

Edinburgh Tram System Design Services

Roads Design Delay & Disruption Claim

Halcrow Group Ltd Presentation to Bilfinger Berger
25 November 2009

Scope of Presentation

1. Obligations of the Parties
2. Rationale for our Claim
3. Process of CEC Roads Department Technical Approval
4. Example Numbers of CEC Comments Received
5. Process for Close-out of Roads Technical Approval
6. Example Time-lines
7. Conclusion

Relevant Obligations

Halcrow's Contractual Obligations:

- In the performance of the Sub Consultancy Services.....(Halcrow) shall exercise a reasonable level of professional skill, care and diligence to be expected of a properly qualified and competent.....design provider.
(Sub-contract: Clauses 3.2 & 3.9A)
- (Halcrow) shall use its best endeavours and at its own cost and expense to obtain and maintain in effect all Consents which may be required.....as is consistent with, required by or contained within the Sub Consultancy Services. (Clause 5.1.1)
- At the request of (Halcrow), (Parsons Brinckerhoff) may at their discretion render appropriate assistance, without any obligation, in relation to obtaining any Consent.
(Clause 5.2)

Roads Authority's Legal Obligations

- The powers in subsection (2) [*for the authorised undertaker to alter the layout of roads*] shall not be exercised without the consent of the Roads Authority, but such consent shall not be unreasonably withheld. (Edinburgh Tram Acts: Article 3(3))

Summary Of Our Claim Rationale

- That our roads designers produced competent designs capable of approval and implementation in accordance with our contractual obligations.
- That Halcrow's roads design submissions have been subjected to an unnecessarily minute and detailed technical audit by CEC officers
 - Resulting in thousands of individual comments and requirements for design modification being issued by the officers
 - Far beyond what we could have reasonably expected given our experience - all of which have to be responded to, evidenced and closed out to the satisfaction of the Roads Department as a pre-condition of their approval - a hugely time-consuming exercise.
- That CEC Roads Department officers have engaged in adversarial behaviours in conducting their technical approval process
 - This has frustrated the roads technical design approvals process and thereby exposed Halcrow to unforeseen additional design costs over an extended period.
- That this process has continued beyond the date of our claim
 - There is still no prospect whatsoever of full unconditional approval of all of our roads designs technical submissions being obtained in the foreseeable future.

Development of the Roads Design

- Roads Design Working Group meetings held regularly with CEC Roads Department & Planning Department officers & tie's technical advisers Scott Wilson
 - In which our designers advised the rationale underlying the configuration and layouts and obtained feedback and comments on the design solutions we presented as work-in-progress.
 - Most CEC officers subsequently undertaking technical approval of roads designs were not aware of the prior discussions at the Roads Design Working Group
 - tie subsequently dispensed with the services of Scott Wilson and left roads matters solely to CEC officers.
- CEC Planning Department held a number of Charettes during roads design development period which resulted in requirements for late changes to roads layouts previously agreed with Roads Department officers
 - Symptomatic of indecision within wider CEC as to acceptability of overall system design and layout being proposed
- Detailed designs were presented, discussed with and reviewed by CEC Roads Department officers during design finalisation.
- Unwillingness of CEC to then accept their obligations as Overseeing Authority to determine the Road Safety Auditor's recommendations
 - Thereby preventing us completing our designs for technical submission.
 - Eventually CEC conceded but only after considerable delay.

Submission to CEC for Technical Approval - 1

Key Issues

- No undertaking exists from CEC Roads Department for their response time to submissions for technical approval
- CEC Roads Department officers issued our submitted designs for comment to CEC officers outwith the Roads Department e.g. CEC Planning Department
 - Statutory basis of Roads Design approval process used by CEC as a means of influencing overall design and configuration of Tram project outwith the formal tie/CEC consultation process.
 - No attempt made by CEC officers to rationalise or moderate the consultee comments or to eliminate duplicated or conflicting comments.
 - CEC officers saw much merit their consultative approach across wider CEC as evidence (from their perspective) of thorough scrutiny of the design by officers representing different interests within CEC.

