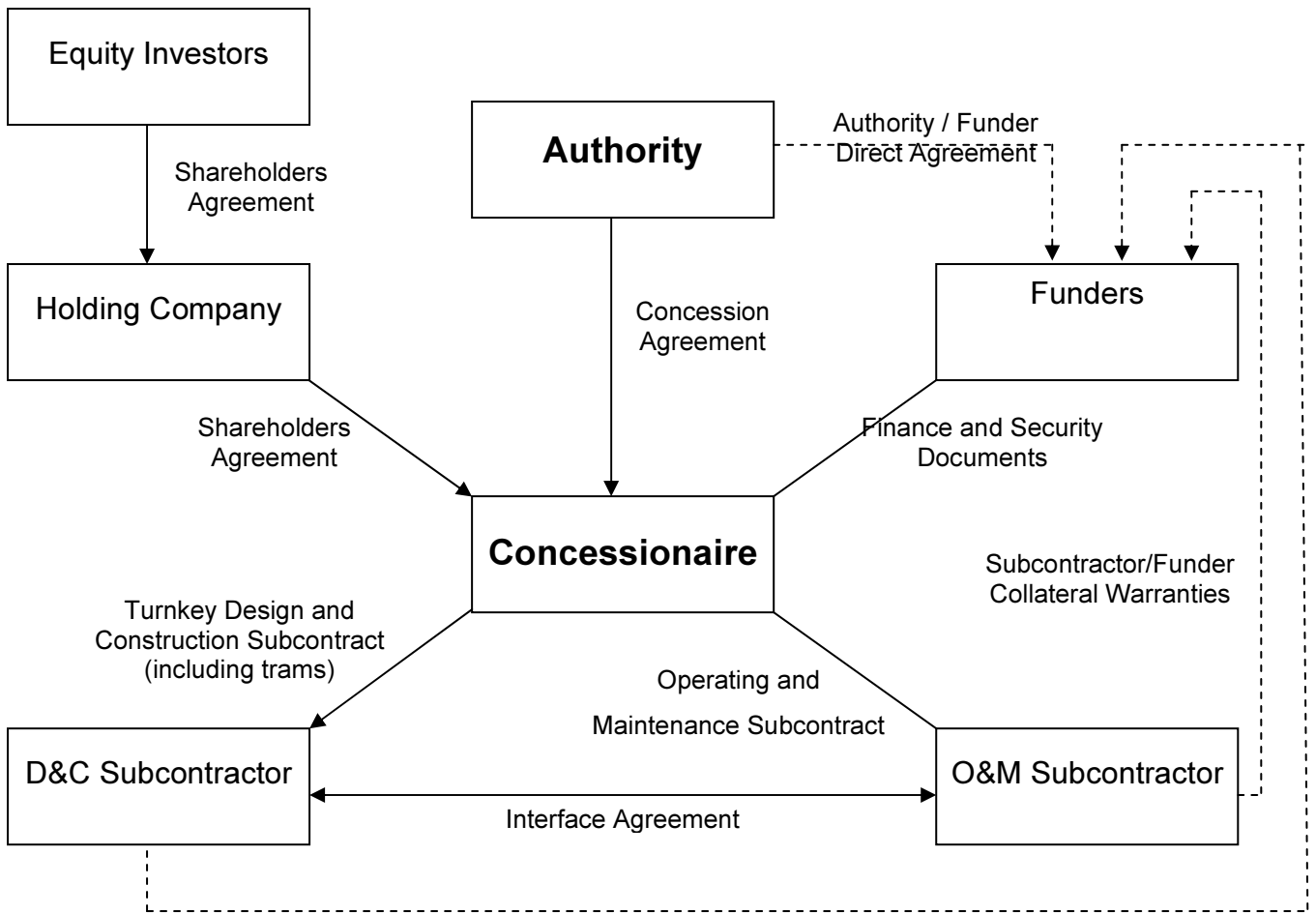
6.1.4 the Security Trust Deed (the contract creates security in favour of the security trustee who in turns holds this security on trust for the funders);

6.1.5 Intercreditor Deed (this contract creates the priority arrangements between the funders and the shareholders of the Concessionaire who provide what is called "junior debt");

6.1.6 the Debentures (this creates the charges over the Concessionaire's assets and an assignment of the Concessionaire's rights to the funders); and

6.1.7 Sub-Contractor/Funder Collateral Warranties (these will be provided by the Design and Construction Sub-Contractor and the Operating Sub-Contractor and will give the funders the right to step into the role of the Concessionaire under the Sub-Contracts in the event of non performance or default by the Concessionaire).

NET PHASE TWO CONCESSION STRUCTURE DIAGRAM



Local Employment and Training

NET Phase Two offers significant economic development opportunities for the City including opportunities for local businesses and for local residents to secure jobs and training.

Procurement and development of Employment, Training and Supply chain Opportunities (ETSO) approach

The tender documents for NET Phase Two were issued in November 2009 and required bidders to set out how they will ensure that employment and training opportunities will be made available to local people, and how they intend to ensure the delivery of supply chain opportunities to businesses in the local area. The requirements were based on those used for the Building Schools for the Future procurement, which were the most comparable available at the time.

Since the tender document was issued, the City Council has significantly developed its approach to the employment, training and supply chain agenda, with a commitment to an Employer Hub that will maximise 'targeted recruitment and training requirements' from major developments in the City. Future requirements will be captured in a Procurement Policy for Employment, Training and Supply chain Opportunities (ETSO) that the Council is seeking to adopt (subject to legal assessment) as mandatory for large new Council procurements.

Many elements of the ETSO policy were included in the tender and bidder submissions. Some areas were less developed. The Project Team is working with Tramlink, the NET Phase Two preferred bidder, to fully align with ETSO policy.

Local employment and training

Tramlink is fully engaged in the process and they recognise that securing local employment and training is one of the Authority's highest priorities, for the Council as a whole and for NET Phase Two. There has been extensive dialogue with the Authority's Employment and Skills team and Tramlink have indicated they will work with the target levels and methodologies within ETSO, and have already proposed higher levels of training opportunities for the operational and maintenance phase than were included in initial tenders.

It is expected that Tramlink will give priority to recruiting employees and providing training opportunities to people within the Nottingham City Council area. The aim is to target 'new entrant trainees' within the Nottingham City Council area. New entrants include people leaving school or higher education, or who have been unemployed for six months. Approximately 200 training opportunities could be created during the construction phase and Tramlink have indicated a target of over 100 apprenticeships to be created during the operational and maintenance phase of the contract.

Tramlink will utilise the Nottingham Employer Hub, with each vacancy and new entrant trainee opportunity notified to the City Council. They will provide detailed monitoring information against specified targets on staffing throughout the contract to enable monitoring of performance to take place.

Tramlink have been discussing their training needs with local colleges, and with the National Apprenticeships Service (NAS) who provide funding to local providers. The construction and operation of NET Phase Two will require a wide variety of skills and trades and a number of local colleges have come together to form a co-operative to ensure that training requirements can be met locally.

Although much of the appropriate training associated with the NET Phase Two contract can be secured through the local colleges, Tramlink are also investigating training opportunities through other sources, including the Government Work Programme, launched in June 2011, particularly for semi skilled and operative task, which require a shorter period of training to become productive, and will be more appropriate for some of the NET works packages.

