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**From:** Nick Smith  
**Sent:** 30 November 2010 17:03  
**To:** Alastair Maclean  
**Subject:** Confidential

Alastair

FYI as requested - ***confidential please and literally for you only***. This is simply a quick and very subjective brain dump. Others will have views too.

However, from my personal perspective, the issues are:

- Current position says it all
- Ultimately tie agreed, approved and recommended an unworkable contract
- Allegations about bonus payments raise questions about the probity of key decisions taken around contract close.
- Artificial timetable re Carlisle employed - CEC legal kicked for daring to suggest timetable impossible despite DLA agreeing.
- CEC legal requests to consider "grind on" as an option consistently ignored
- Constant shifting of strategy and U turns without explanation or recognition of the scattergun approach (concentrated focus on Carlisle to the exclusion of everything else, constant slippage of timetable followed by petering out of negotiations and a shift to termination as the only way forward, pursued relentlessly until halted by CEC questioning of legal advice/illness of Andrew Fitchie resulted in more rigorous McGrigors scrutiny of case for termination and conclusion that this would be disastrous).
- CEC legal identified 80.20 issue in Aug. Despite requests to RJ it took over a month to even get a meeting. This now forms a key plank of tie's strategy apparently. However, this should have been used and implemented many months ago.
- The issue of Underperformance Warning Notices was flagged months ago and rejected by tie. They then subsequently use it as part of their strategy.
- CEC led to believe R Keen QC "all over the RTNs". Clearly not the case. One would expect that when serving the RTNs the case had been fully prepared. RJ advised last week that speed was preferred to robustness/accuracy of factual grounds.
- tie have only provided selected documents to CEC despite requests. eg a whole load of phase 2 governance docs dated Jan 2009 only provided to CEC legal on 11 Oct 2010.
- The Dervaird decision re DRP suggests a failure to prosecute DRPs correctly
- DRP results presented in an opaque and overly positive manner.
- Failure to change lawyers at the time that the disputes became clear. Allowing DLA to advise on the contract they drafted appears ill- judged.
- Adjudications make it clear that there were disputes even around time of contract signing. Never disclosed to CEC that I am aware of.
- I understand there were issues with tie's handling of Princes St delivery. eg Original estimate £2m, current cost 12-13m, much of which is unexplained.
- Marshall's investigation into tie found project management faults.
- Failure to provide info requested re costings in various emails (eg request dated 27 August 2010). Indeed it is notable that tie have never factored the "whole line delivery" requirement or the 20% liability cap into their calculations despite the fact that they agreed the points with Infracore.
- CEC legal and Council officers ignored and sidestepped constantly. The one family approach is only employed when it suits tie.

To be balanced I'm sure there are good people and good aspects of the project, but the above highlights some of the key failures which need to be factored into any decision making, bearing in mind we have no comeback on tie.

Kind regards

Nick

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*Please note that I am not in the office on a Monday*