

---

**From:** Nick Smith  
**Sent:** 21 January 2008 11:26  
**To:** Nick Smith; Gill Lindsay  
**Cc:** Colin MacKenzie  
**Subject:** RE: tie O/A

Gill

I've looked at Colin's email. Most of the text is observations about general risk on the deal itself, including the general structure put in place a long time ago (ie tie control the negs etc but CEC ultimately carry all the risk). This has been the case since day one and is a result of tie having been set up to run tram and BBS being unhappy they have no assets, hence the CEC guarantee.

The main contractual issues have been set out in the spreadsheet sent by Andrew to Willie last week. However, Colin has raised two points at 9 & 10 which I will raise with GB. These are how SDS consent issues can be closed out (I understand Andy Conway has been in discussion with tie re this anyway) and the fact that BBS are unwilling to accept any clause in the guarantee which waives BBS's rights where BBS are at fault for causing the loss of the grant.

Ultimately, I think Colin's point is that in general it is clear that not all the issues will be closed out by Financial Close. It will therefore be up to the directors to decide how much of the Council's requirements have to be satisfied before tie can be given the go-ahead. For example, if we cannot give unfettered access to NR land to BBS, is it too risky to allow the contract to be signed with the chance of a delay claim should negs with NR stall?

Kind regards

Nick

Nick Smith  
Senior Solicitor  
Legal Services Division  
City of Edinburgh Council  
City Chambers  
High Street  
Edinburgh EH1 1YJ

(t) [REDACTED]  
(f) 0131 529 3624

---

**From:** Nick Smith  
**Sent:** 21 January 2008 10:12  
**To:** Gill Lindsay  
**Cc:** Colin MacKenzie  
**Subject:** RE: tie O/A

Thanks for the update. Must be something going around. I feel a bit under the weather myself.

I'll contact Andrew re the "recklessness" issue.

CEC01395072\_0001

I'll take a look at Colin's email (I assume you mean the one at 5.41pm?). I think all the specific issues have been raised by Colin and the clients in the list already provided to tie. I expect that the other issues are really a risk-balancing exercise for the Council as to when Tom and the directors will consider it prudent to allow tie to proceed. I'll take a look and see if tie are able to answer any of them direct anyway.

Kind regards

Nick

Nick Smith  
Senior Solicitor  
Legal Services Division  
City of Edinburgh Council  
City Chambers  
High Street  
Edinburgh EH1 1YJ

(t) [REDACTED]  
(f) 0131 529 3624

---

**From:** Gill Lindsay  
**Sent:** 21 January 2008 09:49  
**To:** Nick Smith  
**Subject:** RE: tie O/A

Nick

Thanks. Seems sensible to me as reckless is a high test ie not inadvertent. PL check quickly with Andrew first letting him know our advice. Nick understand Colin is off sick. Have just met with Chief Exec, AH, and Tie re update. Essentially working to current timescales and awaiting update tonight. Seems may be list of positioning re Tie and BBS developing which will be available tonight. Tom requires AH and us to prepare any Report reqd for Council 7 Feb. I will commence in Colin's absence and then pass to him. Will be drafted at present to say matters substantially concluded and awaiting final preparations before completion, providing this is the positioning reached by 30 January.

Following this I raised with GB issues that Colin may have re mail of Friday. They are to ensure there is a space tonight at IPG to deal with all contractual issues/structure of contract Colin had concerns on and raised in his mail to me of Friday. Can you pl do this on Colin's behalf. Can you pl let G Bissett know by mail what they are as he wants to make sure he has the right people there at L:AC to deal with this. Whatever issues we have re contract structure and PC guarantees should be worked through urgently with Tie, getting advice from DLA if reqd. I will take up and deal with letter I require from DLA directly. Essentially I am trying to get a positioning on where DLA are re current state of negotiations and what I will have in advance of 28th.

Just let me know if you want to discuss before LAC tonight.

Thanks  
Gill

---

**From:** Nick Smith  
**Sent:** 21 January 2008 09:07  
**To:** Gill Lindsay  
**Cc:** Colin MacKenzie  
**Subject:** FW: tie O/A

Gill

I want to give the attached a final read-through, but I think we are there. However, when drafting the waiver in 3,9 for the last draft, I added a carve out for reckless behaviour. tie do not wish to accept this. I recommend that it remains. I agree that the previous wording was agreed by the tie board, but that was before the Council was willing to concede on the waiver at all. I think tie should at least accept this. Do you have a view here?

Thanks

Nick

Nick Smith  
Senior Solicitor  
Legal Services Division  
City of Edinburgh Council  
City Chambers  
High Street  
Edinburgh EH1 1YJ

(t) [REDACTED]  
(f) 0131 529 3624

---

**From:** Graeme Bissett [mailto:graeme.bissett@virgin.net]  
**Sent:** 17 January 2008 15:01  
**To:** Nick Smith  
**Cc:** 'Willie Gallagher'; david\_mackay@tiscali.co.uk; Neil Renilson (TEL); Andrew Holmes; Andrew Fitchie; Gill Lindsay; Rebecca Andrew  
**Subject:** tie O/A

Nick, here is a revised version of the tie agreement. This is track changed from your version issued on Wednesday 16<sup>th</sup>, the updated second version.

Revisions are :

- Funding Agreement definition – to remove an uncertain date
- Tramco definition – to align with use in the body + typos
- 2.15 – conform with TEL to cover reporting of all insurances
- 2.25 – typeface
- 2.32 – words from Andrew Fitchie as I believe has been discussed.
- 3.9 – remove “reckless”, back to definition previously agreed by tie Board
- 11.1 – to reflect the wider group of contracts

I hope this leaves only :

Any final consistency alignment with the TEL agreement

Commencement date in 4.1

Signing page dates etc

Can you supply the Governance diagram from the Council Report for App 2.

I will have this final form checked by PwC and DLA and let you know if any further tweaks are needed.

Regards

Graeme

---

Graeme Bissett

m : 