Supply chains

Tramlink are strongly committed to utilising local suppliers to deliver the project and have committed to sourcing as many services and materials as possible from local sources during construction. Tramlink have provided a comprehensive list of services to be targeted at local suppliers, and have provided a targeted expenditure of over £40million per annum for 3 years in the local market during construction. Tramlink expect at least 30% of the total value of the project operations contracts to be awarded locally. Tramlink have provided a portal on their website encouraging companies to register their interest, and have written to each company explaining their approach, and what standards they would expect from potential suppliers. Tramlink have also indicated they will commission specialist support with local experience to identify suitable local companies.

The Authority has also been pro-active in talking to the local market about forthcoming opportunities, including through the Nottinghamshire Construction Forum and Chamber of Commerce, and also held an event in 2010 giving details of the types of work the scheme will generate. Details of the 100 plus local companies who attended the event have been passed to Tramlink.

Tramlink are currently developing an action plan which will detail how they will engage locally, and this will include 'meet the buyer' events, participation in job fair events promoted by the Authority, and media releases. This activity will grow around financial close when Tramlink will start letting sub-contracts, and they are keen for this to be progressed jointly with the Authority. A working protocol between the Authority and Tramlink is also being established. This should fully co-ordinate with the City Council Employer Hub proposal.

Economic Impact

NET Phase Two will bring wide spread benefits for the local economy, providing valuable infrastructure, access to workplaces and will act as a catalyst to further inward investment.

The two new tram lines will provide access to approximately 1270 workplaces that 55,000 employees commute to, directly serving popular destinations like the NG2 business park, the QMC and University of Nottingham. The completed system will serve 20 of the 30 largest employers in Greater Nottingham, who will be within 800 metres of a tram stop.

There is evidence that NET Phase Two is already influencing future economic growth patterns, with a number of development or proposals along the corridors. Analysis undertaken by the Centre for Economics and Business Research has estimated that NET Phase Two will support the creation of up to 10,000 new jobs in Greater Nottingham by 2021, and concluded that 'few other single projects or interventions would have as large an impact on long term employment growth in Nottingham and surrounding areas.'

Ticketing

1. The City Council's Ticketing Strategy aims to:
 - T1. Promote inter-ticketing between operators and modes
 - T2. Promote discounted travel for key sectors e.g. elderly, disabled and scholars
 - T3. Integrate ticketing with information and the travel attractor
 - T4. Promote pre-paid ticketing and off bus ticketing information to speed boarding times

2. The Tramlink submission sets out the following aspects which support these strategies:
 - Subject to being no worse off by participation, Tramlink have agreed to:
 - participate in any multi-modal ticketing scheme supported by the City Council (T1)
 - allow the City Council to amend any existing multi-modal ticketing scheme or introduce any new scheme (T1)
 - participate in any concessionary fares scheme supported by the City Council. (T2)

 - The ticketing systems used will have the following features:
 - capable of accepting multi-modal and multi-operators tickets (T1,T2)
 - support tag on/tag off charging (T2,T4)
 - on platform ticket vending machines (T4)
 - read and write to smartcards in accordance to the ITSO standard (T1,T2,T4)
 - flexibility to swiftly update in accordance with multi-operator ticketing scheme and ITSO standard updates. (T1,T2,T4)
 - a commitment to prepaid and bulk ticketing agreements (T4)

 - The following will promote ticketing with the travel attractor (T3):
 - integrating interactive journey planning and ticketing information into all Tramstop TVM's covering all public transport;
 - providing travel advice at its proposed city-centre customer service centre covering all public transport;
 - installing 10-line multi-modal displays at designated interchange tramstops, which can include ticketing information
 - installing flat panel information screens on all new trams (and if successful possibly on the existing trams) showing public transport interchange information for the approaching stops.

3. The City Council's smartcard plans support this strategy by seeking to put in place back-office and card issuing arrangements together with a network of retail outlets to encourage simplified integrated ticketing, spreading costs and allowing flexible ticketing developments by all

operators. It also supports a multi-functional citizens card to access facilities across Nottingham, linking ticketing with the travel attractor.

4. The City Council's plan is that by April 2013 there will be a single stored travel rights product ('e' purse) which can be used by all operators in Nottingham. Customers would have one single transport account, from which any single operator or multi-operator ticket could be charged. Embedded 'capping rules' would be in place to ensure that account holders are charged the cheapest fare for the journeys completed on a given day or over a given calendar week. The current range of 'Kangaroo' multi-operator ticketing products would be broadened to include season variants.
5. In order for the above plan to be attractive and sustainable it is important that operators do not promote single operator or bi-lateral 'e' purse arrangements on separate individual transport accounts. This will reduce simplicity, discourage integration and competition in both the commercial and contracted markets. It will also make it difficult to develop emerging new platforms – such as on mobile phones and bankers (EMV) cards – in an integrated cost effective regional manner. Furthermore, such bi-lateral arrangements are likely to fall foul of competition legislation.
6. Tramlink's current progress with smartcard and their willingness to develop it to ITSO standard for use on the tram is a positive step towards the wider City aspirations.

Land Acquisition Strategy.

1. Introduction

- 1.1 Under the terms of the proposed Concession Agreement for NET Phase Two, it is the responsibility of Nottingham City Council ('The Authority') to acquire the necessary land and rights for the scheme within a timeframe set by the Preferred Bidder/Concessionaire.
- 1.2 This paper explains, in outline, the proposed approach for taking possession and acquiring the land and rights for NET Phase Two.

2. Categories of land

- 2.1 There are various categories of land to be acquired for NET Phase Two, with the main categories being land which is:
 - Defined as a street, and is either a private road or adopted highway;
 - In the ownership of third parties required either permanently (e.g. for the tram alignment, park and ride sites) or temporarily (e.g. construction site, accommodation works) for the scheme;
 - In the ownership of the Authority required either temporarily or permanently for the scheme.
 - Statutory undertakers' land
- 2.2 These categories are considered further below.

3. Street

- 3.1 Where the trams run along a street, irrespective of whether that is a private street or one adopted by the local highway authority, no land acquisition is required. In these circumstances, the NET System Order 2009 grants a right to use and occupy the street for the purposes set out in the Order.

4. Third party land

- 4.1 Third party land will generally be acquired through the Compulsory Purchase process, unless a legal agreement or protective provision within the NET Order 2009 requires land to be acquired by agreement.
- 4.2 The adopted approach is first to take temporary possession of the land required from third parties by using the powers within article 36 of the NET System Order 2009. This clause allows temporary possession to be taken for all land within the Order limits for a period up to two years after the works specified in the Order are complete, and requires a minimum notice period of 14 days. Once the land has been entered, the works can be constructed largely using the powers under article 5 of the Order.

