
From: Colin MacKenzie
Sent: 04 March 2009 16:20
To: Marshall Poulton
Cc: Alan Coyle
Subject: TRAM; REVIEW BY OGC

Importance: High

Marshall,

I refer to our telephone discussion this morning and your request that I provide some questions of a legal nature in advance of the Gateway Review meeting tomorrow.

- Whilst I appreciate that OGC have been called in by David MacKay, I am not sure what their remit is. Accordingly, I apologise if the following questions are not absolutely in line with the OGC remit; nevertheless I trust they are pertinent questions at this stage in the dispute between **tie** and BB.
- Is there a design mismatch? What I mean here is that the B team as long ago as November 2007 was flagging this up to our Directors, before Financial Close. Have **tie** failed in any of their contractual obligations to BB, so as to entitle BB not to progress the works on Princes Street? Is the dispute a question of dates being missed whereby "vacant possession" of Princes Street was to be given to BB; or were there other material factors such as changes in design, delay in MUDFA progress?
- Who pays for the delay and additional costs which will be attributed to the current down time at Princes Street?
- I recall that either OGC or Audit Scotland in 2007 were critical of **tie's** lack of Project Management capabilities; is that still a valid criticism?
- Is a lack of Project Management skills a contributory factor to the current impasse?
- We understand there is a list of circa 250 changes: how are these categorised under the contract and what is their status? Who made or suggested the changes and are they competent under the contract?
- Is there a clear breach of contract by BB refusing to progress works on Princes Street? Should they not be on site and working whilst proceeding through the DRP procedure with **tie**?
- **tie** have certain obligations in the Operating Agreement vis a vis ensuring that they take all appropriate steps available to them contractually, and at the relevant times, to act in the best interests of CEC to minimise the Council's exposure to increased cost and programme, as well as compliance with the Grant Award. Have they fallen foul of these obligations? When did they know about the matters giving rise to BB's refusal to start work on Princes Street?

These are my initial promptings, without the benefit of knowing in any detail what the dispute is about. Dare I say it supports the call that the Chief Executive should have formally issued his letter to David MacKay on Monday once it was agreed within the Council.

Regards,

Colin MacKenzie
for Council Solicitor