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**From:** Alan Coyle  
**Sent:** 11 April 2008 11:20  
**To:** Donald McGougan  
**Cc:** Rebecca Andrew; Colin MacKenzie; Andy Conway  
**Subject:** FW: RUSSELL ROAD BRIDGE: PRIOR APPROVAL

**Importance:** High

Donald

The issue around Russell Road bring could cause a delay/disruption claim from BBS. The problem is two fold. If BBS do not get permission to press on with the piling works I would imagine they would be looking for a compensation event as a result of the delay. If they go ahead with the piling work and then through the approvals process they need to amend the work, then again this falls on the project.

We have been led to believe that the structures have been given priority in terms of design approval. The point is we as the Council are being backed into a corner. I think this needs bottomed out with tie. SDS continue not to deliver and these type of issues could eat into the QRA (£3m for SDS delay £6m for General Delay) pretty quickly.

Rebecca will attend Legal Affairs on Monday as I am on leave, where Council Officers will raise the issue. If we do not get a satisfactory response then I think the matter should be escalated.

If you want to discuss you can get me today or discuss with Rebecca on Monday.

Regards  
Alan

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**From:** Andy Conway  
**Sent:** 11 April 2008 11:02  
**To:** Dave Anderson  
**Cc:** Jim Grieve; Marshall Poulton; Colin MacKenzie; Alan Coyle; Gill Lindsay; Donald McGougan  
**Subject:** FW: RUSSELL ROAD BRIDGE: PRIOR APPROVAL  
**Importance:** High

Dave,

I need to bring an issue to your attention regarding the tram project. It may have an impact on the tram contract awards, and the Report to full Council on 1 May 2008.

Yesterday, I had a rather unsatisfactory discussion with Damian Sharp from tie regarding the Russell Road bridge and the likely delay to the Infraco contract as a result of the prior approval not being complete. tie had asked if pilling could commence before the prior approval (which is effectively Planning permission). I had done further investigation with Planning and Legal, and requested to tie that this would need to be dealt with formally given the implications (legal challenge, objections to Planning Committee etc - which could also severely delay the works). Damian all but refused to provide that information - in fact, one of the suggestions by Damian was that they could charge on regardless! Needless to say the discussions went downhill from there.

The main issue is that this was news to us, and wasn't an issue that we aware about. It's not been mentioned in the Tram Project Board papers from Wednesday's meeting. It is not in the QRA or in the close-out report. I've spoken within Finance to raise their awareness (they are going to brief the Director of Finance) and they confirmed that a total of £3M is identified in the QRA for delays to prior and technical approvals. That said; it wouldn't be very palatable if we use that up in the first week of the contract award and it's doesn't quite align with the positive wording in the current draft of the Council report.

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I'll now do some further digging and try to determine the extents of the delays and associated costs. I'll be back in touch later today with that info.

Perhaps we could raise this with at the Legal Affairs meeting at 5pm on Monday (Andrew used to attend - is that something you intend to do?).

Regards

Andy Conway

Tram Co-ordinator / City of Edinburgh Council  
Level 1 / Citypoint / 65 Haymarket Terrace / Edinburgh / EH12 5HD  
Mobile: [REDACTED]  
Citypoint (tie): [REDACTED] / City Chambers: [REDACTED]  
andy.conway@edinburgh.gov.uk

-----Original Message-----

From: Colin MacKenzie  
Sent: 11 April 2008 09:31  
To: Andy Conway  
Cc: Rebecca Andrew; Alan Coyle; Alan Squair; Nick Smith  
Subject: FW: RUSSELL ROAD BRIDGE: PRIOR APPROVAL  
Importance: High

Andy,

Please see below, for information, my report to Gill and her response.

Kind regards,

Colin MacKenzie  
For Council Solicitor

-----Original Message-----

From: Gill Lindsay  
Sent: 11 April 2008 08:45  
To: Colin MacKenzie  
Subject: RE: RUSSELL ROAD BRIDGE: PRIOR APPROVAL

Thanks Colin. Can we get a view from Fin re QRA and both Directors re issue. Can you ensure you contribute as appropriate to May Report. Suggest this issue then put to Tie for awareness and resolution.  
Gill

-----Original Message-----

From: "Colin MacKenzie" <Colin.MacKenzie@edinburgh.gov.uk>  
To: "Gill Lindsay" <Gill.Lindsay@edinburgh.gov.uk>  
Cc: "Alan Squair" <Alan.Squair@edinburgh.gov.uk>; "Nick Smith" <Nick.Smith@edinburgh.gov.uk>  
Sent: 11/04/08 08:24  
Subject: FW: RUSSELL ROAD BRIDGE: PRIOR APPROVAL

Gill,

You should be aware of this latest issue, given that you are one of the triumvirate who will be making a recommendation to the Chief Executive as to tie's empowerment to sign the contracts. This situation is really most unsatisfactory from the Council's point of view.

Bearing in mind the fact that officers are due to report to Council on 1 May, I recommend to you that full disclosure to members is made on this and all other relevant matters before authority is granted to tie to close the contracts. In my humble opinion this is getting very close to calling upon the Monitoring Officer to become involved.