- 4.3 For land that is required permanently, formal acquisition procedures will follow after the works are complete. There are two recognised approaches to permanently acquiring land following a Compulsory Purchase Order; to issue a General Vesting Declaration (GVD) or a Notice to Treat/Enter (NtT/NtE). Based on experience on Line One and elsewhere, it is considered that the GVD approach, although taking longer to commence (approximately three months), is a more advantageous approach, primarily because on the vesting date, the Authority will acquire title from all who had an interest in the land and so the process is quickly completed; The NtT/NtE approach, which can be commenced in 14 days, would not conclude and give the Authority title until compensation negotiations were complete with each landowner. The GVD approach will remove all interests in the land (e.g. covenants, easements), and significantly reduce the time consuming and expensive compensation negotiations, with the onus on progressing the acquisition negotiation placed on the claimant rather than the Authority.
- 4.4 There are three main advantages of the adopted approach to initially take temporary possession (through article 36 of the Order), and then to acquire the land using the GVD approach at a later date:
- Formal acquisition procedures will not commence until after detailed design and construction are complete, so that the precise details of the land requirements are known. Early acquisition would inevitably result in a greater amount of land being acquired than was needed, resulting in additional compensation payments and maintenance liabilities. In these circumstances, the additional land would most likely be passed to the Concessionaire to maintain.
 - If only part of a land plot is required, the third party with a land interest can serve a counter notice on the Authority to acquire the whole plot. Ordinarily, in this circumstance, the GVD approach is suspended until the issue is resolved. However, by taking temporary possession first, the risk of delay caused by a counter notice is removed, so that the Authority will be able to make land available to the Concessionaire on the dates they have supplied. Any negotiations about land values or the extent of acquisition will therefore not delay construction.
 - The shorter notice period for taking possession (14 days under art. 36 of the Order rather than 3 months for a GVD) will allow the Authority to react more quickly to any changes in the work programme during the construction phase.
- 4.5 Where it is anticipated that a counter notice will not be served (e.g. public bodies) or where it is known that a full plot is required permanently, and sufficient time is available to acquire the plot in advance of it being required, a GVD may be served in advance of taking possession (instead of utilising s36 of the Order). This option will be considered on a case by case basis.

5. Use of approach on other schemes

- 5.1 This approach has been used on other rail and light rail schemes, since it was first introduced on the Docklands Light Railway in 2002.

- 5.2 The temporary possession powers have also been included in the recent legal Orders authorising Merseytram, three extensions to the Midland Metro, and two further upgrades to the national rail network (Nuneaton North chord and Hitchin Cambridge junction). None of these has been implemented as yet.

6. City Council land

- 6.1 Although no notices will be served, possession of City Council owned land will be taken on the dates specified by the Preferred Bidder/Concessionaire.
- 6.2 For open space land owned by the Authority which is to be appropriated for other uses, there is a requirement (either under section 122 (2A) of the Local Government Act 1972, or section 232(4) of the Town and Country Planning Act 1990), to advertise its intention to appropriate the land in a local newspaper for 2 consecutive weeks and for the Council to consider any representations made. There are approximately 20 plots of land in this category and this procedure has commenced.
- 6.3 For other land owned by the Authority, no formal process is proposed in advance of taking possession, but internal consultation within the City Council will ensure that those in possession of the land will be aware of the acquisition timeframes. Once the works are complete and the extent of the landtake is known, it is proposed to pursue formal appropriation procedures to formally transfer the land to the project. This is an internal procedure for all land with the exception of open space.

7. Statutory undertakers' land

- 7.1 Schedule 13 and 14 to the Order prevents acquisition of any property owned by the British Network Rail without its consent (which is not to be reasonably withheld). Where the tram runs on Network Rail owned land, consensual agreements will need to be concluded. The Authority is currently in the process of formalising a property agreement with Network Rail which, amongst other matters, provides for the grant by Network Rail of a 200 year lease of the land associated with the bridges over Nottingham Station and a freehold easement in respect of the bridge over Lenton Lane.

8. Timing of taking possession and extent of land required

- 8.1 Under clause 8.2.4 of the Concession Agreement, the Concessionaire must take all reasonable steps to minimise any compensation on land acquisition for which the Authority is responsible.
- 8.2 The Authority will expect that the Concessionaire will only identify land that is required for acquisition, and for the entry dates to broadly follow the works programme, as it is undesirable, from compensation liability,

site management and public relations perspectives, to take possession of land significantly in advance of when it is required.

- 8.3 Although there will be considerable informal advance notice given to landowners, under article 36 of the Order, legal notices only need to be served 14 days before taking possession of land. Therefore, the vast majority of notices will be served after Financial Close.

9. Taking possession of the land

- 9.1 Following service of notices and after the notice period has elapsed, the Authority will be able to enter onto land. The Concession Agreement sets out the mechanism by which the land is transferred to the Concessionaire for the purposes of NET Phase Two.
- 9.2 Where possession of land is to be taken, Bruton Knowles, the appointed surveyors for the project, will attend site on the day of possession on behalf of the Authority, along with a representative of the Concessionaire.

Summary of Key Retained Obligations

This is intended to provide a summary of the key project specific obligations retained by the Authority only and not a definitive list of all such obligations. In particular, the table below does not necessarily contain "contingent" obligations - i.e. those which only apply in certain circumstances where the Authority elects to exercise a right under the concession agreement (for example, the obligation to minimise disruption where a survey is undertaken at the Authority's election pursuant to clause 24). This summary reflects the provisions of the version of the Concession Agreement current at the time of preparation of this report.

Obligation	Description	Management and Mitigation
Termination of NET Line One concession agreement	The Authority remains responsible for procuring termination of the NET Line One concession at the appropriate time and for all compensation payable to Arrow as a result of the termination.	Ongoing discussions with Arrow to finalise the process of termination and agree the compensation amount.
County Council Settlement Agreement	The Authority has reached a settlement under which the County Council will withdraw from participation in NET Phase Two and (subject to Financial Close) NET Line One. Broadly, the Authority will perform the County Council's obligations under the various existing agreements, indemnify the County Council against claims associated with the project agreements and contracts and meet the County Council's reasonable costs in dealing with Highway approvals for, and bus support affected by, the NET works. The settlement also provides for the transfer of County owned land used or required for the NET system, including appropriate financial settlement.	The agreement has been the subject of detailed negotiation, as reported to Executive Board in January 2011, and is now finalised. Management arrangements are in hand.
Limit on Concessionaire liability for certain NET Line One incidents	The Authority remains responsible for liabilities related to incidents occurring prior to the Concessionaire taking over (NET Line One Services Commencement Date). The Authority is also required to provide assurances to the Concessionaire that it has not waived breaches by Arrow Light Rail of the existing NET Line One concession agreement between the date of the NET Line One termination survey and the date on which the new Concessionaire commences operation where doing so would affect the Concessionaire's ability to bring claims against Arrow's sub-contractors. Breach of this assurance could give rise to a Compensation Event.	The City Council has certain rights against Arrow's sub-contractors (through the Promoters' Assignability Agreements) in relation to third party claims arising from the design, construction, operation and maintenance of NET Line One, although these rights are not limited.
NET Line One Land Compensation claims	The Authority is liable for third party land compensation claims associated with NET Line One Operational Land	As above but Part 1 land claims are now out of time.
Breach of Statutory Duty	The Authority retains the risk of breaches of statutory duty relating to the project where the Concessionaire's aggregate uninsured liability in	This cap does not apply to breaches of statutory duty in failing to comply with the Railways and other Guided Transport Systems