Submission to CEC for Technical Approval - 2

- Conditional Approval letter received from CEC Director of City Development for most (but not all) sub-sections submitted for roads technical approval.
 - Attached were extensive schedules of comments on each submission “which must be addressed prior to the commencement of construction work.”
 - Stated officer requirement “that unless and until designers provided acceptable responses to each and every comment to the satisfaction of Roads Authority officers, formal close-out of the conditional approval would not be granted.”
 - Despite our misgivings and irrespective of the technical merit of the individual comments we had no option but to comply with CEC requirements in order to obtain unconditional consent.
 - Clearly the officers were indulging in a war of attrition to force through their design preferences without having to take designers’ CDM liability for the roads design solutions they required, and in ignorance of the inter-disciplinary implications of these changes

CEC Initial Comments on Designers' Submissions for Technical Approval

Route Section	Length (m)	No. Drawings	No. Comments
1A1 & 1A2	1435	61	337
1B	1260	54	644
1C	2980	111	1177
1D	1270	58	725
2A	810	26	659
5A	1475	31	344
5B	4555	88	504
5C	1890	36	610
7A	2580	33	259

Close-out of Technical Approval - 1

- In order to address CEC Conditional Approval comments each had to be reviewed by designers, a technical response or revised solution developed, drawings and/or specifications amended, and an IDC undertaken to ensure consistency.
- Close-out meetings for each sub-section then held with Roads Authority officers to review the designers' responses
- Close-out submission for each sub-section then made to Roads Authority officers for approval.
- Further comments subsequently received from CEC Director of City Development on Designers' close-out submissions (but not yet received for all sub-sections)

Close-out of Technical Approval - 2

- Letter received from CEC Director of City Development for each subsection resubmitted for roads technical approval close-out
 - “It is my intention to grant conditional approval of the Close-out Report in terms sufficient to allow construction works to commence”
 - “This conditional approval is predicated on an assurance from the designer that where technical approval comments have been accepted by the designer the required remedial actions will be undertaken prior to issue of construction drawings and start of construction work. This applies also where the designer has rejected the Council’s comment but is nonetheless modifying the documents”
 - “The majority of outstanding issues which are generally matters of detail and listed on the attached schedules can be resolved in parallel with those works”
 - “It is [the designers’] responsibility to ensure and demonstrate that all matters have been resolved and agreed with the Council”
 - “A number of issues (informatives) will have to be ratified by the Council as and when the information becomes available”
 - “While I am satisfied as I can be that the design is technically competent, assuming the engineering issues are addressed, the scheme will be judged to a large extent on its fit with the built environment”

Close-out of Technical Approval - 3

- Each close-out letter from CEC is accompanied by further schedules of comments including new comments not previously raised at the technical approval stage.

Route Section	No. Close-out Comments Received
1B	114 of which 30 were new comments
1C3	203 of which 44 were new comments
1D	166 of which 21 were new comments
5B	176 of which 20 were new comments
5C	138 of which 14 were new comments

Many comments were listed in the CEC schedules as still live, although previously agreed with officers at close-out meetings as having been closed-off.

Example Approval Time-lines

Section	1C3	5B
Design Submitted to CEC for Technical Approval	2 May 08	22 May 08
CEC Comments on Designers' Submission Received	7 Aug 08	20 Aug 08
Designers' Responses to CEC Comments Issued to CEC (to Close Out)	28 Oct 08	30 Sept 08
IFC Drawings Issued	20 Feb 09	30 Sept 08
CEC Close-out Letter & Comments Received	6 May 09	4 June 09
Designers' Response to CEC Close-out Comments Meeting with CEC	1 July 09	14 July 09
Revised IFC Drawings Issued	7 Oct 09	4 Sept 09
CEC Confirmation of Designers' Discharge of All CEC Close-out Comments & Informatives	?	?

Outstanding Roads Design & Approval Actions

CEC to Issue Response to Designers' Technical Approval Submission (Conditional Approval)

- Sections 1C1; 1C2 (Picardy Place); 2A; 3A; 3B & 3C

Designers to Submit Response to CEC Conditional Approval (to Close Out)

- Section 1A3 (Ocean Terminal)

CEC to Issue Close-out Comments

- Sections 1A1; 1A2; 1A4; 5A; 6A & 7A

CEC to Confirm that Designer has Discharged All CEC Close-out Comments & Informatives

- Sections 1B; 1C3; 1D; 5B & 5C

Conclusion

- Halcrow incurred unforeseen excess designers' time charges between w/e 16 May 08 to w/e 5 Dec 08 due to the delay and disruption experienced in complying with CEC's unreasonable roads technical approval processes
- This is in the sum of £993,724 which represents 15,940 man-hours of work of the 14 strong roads design team over the 30 week period.
- Omitting work reimbursed through Change Orders this reduces to £763,267
- Included in the above is the sum of £234,385 for team managers' time. To the extent that this is reimbursed through settlement of Extension of Time Claim No.3 it can be omitted from the sum above.
- It is evident that further delay and disruption to the approvals process occurred beyond w/e 5 Dec 08 - and continues to occur. Halcrow has given formal notice that it reserves the opportunity to submit a further claim for the costs involved.