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**From:** Anthony Rush [rush\_██████████]  
**Sent:** 09 November 2010 09:27  
**To:** Joanne.glover@dlapiper.com; Brandon Nolan; Fitchie, Andrew; 'Hazel Moffat'; Jim Molyneux; Nigel Robson; Richard Jeffrey; Simona Williamson; Steven Bell; Susan Clark; Torquil Murray; William Mowatt  
**Subject:** Track-design

Brandon

We spoke yesterday about the options open to tie after refusing the rectification plan for On-street track design and seeking Richard Keen's opinion at the next conference.

The RTN in effect makes out **tie's** complaint that the Infraco haven't delivered a complete design.

In their rectification plan the Infraco admit that they haven't. [See page 4, 5, 6, 9, 11]

It is part of **tie's** assertion that the Infraco should have obtained the Road Authorities approval – the Infraco admit that they haven't and assert that paragraph 2.5.1 excuses them. I am minded that their explanation is contrived – but this will be an issue for RBB.

I note that the Infraco do not offer or rely on evidence of them complaining to tie that other parties' behaviour in this matter is preventing them from executing Infraco works with due expedition. (Torquil will track whether there are notices under Clause 80 or 65).

I note that BSC's letter 52170 is titled "rectification Plan" – but they do offer an assertion that the RTN is invalid.

I would like you to consider asking Counsel for his thoughts on:

1. In these circumstances would Infraco be able to mount a successful defence against **tie** terminating the Contract pursuant to Clause 90.2 on the basis that despite having submitted a rectification plan there was no Infraco Default?
2. Has Counsel any thoughts on the Infraco's assertions on the meaning of Clause 2.5.1 of Schedule Part 14?
3. Should **tie** consider issuing further RTN's on this matter having regard to the Infraco's obligation under Clause 90.6?

To inform the questions Torquil will circulate reports from tie and CEC on the rectification plan.

I would confirm that tie should continue administering the Contract whatever Council timetables may be – there is no cut-off for issuing RTN's.

Tony

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Mobile [REDACTED]  
email rush [REDACTED]