	respect of such claims would exceed £250k per year.	(Safety) Regulations 2006, the TWA Order and the Greater Nottingham Light Rapid Transit Act together with any other breach arising from performance or non performance by the concessionaire of the Project Operations. This covers off the Authority's main concerns.
Land	<p>The Authority is responsible for acquisition of the necessary land and rights for the scheme and its availability for the Concessionaire's purposes within an agreed timeframe.</p> <p>Save to the extent caused by the Concessionaire's failure to comply with the Concession Agreement, the Authority is responsible for compensation claims made by landowners affected by the scheme (including claims under Part 1 of the Land Compensation Act), whether land is acquired through compulsory acquisition or otherwise.</p> <p>Some of the land required is not covered by the acquisition powers under the TWA Order. This must be acquired voluntarily, and while agreements are or will be put in place with the relevant landowners, non-performance by landowners will take longer to remedy than if compulsory purchase powers were available.</p> <p>The Authority also needs to make its own land available for NET Phase Two. Some of this land is open space, and therefore subject to a procedure of advertisement and the consideration of objections. There is therefore a risk that the Authority will decide not to make this open space land available.</p>	<p>Property Agents appointed, Land Strategy agreed (see Appendix 2a).</p> <p>The majority of acquisition powers are included in the TWA Order and related powers and third party agreements in progress for the acquisition of other land not covered by these powers. Concession Agreement obliges the concessionaire to take all reasonable steps to minimise any compensation on land acquisition. This will include limiting the period any temporary land is occupied and minimising permanent land take.</p> <p>The Land Strategy envisages land to be made available on a temporary basis (requiring only 14 day notice periods), allowing Works to be undertaken, with permanent acquisition following later.</p>
Contaminated Land	The Concessionaire is responsible for remediation of any contamination resulting from its act or omission or contamination present prior to Financial Close of which it is aware or ought reasonably to have been aware. The Authority to meet any reasonable additional costs for remediation of any other contamination discovered.	<p>Surveys of contamination have been undertaken by Mott MacDonald and are warranted by Mott MacDonald to the Concessionaire.</p> <p>Discharge of associated Planning Conditions has been progressed.</p> <p>The risk of having to remediate 'unknown' contamination is considered low.</p>
Design Process and Review Procedure	<p>The Concessionaire is responsible for designing the system within the provisions of the TWA Order, Third Party Agreements and Undertakings, Consents and the Concession Specification.</p> <p>The Authority may review the Design Data in accordance with an agreed Review Procedure. This is separate from any review undertaken by the Council in its role as giver of Consents as Planning Authority or Highways Authority and principally aimed at ensuring compliance with the agreement and specification.</p>	<p>Strict timescales apply. Also, grounds for objection are limited.</p> <p>Design risk remains with the Concessionaire notwithstanding any review or approval by the Authority - i.e. such approval does not constitute confirmation from the Authority that the design constitutes compliance by the Concessionaire with its obligations under the Concession Agreement.</p>
Ministerial Approval	Under the TWA Order, the Secretary of State must approve	Ongoing dialogue with DfT regarding this consent process and

of Concession Agreement and Penalty Fares	arrangements under which a concessionaire is granted rights or powers over NET. The concession agreement will grant such rights and powers and therefore needs to be approved by DfT. Clause 34 of the concession agreement also obliges the Authority ensure that the Secretary of State sets a date for the coming into effect of the penalty fare provisions of the TWA Order in relation to the NET Phase Two extensions..	adequate programming by the Authority to ensure that the consent will be obtained and the penalty fare date specified before the required date.
Network Rail & interface with Station Hub project	NET Phase Two interfaces with Network Rail at two locations along the route, the key one being the new interchange with Nottingham Station. Whilst the responsibility for design and construction will be the Concessionaire's, the agreements entered into to facilitate the works are between the Authority and Network Rail. The Authority's obligations under these agreements will be passed to the concessionaire under the concession agreement. The Authority has entered into a funding agreement (Contribution Letter) with Network Rail for the Station Hub project. Under this agreement, the Authority (due to lack of programme certainty for NET Phase Two when the agreement was signed) has retained responsibility for costs incurred by Network Rail as a result of a delay to the commencement of the NET Phase Two concession.	The Authority has sought to minimise risk associated with these interfaces by entering into a suite of agreements with Network Rail and undertaking extensive design development. This has enabled key consents to be obtained for the majority of the proposed works, including advanced booking of possessions. Regular liaison meetings are being held with Network Rail and other key stakeholders, including those engaged in the Hub and East Midlands Re-signalling Scheme, to ensure any interface issues are addressed in a timely manner and to optimise the coordination of the works. The potential exposure to costs arising under the Hub Contribution Letter has been mitigated by a number of cooperation clauses which will require the parties to manage the interfaces and to take reasonable steps to minimise disruption and mitigate the consequences of any disruption, including the incorporation of relevant provisions within Network Rail's contracts for the Hub project.
Advance Diversionary Works	In order to ensure that relevant diversionary works are completed so as to enable the Concessionaire to comply with the programme, the Authority has entered into the Station Street Diversionary Works Contract and is responsible for payment to Central Networks East.	The Concessionaire is required under the Concession Agreement to reimburse the Authority. However, if Financial Close is not reached, the payment risk effectively rests with the Authority and is not backed off to the Concessionaire.
Nottinghamshire County Council - Indemnities	The Concessionaire will enter into a deed of covenant with the County Council under which it will be directly obliged to perform various obligations contained within the County Settlement Agreement referred to above. However, there are two indemnities contained within the county agreement which the County Council requires the Authority to remain primarily liable to it for and which cannot therefore be transferred to the Concessionaire under the deed of covenant.	The Concession Agreement backs down these indemnities to the Concessionaire, although in the event of non payment by the Concessionaire the Authority will continue to be bound to pay the amounts to the County Council.
NET Line One Licensed Assets	The Authority must make the NET Line One Licensed Assets available to the Concessionaire throughout the duration of the concession.	Work is ongoing to identify those items which will be transferred by Arrow Light Rail to the Authority on termination of the existing NET Line One concession agreement to ensure that they are properly captured in the relevant provisions under the Phase Two

		agreement.
Payment Mechanism	The Authority must make monthly payments to the Concessionaire under the Payment Mechanism. The payments to the Concessionaire are made on the basis of a fixed maximum each month with deductions being made if performance targets are missed. The 26 Performance Measures are reported by the operator and are subject to audit by the Authority. Performance is measured in relation to those things most likely to be important to users (reliability, punctuality, cleanliness, security, passenger comfort and customer service, etc) and therefore to the achievement of the Authority's objectives for the system	The system is very similar to that used successfully on NET Line One, with some modifications introduced based on the NET Line One experience.
Retained Functions	Authority retains responsibility for performing various functions under the TWA Order and Greater Nottingham Light Rapid Transit Act	The management arrangement referred in the row below will apply equally to the retained functions.
Third Party Agreements - Retained Obligations	<p>During progress of the Greater Nottingham Light Rapid Transit Act and the Transport and Works Act Order a number of agreements with, and undertakings to, organisations and other third parties have been entered into by the Authority. Whilst some of these obligations are to be transferred to the Concessionaire, there remain many which it is considered impractical or not cost effective to pass on to the Concessionaire and these obligations are to be retained by the Authority. Examples of the more significant of these include:</p> <ul style="list-style-type: none"> • Undertake ecological or infrastructure improvements at Kings Meadow nature reserve. • Fund noise and vibration monitoring within the City, Broxtowe and Rushcliffe. • If necessary, provide temporary accommodation (or alternative mitigation) for affected residents at Sandby Court during the construction works. • Pay Broxtowe Borough Council £260,000 for public recreation facilities improvements in Chilwell. • Contribute 50% of the cost of the Chilwell Road financial assistance package (with the County Council picking up the remaining 50%.) 	Approximately eighty-seven Third Party Undertakings are covered by this requirement. A management arrangement will monitor and act upon the retained obligations as well as monitoring the concessionaire's actions in respect of the transferred obligations. Costs associated with performance of the retained obligations have been included within the project budget.
Reinstatement Works	The Authority indemnifies the Concessionaire where the County Council requires the Concessionaire to undertake reinstatement works as a result of cessation of the Works following termination for Authority Default, Force Majeure or voluntary termination by the Authority.	Interrogate any costs claimed to ensure that they are reasonable. Take steps to minimise likelihood of termination for Authority Default.

