
From: Nick Smith
Sent: 26 November 2007 11:06
To: Colin MacKenzie
Cc: Alan Squair
Subject: RE:

Importance: High

Following on from the email below and from last Tuesday morning's meeting for discussion.

As discussed, the current governance section of the FBC requires to be reworked by tie. The present draft notes the position of TPB historically and states that it has "appropriate delegated authority". This is, to our knowledge, factually inaccurate. As we are advised that TPB is a committee of TEL, TPB must accordingly have been validly constituted and derive all its authority via the TEL board. Given that nothing has been devolved to TEL by the Council, it must necessarily follow that TPB presently has no authority or responsibility. This was the issue highlighted by Jenny Drummond in her memo of November 2006 and clearly also causes a governance issue with regard to TPB's sub-committees. As noted below, absent any further clarification, until 20 December the only body with any appropriate delegated authority is tie.

Moving to the post 20 December 2007 position, if it is intended that tie is to have a reporting line both direct to the Council as well as certain matters being referred to TPB then this is in practice possible. To do this would involve:

- CEC specifying which matters require to be referred by tie to which body (ie Council direct (IPG) or TPB) and on what basis. This would need to be added to the Operating Agreement.
- CEC authorising tie to report direct to TPB on certain specified matters.
- CEC would need to giving TEL such powers as are required to allow it to set up TPB and devolve appropriate responsibility to TPB and note that tie will report to TPB on certain matters and that TPB will in turn report to CEC.

Therefore, the position moving forward is soluble in terms of the desired reporting lines and, subject to approval from the relevant Directors, the Operating Agreements can be changed to deal with this structure. TEL would in turn need to put in place the requisite authorities etc.

However, as noted above the historical position is far more complex and as presently noted in the FBCv1, factually inaccurate and inconsistent. In short, TPB presently has no power or authority to take any decisions in relation to the project and in my view it is not possible to remedy this position prior to 20 December.

Kind regards

Nick

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From: Colin MacKenzie
Sent: 14 November 2007 16:27
To: Duncan Fraser
Cc: Alan Coyle; Gill Lindsay; Alan Squair; Nick Smith
Subject: FW:
Importance: High

Duncan,

The undernoted views from Nick, and agreed by me, might be helpful to you.

Kind regards,

Colin MacKenzie
for Council Solicitor

As you know we have recently tried to clarify the governance arrangements for the tram project by producing a flow chart.

One of the main concerns which has come from this has been that we understand that TPB is a committee of TEL. As TEL has, to our knowledge, not been authorised or empowered to do anything in relation to the Project by the Council as yet, it is clearly difficult to see how TPB can presently have any functional role. We appreciate that this may not be consistent with practice to date, but absent any further clarification which tie or Council officers can provide, the legal position is as stated.

As far as we are aware, tie is the only body with delegated authority to carry out matters in relation to tram. Accordingly, any approvals or recommendations of documentation prior to 20 December will require to be made by tie alone as no other body is suitably empowered apart from the Council.