

---

**From:** Alan Coyle  
**Sent:** 09 August 2010 09:29  
**To:** Donald McGougan  
**Subject:** FW: Edinburgh Tram Project - Grant letter

Donald,

FYI

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG | [alan.coyle@edinburgh.gov.uk](mailto:alan.coyle@edinburgh.gov.uk) |  
Phon [REDACTED] Mobile [REDACTED]

---

**From:** Carol Campbell  
**Sent:** 06 August 2010 17:11  
**To:** Alan Coyle  
**Cc:** Nick Smith  
**Subject:** RE: Edinburgh Tram Project - Grant letter

Alan,

You asked me for a brief note regarding the provisions of the grant letter that are relevant to our current situation. The main provisions are as follows:

#### **Notification**

The grant conditions require the Council to notify the Scottish Ministers at least 30 days before tie exercises any right of termination of the Infraco contract.

#### **Clawback of the grant**

With regard to clawback of grant, there is an important distinction to be drawn between terminating the Infraco contract and terminating the project. Termination of the contract does not of itself constitute an event of default under the grant conditions. Termination of the project would constitute a default event under the grant conditions, allowing the Scottish Ministers to exercise all their contractual remedies (including clawback of grant already paid, ceasing further payments etc).

The relevant default event (Condition 13.1.(b)) is the Council "*ceasing or threatening to cease to deliver the Project or any material part thereof*".

#### **Cure Notice and Cure Plan**

As mentioned above, termination of the contract does not of itself constitute an event of default under the grant conditions. There is however a "Cure Notice" procedure which allows the Scottish Ministers to serve a notice on the Council on the occurrence of certain events, requiring the Council to agree a programme of action ("Cure Plan") which will resolve the matters in the Cure Notice to the satisfaction of the Scottish Ministers.

The events allowing the Cure Notice to be served broadly deal with situations where the Council is in default in some way, for example by failing to supply regular reports, comply with the grant conditions etc. There is however an event (Condition 13.2 (c)) which could apply to the present situation:

*"the occurrence of any event which allows or which with the lapse of time would allow any party to a Major Trams Contract to terminate the relevant contract before its natural expiry date or to exercise any other remedy thereunder"*.

Note that the language used is "any party" and read literally this would include a situation where the Council (tie) itself has the right to terminate a Major Trams Contract because of a counterparty breach, not just where any counterparty has the right to terminate because the Council (tie) is in default. Clearly this could apply to the current circumstances in relation to the Infraco contract.

If any Cure Plan is not implemented or progressed to the satisfaction of the Scottish Ministers they can suspend payment of the grant until they are satisfied with implementation/progress. If the Council fails to implement the Cure Notice this in itself will constitute a default event with the consequences outlined above regarding clawback of grant etc.

Hope this brief outline is helpful - I would be happy to discuss further.

Kind regards,

Carol

Carol Campbell | Solicitor | Legal and Administrative Services | The City of Edinburgh Council | Waverley Court Business Centre 3.1 | 4 East Market St | Edinburgh | EH8 8BG | Tel [REDACTED] Fax 0131 529 3603 | LP 6 Edinburgh 8

---

**From:** Alan Coyle  
**Sent:** 27 July 2010 15:09  
**To:** Carol Campbell  
**Subject:** RE: Edinburgh Tram Project - MUDFA Rev 8

Carol,

Attached as discussed. I was onto Nick a while ago to get his view on where we stood with the grant letter given out current situation.

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8 8BG | [alan.coyle@edinburgh.gov.uk](mailto:alan.coyle@edinburgh.gov.uk) |  
Phone [REDACTED] Mobile [REDACTED]

---

**From:** Carol Campbell  
**Sent:** 27 July 2010 14:30  
**To:** Alan Coyle  
**Subject:** RE: Edinburgh Tram Project - MUDFA Rev 8

That would be great, thanks-I've been looking through the pile of docs Nick gave me but if you can send me a copy that would be much easier!

---

**From:** Alan Coyle  
**Sent:** 27 July 2010 14:26  
**To:** Carol Campbell  
**Subject:** RE: Edinburgh Tram Project - MUDFA Rev 8

Carol,

Do you have a copy of the grant letter with Transport Scotland? If not, I could send it on. The point Donald made regarding the Minister being able to claw back the grant without Parliamentary approval is a good one, I'm pretty sure we are in breach of the grant as things stand if he wanted to call it.

Regards

Alan Coyle | Financial Services | Corporate Finance Team (Edinburgh Trams) | Level 2/6 Waverley Court | 4 East Market St EH8  
8BG | [alan.coyle@edinburgh.gov.uk](mailto:alan.coyle@edinburgh.gov.uk) |  
Phone [REDACTED] Mobile [REDACTED]

---

**From:** Carol Campbell  
**Sent:** 27 July 2010 14:20  
**To:** Andrew.Fitchie@dlapiper.com  
**Cc:** Alan Coyle  
**Subject:** Edinburgh Tram Project - MUDFA Rev 8

Andrew,

Could you let us know when you're expecting to receive the adjudicator's written decision on MUDFA Rev 8? I'd be grateful if you could let us have a copy when available.

Many thanks,

Carol

**Carol Campbell** | Solicitor | Legal and Administrative Services | **The City of Edinburgh Council** | Waverley Court Business Centre 3.1 | 4 East Market St | Edinburgh | EH8 8BG | **Te** [REDACTED] **Fax** 0131 529 3603 | LP 6 Edinburgh 8