<p>Concessionary Fares</p>	<p>The Concessionaire to participate in the Nottingham City Council's Concessionary Fares scheme and Authority to reimburse the concessionaire in accordance with the scheme.</p> <p>The Authority may change the Concessionary Fares scheme such that the Concessionaire shall be in no materially worse position provided that the Authority must reimburse the concessionaire through the Authority Change process where the change materially affects revenue.</p> <p>The increase in cost resulting from increase in public transport trips by eligible users is expected to be in the region of £1m per annum.</p> <p>A similar arrangement will exist in respect of the County Council's scheme but this is guaranteed for only 5 years following the date of full operation, following which the County Council is entitled to review the arrangement.</p>	<p>On NET Line One, eligible passengers receive the same fare concessions on an equivalent basis to bus trips. The NET Phase Two concession has been negotiated on the same basis, ensuring the objectives of transport integration, increased public transport trips and social inclusion are achieved. The Authority carries financial risk for Concessionary Fares passenger trips on trams as these are not included in the national scheme.</p>
<p>Ticketing Schemes</p>	<p>The Concessionaire is required to participate in local ticketing schemes ('Kangaroo' and 'Plusbus') and any new multimodal ticketing scheme introduced or scheme amended in accordance with clauses 43.9 or 43.11. The Authority may develop a multimodal ticketing scheme acceptable to local operators provided that the terms of any such scheme are formulated with the objective that the Concessionaire shall be left in materially no worse position as a result of participation.</p>	<p>A fully integrated smartcard scheme covering all operators is only partially developed at present. There are significant technological, organisational, structural and funding issues involved in completing this work. These are currently being detailed in full and form the basis of the Local Sustainable Transport Fund bid to DfT, the result of which should be announced by end of June 2011. The first stage may be to reach agreement to the introduction of a Kangaroo Season Ticket, followed by a full multi-operator smartcard scheme to be in place for the commencement of NET Phase Two services. Progress will be very dependent on the business stance of each individual operator in relation to its company's ticketing equipment, ticketing schemes and fare setting.</p>
<p>Compensation Events</p>	<p>The Authority to compensate the Concessionaire for costs or lost revenue (and relieve the Concessionaire of obligations) due to a Compensation Event. Compensation Events are defined as:</p> <p>(1) an Authority breach; or</p> <p>(2) a Long Term Highways Change or a Temporary Highways Change lasting more than 72 hrs (a permanent TRO or a permanent reconfiguration of any traffic signals, initiated by Nottingham City Council or by Nottinghamshire County Council in their capacity as a local highway authorities and materially adversely affecting the operation of passenger services on the Network, but excluding such changes requested by, or consequential to any works carried out by, any third party).</p>	<p>As regards item (1), the Authority has direct control over the performance by it of its obligations under the concession agreement.</p> <p>As regards item (2), the City Council has strategic control over its own decisions in this respect and would wish to give due consideration to any adverse impact on tram movements arising from changes promoted by it to the highway network. With County Council highway changes, the Authority would seek to work with the County to reach an arrangement that minimised any adverse impact. The County must act 'reasonably' and in accordance with its statutory duties, including its Traffic Management Duty.</p>
<p>Relief Events</p>	<p>If and to the extent that a Relief Event is the direct cause of a delay to</p>	<p>The Authority would work with the Concessionaire to resolve the</p>

	<p>Full Service Commencement and/or adversely effects the ability of the Concessionaire to perform any of its obligations under the Concession Agreement then the Concessionaire may apply for relief from default termination of the agreement. Certain conditions apply. Relief Events include such events as fire, explosion, flood, etc, or failure by a statutory undertaker or like body, strikes, significant archaeological finds, etc. The Authority would have limited call on the Concessionaire if this resulted in serious delay.</p>	<p>issue to enable the project to resume. The probability of a very lengthy or terminal impact is low.</p>
<p>Public Events in the Old Market Square</p>	<p>There is no limit on the number of public events that do not materially adversely affect or prevents the safe passage of Trams through the Old Market Square.</p> <p>In addition to the Nottingham Remembrance Day Parade and the Nottingham Marathon, there is a limit of 12 dates per year on Planned Public Events which do materially adversely affect or prevent the safe passage of Trams through the Old Market Square and which is implemented by a temporary TRO.</p> <p>Public events occurring at any other location on the Network are at the risk of the Concessionaire.</p>	<p>No compensation is paid for planned interruptions to the tram service and the Concessionaire is required to rearrange its passenger services accordingly and continues to be monitored for performance on the basis of the alternative arrangements. The number of events allowed has been increased, reducing the likelihood of the occurrence of Unplanned Public Events and reflects the increasing use of the Old Market Square for major public events.</p> <p>In the event of an Unplanned Public Event that materially adversely affects or prevents the safe passage of Trams through the Old Market Square, the Concessionaire may exclude the affected services from the payment mechanism for the shorter of 24 consecutive hours and the period until a revised timetable is put in place in accordance with clause 31.5. No compensation is due and the Concessionaire remains obligated to minimise the disruption on the service.</p>
<p>Closure of Forest Park & Ride Site for Goose Fair</p>	<p>The Authority is entitled to require the closure of the Forest Recreation Ground Park and Ride Site for the purpose of holding the Goose Fair for up to ten consecutive days in any year. The Authority is required to take such reasonable requirements imposed by the Concessionaire to make provision for safety, security and continued operation of the system and to ensure compliance with applicable Law. The Authority shall pay to the Concessionaire the cost of making good any damage caused and the cost of cleaning and otherwise restoring the Site to the condition it was in prior to the holding of the Goose Fair</p>	<p>This is an existing arrangement that has worked satisfactorily on NET Line One. The likelihood of over-running the agreed closure period is very low and any remedial works are likely to be contained within the reasonable costs of holding the Goose Fair.</p>
<p>Authority Changes and Small Works</p>	<p>The Authority shall be entitled to require the Concessionaire to implement changes in the Project Operations at the Authority's cost. Under the Medium Value Change process, if the Authority withdraws the Notice of Change prior to the Estimate being received, the Authority must pay costs incurred by the Concessionaire in the preparation of the Estimate. Under the High Value Change process, if</p>	<p>The alignment of the extensions has been a part of development considerations for some considerable time and so the likelihood of change during the Works Period is low.</p> <p>The agreement includes a change control process so that any change is assessed for cost and time impact.</p> <p>The Authority has control over its own decisions in this respect but</p>