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Regards,

Colin MacKenzie  
for Council Solicitor

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From: Andy Conway  
Sent: 10 April 2008 18:35  
To: Alan Coyle; Colin MacKenzie  
Cc: Nick Smith; Rebecca Andrew  
Subject: RE: RUSSELL ROAD BRIDGE: PRIOR APPROVAL

Trust me - I agree.

Perhaps you/Rebecca can have a word with Donald, and I'll do the same with Dave.

Regards

Andy Conway

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From: Alan Coyle  
Sent: 10 April 2008 17:51  
To: Andy Conway; Colin MacKenzie  
Cc: Nick Smith; Rebecca Andrew  
Subject: RE: RUSSELL ROAD BRIDGE: PRIOR APPROVAL

Andy

There is circa £3m in the QRA for SDS delay. Nothing specifically with regard to this matter. I find this complete nonsense (so much for risk transfer to the private sector!) how can the Council take the risk on these matters when we have received bugger all information. We cannot continue to be backed into a corner in these matters. I agree this should be brought up at LAG but surely senior CEC officials need to get involved so that a proper process can be put in place to manage these kind of issues! Realise I'm just ranting but how many of these things are going to come out of the woodwork?

Alan

**CEC01393933\_0003**

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From: Andy Conway  
Sent: 10 April 2008 17:40  
To: Colin MacKenzie  
Cc: Nick Smith; Rebecca Andrew; Alan Coyle  
Subject: RE: RUSSELL ROAD BRIDGE: PRIOR APPROVAL

Colin,

I've just a rather long; and not particularly helpful discussion with Damian Sharp from tie. He's reluctant to put it in writing (don't ask!). I can't see why.

He did confirm that we'd end up taking the risk if the pilling changed through the prior approval process - it's either that risk or a certain delay costs. What a choice eh!

I ended the heated discussion, with the comment "if you want us to make a decision, you'll have to give us the information" and had to walk away. Whatever happens, it looks likely that we've been put in the corner by tie and we need to make a choice one-way or the other. We just need to get the info. I suspect that they may intend on not saying anything more on this subject and go ahead regardless (which was one of Damian's suggestions!).

I suggest that we raise this at the next LAC. Yet another example of waawa...

Alan - is there anything in the QRA for this? or is it just a single risk for a delay in the approvals in general? Depending on the delay costs that could be incurred, it wouldn't look good if within a week of the contract being signed we suffered a major claim!

Regards

Andy Conway

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From: Colin MacKenzie

CEC01393933\_0004

Sent: 10 April 2008 16:23  
To: Andy Conway  
Cc: Nick Smith; Rebecca Andrew; Alan Coyle  
Subject: RUSSELL ROAD BRIDGE: PRIOR APPROVAL  
Importance: High

Andy,

I have given some consideration to your query about this matter.

As I understand the point, there is no requirement within the prior approval process to consider the piling design. Further, I am assuming that the Technical Approval ( under the Roads [Scotland] Act 1984 ? ) does not have to await a Prior Approval. If my assumptions are wrong please correct me.

There is a time lag between the likelihood of securing the Technical and Prior Approvals in the order stated, with an associated risk of delay which will have to be picked up by one of the parties.

This appears to be one of the dreaded scenarios which we have regularly discussed at PLIG and Coordination meetings. I would be most reluctant to see a situation whereby the Council ends up paying the cost of delays brought about by the fault of another party in failing to secure a timeous Prior Approval. I cannot confidently say that I understand what the settled position is among tie/SDS/BBS and communicated to the Council about Prior and Technical Approvals, and specifically the liability for delays. I would insist that provided the Council as Roads and Planning authorities respectively meet their obligations timeously, any delays caused to the BBS contract and programme cannot lie with the Council ( either as Promoter or as statutory body in respect of Roads and Planning functions).

Presumably this bridge was one of the "top ten" structures requiring approvals and should have been given its appropriate priority, notwithstanding the continuing delays in achieving Financial Close. Indeed, the additional time does not appear to have been used prudently by tie and SDS ! This all points to a commercial risk being managed by tie, provided they manage it properly and are transparent with the Council as Promoter. From what you say, there is a risk that if the piling does not proceed until the Prior Approval is granted, the programme is adversely affected and somebody pays the price for that. Absent any delays on the part of the statutory authorities ( as well as instructions from the Council as authorised undertaker making changes ), the cost of any delays must rest with SDS/BBS. That situation may have to be expressly covered in the contract between tie and BBS. Can you seek written confirmation from tie in that regard. tie will also have to explain and manage the consequences, if any, of a mismatch on the ground between advance piling and later construction of the bridge on a different footprint, in accordance with the Prior Approval.

Is this effectively a new risk which needs to be considered and quantified for the Council ?

Please note this is advice only for internal purposes and should not be copied to tie.

**CEC01393933\_0005**

Kind regards,

Colin MacKenzie  
for Council Solicitor