	<p>the Authority does not proceed with the relevant change it must pay the Concessionaire's costs of developing the High Value Change Proposal or High Value Change Stage 2 Submission. The aggregate Estimated Change in Project Costs from Authority Changes during Works Period cannot exceed 10% of capital cost.</p> <p>Where the Authority requires the Concessionaire to carry out Small Works, it must pay the pre-agreed rates set out in the Concession Agreement.</p>	<p>must guard against giving grounds for claims by seeking to interfere during construction.</p>
Broadmarsh Tramstop	<p>The Concessionaire has allowed for all implications for operating a new tramstop at Broadmarsh Centre except for the capital cost of fitting out and ongoing maintenance of the new tramstop.</p>	<p>In the event of the Broadmarsh Centre option is exercised by the Authority, costs incurred will be met by the developer.</p>
The Hub	<p>The Concessionaire has priced on the design, construction, operation and maintenance of a new tramstop and interchange facility at the Station as set out in the specification. To the extent that the Authority wishes the Concessionaire to carry out alternative works relating to the Hub instead (defined as Hub Option 2 or Hub Option 3), the Authority will pay to the Concessionaire the increased additional costs set out in clause 53.4. In each case, the Authority would have to also pay the reasonable financing costs if the Authority elects not to pay this amount as a lump sum.</p>	<p>Confirmation of funding authorisation for the Hub in 2010 and the commencement of construction of the first phase, ie the MSCP, in January 2011, has reduced the likelihood of Hub Options 2 and 3 being triggered. However, it is the timing of the second works phase, i.e. the refurbishment of the main station and new concourse that could require the Hub Options to be considered. Until contracts are entered into by Network Rail for the main station works, (planned for September 2011) then the options should be provided for and having the priced options in the agreement means that the cost exposure to the Authority has been minimised.</p>
Beeston Town Centre	<p>Given the uncertainty over the proposed development, the Authority is progressing on the basis of the "without Master Plan for Beeston Town Centre. The Authority is to meet additional costs incurred by Concessionaire for accommodating the "with Masterplan" option if this is instructed by a certain date</p>	<p>In the event that the Authority exercises the Beeston Town Centre "with Masterplan" option by the required date, a one-off payment has been allowed for in the project contingency and would be recoverable from Broxtowe Borough Council as part of an overall land settlement with that council.</p>
A453	<p>The Department of Transport announced as part of the Comprehensive Spending Review, that the widening of the A453 will not progress in the current review period, and will be reconsidered after 2015. The Authority is progressing, therefore, on the basis of the more expensive option that access to the Clifton Park & Ride will be from the existing A453.</p>	<p>In the event that the dualling is to be completed commensurate with the commencement of services to Clifton, then the Authority can exercise the alternative access arrangements provided that this is exercised prior to an agreed date, resulting in an opportunity cost saving made as an adjustment to the Annual Unitary Charge.</p>
Change in Law	<p>The Authority to compensate Concessionaire for costs resulting from certain changes in law, being:</p> <ul style="list-style-type: none"> - Discriminatory Changes in Law affecting the Project only, the Concessionaire only or other PFI Contractors only; 	<p>The Authority would be consulted and would seek to lobby Ministers to seek modifications or recompense if changes in law had an adverse effect on the system.</p>

	<ul style="list-style-type: none"> - Specific Changes in Law which apply to similar services or entities involved in the provision of similar services; or - General Changes in Law but only to the extent that they come into effect after the date on which full services commence and which involve capital expenditure. The Concessionaire bears the financial risk of such changes to the extent that the aggregate costs are less than 3% of the capital works of the project. After this, the risk is borne by the Authority. 	
VAT	The Authority is responsible for compensating for a Change in Law that would have the effect of VAT being irrecoverable by the Concessionaire.	This is considered to be a highly unlikely event
Phase Costs (Network extensions)	The Concession Agreement includes a mechanism whereby (subject to agreement of the parties on key issues) further extensions may be developed and operated by the Concessionaire without the need to terminate the agreement and conduct a new procurement process. The Authority is to meet the Concessionaire's Relevant Expenses during the development stage and, if the extension is implemented, the Authority must pay the Estimated Change in Project Costs to the Concessionaire. If the Authority elects not to proceed with an extension once it has issued a Phase Launch Notice, it must pay Demobilisation Costs.	The Authority has control over its own decisions in determining if pursuing an extension is affordable. Various controls on costs are included in the Concession Agreement (e.g. the Concessionaire must competitively tender certain subcontract packages, operating and maintenance costs are benchmarked against costs tendered by the Concessionaire during the Phase Two procurement process and there is an agreed process whereby the Concessionaire must obtain the relevant funding for the extensions). Ultimately, the Authority retains the right to terminate the Concession Agreement under the voluntary termination process if it is unable to reach agreement with the existing Concessionaire.
Termination on Authority Default	Authority Default is limited to the Authority failing to make payments due, breaching the Agreement so as to substantially frustrate or render impossible the Concessionaire's performance, reorganisation without transfer of obligations or expropriations, sequestration or requisition of assets. Full compensation would be payable. Note that Tramlink has proposed that this would include payment of the mezzanine debt in the same manner as the senior debt.	An internal process of assessment, approval and payment has been effectively utilised for NET Line One and would be applied to the extended network. Any reorganisation of local government or similar activity would need to have regard to the obligations of the Agreement.
Other Reasons for Termination	Arrangements are included for termination and the payment by the Authority of compensation in various other circumstances, including voluntary termination by the Authority, Concessionaire Default, breach of the Refinancing Provisions, Force Majeure, Corrupt Gifts and Fraud, etc. These are relatively standard arrangements save that in the case of "non Concessionaire fault" termination scenarios (i.e. excluding Concessionaire Default, breach of Refinancing Provisions, Corrupt Gifts and Fraud), it is proposed that mezzanine debt will be paid by the	Action would depend on the circumstances, all of which are likely to be remote.

	Authority as part of the compensation amount in the same way as senior debt.	
TUPE	<p>The Authority must, in certain circumstances, indemnify Concessionaire in respect of any transferring employee of the Authority.</p> <p>Where employees transfer from the existing NET Line One concessionaire, the Authority must indemnify the new Concessionaire against employment claims which that employee may have gained prior to the transfer.</p> <p>Where an employee of the existing NET Line One concessionaire who is not identified in Appendix 5 of the Concession Agreement transfers unexpectedly to the new Concessionaire by operation of TUPE, the Authority must indemnify the new Concessionaire.</p> <p>Following termination/expiry of the Concession Agreement, standard indemnities are given by the Authority in respect of employee liabilities following the relevant transfer date.</p>	<p>The Authority does not consider that any of its employees will transfer by virtue of operation of TUPE.</p> <p>Transfer of this risk to the Concessionaire would not have provided value for money.</p> <p>Due diligence is being undertaken so as to properly identify those employees who will transfer.</p> <p>At the relevant time, the Authority will seek back to back indemnities from the replacement concessionaire.</p>

Legal and Financial Advisers' Statement

Statement by DLA Piper - Legal Advisors

1. Unlike other PFI sectors, such as housing and health, there is no standard form contract for light rail PFI projects. In accordance with the outcome of consultation with Infrastructure UK, the Department for Transport and potential bidders, it was determined that the most appropriate form of contract for NET Phase Two was to base the contractual terms on HM Treasury's Standardisation of PFI Contract Terms version 4 (SoPC4), amended and supplemented where appropriate to deal with lessons learnt from the NET Line One concession and other light rail procurements.
2. The vast majority of project specific derogations from the required drafting of SoPC4 have already been agreed by Infrastructure UK. There remains a small handful of further derogations which are still to be approved and it is envisaged that these will be resolved by August 2011.
3. The NET Phase Two project differs from many standard PFI projects (e.g. BSF projects) in three key respects. Firstly, in addition to the payment by the City Council of the monthly unitary charge, the Concessionaire has the opportunity to exploit the use of the Network and retain farebox revenue. Whilst this affords the Concessionaire a great opportunity to generate additional profit, from the funders' and investors' perspective this element of the transaction introduces an additional risk, as this part of the Concessionaire's income stream is less certain than the payment of the monthly unitary charge and the Concessionaire must bear 100% of the risk of farebox revenues being less than forecast.
4. Secondly, unlike many PFI projects which are contained on a specific site, the NET Phase Two project is linear in nature and contains a significant element of on-street running, which in turn gives rise to a number of additional risks including the interface with other highway users, the inter-relationship with the local highway authority and the inter-relationship with other key stakeholders along the route including Network Rail.
5. Thirdly, the project involves the transfer to the new Concessionaire of responsibility for operation and maintenance of the existing NET Line One system.
6. Taking account of these key differences from more standard PFI deals, the City Council has been successful in transferring a significant proportion of the risks in the project to the Concessionaire. It is not within our competence to value these risks, but we can confirm that (save to the extent related to the specific characteristics of the project noted above) the extent of risk transfer is not significantly different from that adopted on other PFI/PPP transactions. We can further confirm that as a result of the negotiations that have taken place, the

position of the City Council has not materially worsened in a manner which, in accordance with our instructions, is unacceptable.

7. The terms of the Concession Agreement have been closely negotiated over many months. There is not a realistic possibility of significantly improving the City Council's position within the timescales to Financial Close in a manner which offers substantially better value for money and which the Concessionaire and its funders would accept. The risks involved in the project have been analysed systematically by the City Council and its advisors. On balance based on the instructions we have received (and, in respect of matters outside our competence as legal advisors, based on the advice which the City Council has received from disciplines other than our own), we believe that the Concession Agreement (subject to final revision) is in a form which the City Council can sign.

DLA Piper

17 June 2011

Statement by PwC - Financial Advisor

1. We support and concur with the comments in the DLA statement.
2. We also confirm that (save to the extent related to the specific characteristics of the project) the extent of risk transfer in the Concession Agreement is not significantly different from that adopted on other PFI/PPP transactions. Specifically, the Payment Mechanism reflects the risk allocation outlined in the Concession Agreement and the principle of payment linked to 'availability' of services is one that is standard in other PFI/PPP transactions. The form of the Payment Mechanism has been adapted from that accepted on NET Line One, supplemented where appropriate to deal with lessons learnt and a larger network, and has been accepted by Tramlink in the state it was originally issued.
3. Given the risk allocation in the Concession Agreement, and the standard PFI/PPP funding structure proposed by Tramlink, we believe that the project is capable of being funded on reasonable market terms at financial close.

PwC

6 July 2011

Department for
Transport

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24 MARCH 2011

Dear Chris

I wrote to you on 12th August 2009 to give Conditional Approval to the Nottingham Express Transit Phase 2 extensions (NET Phase 2) scheme. Following the Comprehensive Spending Review announcement in October 2010 and our subsequent negotiations, I am pleased to confirm that your project has now been re-approved by Ministers and you may now complete your procurement process and, subject to our final approval of your Full Business Case (FBC), move to financial close. The terms of my 12th August approval letter remain extant, apart from the changes detailed below.

Subject to approval of the FBC, central government revenue support will be made available once unitary charge payments from your authority to the contractor begin. Details on how to claim this revenue support will be sent to you in advance of your need to claim. Payments will be made quarterly by the DCLG.

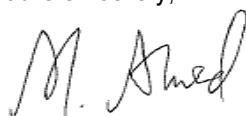
Based on the figures you proposed, the revenue support will be a maximum of: a payment of £33,913,200 in 2013/14, followed by an annuity of £35,400,000 between 2014/15 and 2032/33 inclusive, followed by a payment of £22,125,000 in 2033/34. These payment dates will depend on the contract start date being as advised and the subsequent milestones being agreed. Actual payments will depend on the dates the milestones are achieved.

We expect the annuity payment to be recalculated at financial close, subject to the maximum set out above, based on the actual financing terms and interest rates achieved. In this respect the authority will provide a FBC update to the Department after financial close detailing the finally agreed unitary charge and setting out the final annuity payment required. This will be supported by a letter from your financial advisors that the financing terms and interest rates are on the prevailing market terms.

I should make it clear that this offer is the maximum financial support we can provide and so we will not be able to give you any extra support should financing terms prove more expensive than anticipated. This offer is also conditional upon the scope of the project remaining that set out in the Outline Business Case.

Thank you for working with us to resolve this issue. Would you please confirm your Council's agreement to the above provisions as soon as possible.

Yours sincerely,



Mostaque Ahmed

Financial Modelling Assumptions

Purpose

This appendix sets out the key assumptions within the financial model.

Assumptions

Involvement of the European Investment Bank (EIB)

Discussions have been held with the EIB with a view to Tramlink replacing up to £100m of commercial bank loans with a loan from the EIB which offers lower interest rates, thus reducing the Availability payments over the entire contract period. The current modelled payment to Tramlink assumes a saving of approximately £1.2m pa.

Up front capital contributions

The PFI rules do allow for some capital contributions to be made to the Concessionaire and following discussions with HM Treasury and the Department for Transport it has been indicated that a capital payment will be allowed to be made by the Council (funded by prudential borrowing) to Tramlink. Currently 25% is proposed to be paid on completion of key milestones in construction and 75% on operation commencement. The cost of borrowing and the indicative savings from Tramlink have been built into the current financial model.

Other schemes funded from WPL

The WPL is intended for wider use than funding NET Phase Two. Currently the financial model assumes repayment of all prudential borrowing associated with the Nottingham Station improvements (the 'Hub'). It further assumes a £650k pa contribution (increasing with inflation) towards sustaining the current Link bus provision.

Termination payment to Arrow

Estimates of the amount payable to Arrow on termination of the NET Line One contract have been updated to incorporate a higher estimate of tax liability. The City Council is working with its advisers in order to minimise this tax liability. It is assumed that the full termination cost will be funded by prudential borrowing. The City Council is currently pursuing clarification on this point.

Future interest rates

The cost of the scheme is heavily dependent upon long-term interest rates; both charged by the banks to Tramlink and the cost of prudential borrowing for the City Council. Rates are currently slightly lower than modelled, however the addition of 1% on the cost of borrowing for local government from Central Government has eliminated nearly all contingency in this area.

WPL Income

WPL income has been modelled based upon existing numbers of parking spaces, with a conservative estimate of reductions in spaces based upon the introduction of the charge.

DEVELOPMENT PHASE – NET Phase Two – Capital									
	Expenditure	Income							
Year		Developers' Contributions	City Council LTP	NET Reserves	DFT	EMDA /GNP	ERDF	Notts CC	TOTAL
	£m	£m	£m	£m	£m	£m	£m	£m	£m
Pre 2010/11	35.2	0.8	1.4	10.5	9.5	4.9	1.0	7.1	35.2
2010/11	2.8			2.7	0.1				2.8
2011/12	3.0			3.0					3.0
TOTAL	41.0	0.8	1.4	16.2	9.6	4.9	1.0	7.1	41.0

Appendix 3d

POST FINANCIAL CLOSE - Line One and Phase Two Capital and Revenue												
	Expenditure					Income					Reserves	
	Capital	Revenue				Revenue						
		Principal and Interest re Capital	Availability payments to Tramlink	Monitoring costs	TOTAL	PFI Grant	Annual revenue contrib's	Interest	WPL	TOTAL	Change in NET Reserves	Available NET Reserves
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
												1.9
2011/12	301.5	7.5	8.0	1.4	17.0	13.2	1.2	0.2	0	14.6	(2.4)	(0.6)
2012/13	29.9	24.3	12.8	1.8	38.9	22.6	1.2	0.0	6.1	29.8	(9.1)	(9.6)
2013/14	27.9	26.6	12.8	1.8	41.3	56.5	1.3	0.1	7.5	65.4	24.1	14.5
2014/15	76.4	32.0	26.8	1.4	60.2	58.0	1.3	0.5	8.4	68.2	8.0	22.4
2015/16		34.8	36.6	0.4	71.7	58.0	1.4	0.6	9.2	69.2	(2.5)	19.9
2016/17		34.8	36.6	0.4	71.7	58.0	1.4	0.5	9.6	69.5	(2.2)	17.7
2017/18		34.8	36.6	0.4	71.7	58.0	1.5	0.5	10.1	70.1	(1.7)	16.1
2018/19		34.8	36.6	0.4	71.7	58.0	1.6	0.4	10.4	70.4	(1.4)	14.7
2019/20		34.8	36.6	0.4	71.7	58.0	1.6	0.4	10.7	70.7	(1.0)	13.7
2020/21		34.8	36.6	0.4	71.8	58.0	1.7	0.4	11.1	71.1	(0.6)	13.1
2021/22		34.8	36.6	0.4	71.8	58.0	1.7	0.4	11.5	71.6	(0.2)	12.9
2022/23		34.8	36.6	0.4	71.8	58.0	1.8	0.4	11.8	72.0	0.2	13.1
2023/24		34.8	36.6	0.5	71.8	58.0	1.9	0.4	12.2	72.4	0.7	13.7
2024/25		34.8	36.6	0.5	71.8	58.0	1.9	0.4	12.6	72.9	1.1	14.8
2025/26		34.8	36.6	0.5	71.8	58.0	2.0	0.4	13.0	73.4	1.6	16.5
2026/27		34.8	36.6	0.5	71.8	58.0	2.1	0.5	13.4	74.0	2.1	18.6
2027/28		34.8	36.6	0.5	71.8	58.0	2.2	0.5	13.8	74.6	2.7	21.3
2028/29		34.8	36.6	0.5	71.9	58.0	2.3	0.6	14.2	75.1	3.3	24.6
2029/30		34.8	36.6	0.5	71.9	58.0	2.4	0.7	14.7	75.8	3.9	28.5
2030/31		34.8	36.6	0.6	71.9	49.5	2.4	0.7	15.2	67.9	(4.0)	24.5
2031/32		34.8	36.6	0.6	71.9	35.4	2.5	0.4	15.6	54.0	(17.9)	6.6
2032/33		34.8	36.6	0.6	71.9	35.4	2.6	(0.1)	16.1	54.1	(17.8)	(11.2)
2033/34			30.1	0.6	30.7	22.1	2.8	(0.1)	17.7	42.4	11.7	0.5

Appendix 3e

Composition and Use of NET Reserves

	£m	Timing
Balance as at 01/04/11	4.6	
Transfer as part of County Settlement	5.1	Development Phase
Less:		
- Purchase of County's share of Line One Land	(1.2)	Development Phase
- Reimbursement of overpayment of development costs / grant (2009/10)	(1.1)	Development Phase
- Additional expenditure in respect of highway authority works	(0.7)	} Between Financial
- Additional buses during disruption on existing tendered routes	(0.3)	} Close and
- 50% share of Chilwell traders' compensation payments	(1.3)	} Operations
Funding for remaining development costs	(3.0)	Development Phase
Use of reserves to fund Hub borrowing prior to WPL	(0.2)	Development Phase
Available within Operation phase	1.9	Operations Phase

Equality Impact Assessment

Nottingham City Council – Equality Impact Assessment 2009 (updated June 2011)

Department: **Environment & Regeneration**

Service Area: **Major Projects**

Title of Service/Policy: **NET Phase Two**

Manager Responsible for Area: **Chris Deas**

Officer Responsible for EIA: **Anne-Marie Barclay**

Aims and objectives

NET Line One opened in March 2004, providing tram services between Hucknall and the City Centre with a spur to Phoenix Park. Carrying over 10 million passengers a year NET Line One has resulted in a significant shift to public transport. NET Phase Two builds on the success of NET Line One and will utilise many of the communication and consultation methods that ensured local communities were kept up-to-date with progress during the construction phase, thereby minimising the disruption caused.

NET Phase Two extends the tram system from the Station Street terminus of Line One, passing over Nottingham Station and through the Southside Regeneration Zone. The tramway then separates into two routes to Clifton via Wilford and Chilwell via QMC and Beeston.

The key aims of NET Phase Two are:

- To increase public transport capacity to accommodate growth in Greater Nottingham.
- To improve accessibility and reduce social exclusion and realise further investment in NET Line One.
- To provide a sustainable alternative to the car, thereby tackling congestion, particularly on the strategic road network.
- To contribute to integrated public transport in Greater Nottingham and improved interchange
- To support land use policy, regeneration and neighbourhood transformation strategies in the City Centre, district centres and other important employment and residential areas.
- To extend the use of an environmentally friendly mode of transport.

The NET Promoter (Nottingham City Council) is currently in the process of tendering for a Concessionaire to design and build NET Phase Two, and to operate and maintain the extended tram network. The current programme, subject to all the necessary approvals being in place and funding being secured, indicates that construction works could begin in late 2011 with NET Phase Two up and running in late 2014.

NET Phase Two is designed to benefit the general public of Greater Nottingham, serving key residential, employment and retail areas, with improved interchange to bus and train. As with Line One, NET Phase Two will provide a fully accessible high-quality tram service and meet the criteria required by Disability Discrimination Act (DDA) legislation.

Feedback from users and local disability groups on NET Line One is positive, and suggests that NET Phase Two will be a welcome addition for those with specific mobility needs across the network, who may find it difficult to access other modes of public transport. With this in mind the NET Phase Two design guide (a document issued to the bidders detailing the requirements for NET Phase Two) has been written to ensure that this level of accessibility continues, and where practical is built upon, with accessibility being a key feature in terms of both vehicle and tramstop design. Accessibility is also one of the evaluation criteria for the bidders when the tenders for NET Phase Two are returned next year.

Potential impact and equality strands

An EIA has previously been published for NET Line One, outlining the potential impacts of an operational tramway. Given that the Concessionaire will take over the operation of NET Line One, the existing EIA will be superseded once NET Phase Two is operational, with a single EIA produced to cover the whole network.

Equality Strand	Assessment of Potential Impact of policy/service		Reason for the Assessment of Potential Impact (provided in previous column)	Are there any mitigating circumstances?	Actions required
Race	Neutral	Low	Some concern may exist with regard to employment opportunities. Bidders will have to provide equal opportunity recruitment as a contractual requirement.		Use of local liaison groups to maintain good communication. Identify any groups where additional information is required (e.g. publications being available in alternative languages).
Sex / Gender reassignment / Maternity and pregnancy	Positive	Low	Level access between tramstops and vehicles. Space for pushchairs and ample seating on board will provide additional benefit to parents with small children and expecting mothers. Priority seating indicated to encourage considerate use by passengers. Park & Ride sites to include dedicated parent and child spaces.		
Disability	Positive	High	NET will provide a fully accessible public transport service. Use of mobility travel passes to continue, increasing travel opportunities.	Potential for some disruption during the construction period which may have greater impact on disability groups.	Continued monitoring during the development and construction period to ensure that there are no adverse impacts. Use of local liaison groups to maintain good communication and a Code of Construction Practice to minimise any adverse impacts.
Religion/ Belief	Neutral	Low	Some concern may exist with regard to employment opportunities. Bidders will have to provide equal opportunity recruitment as a contractual requirement.		Use of local liaison groups to maintain good communication to ensure group will not be adversely affected during the construction phase.
Sexual Orientation	Neutral	Low	Some concern may exist with regard to employment opportunities. Bidders will have to provide equal opportunity recruitment as a contractual requirement.		
Age	Positive	High	Use of City Council Concessionary travel passes to continue increasing travel opportunities. Low floor vehicles provide easy access for families/ and pushchairs.		
Other (e.g. Marriage/ Civil partnership/ Community cohesion)	Positive	High	NET will improve accessibility and reduce social exclusion. Local jobs to be included as a contractual requirement.		