
From: Nick Smith
Sent: 29 January 2008 16:30
To: Gill Lindsay
Cc: Colin MacKenzie
Subject: Consents issue

Gill

Further to last night's meeting with Andrew Fitchie, below is proposed text from you to the directors to progress the approvals matter:

Andrew/Donald

You may recall that the Director's briefing note on the tram project in December noted the consents and approvals issue as being a concern for the tram team. After detailed discussion between Legal Services and City Development the position appears to be as follows:

- It was originally intended that all approvals would have been obtained by SDS by financial close. I understand that at the present time approximately only 20% have been approved.
- The project has been led by tie and the Council has had little input on the technical negotiations. Accordingly the quality and full scope of the other 80% of drawings is unknown as at the present date.
- Unfortunately we are advised that SDS were not put under a timetable commitment by tie when the contract was originally negotiated. We understand that tie and BBS are trying to rectify this by agreeing a revised timetable/programme as part of the SDS novation, although the exact terms are still to be clarified by tie.
- We are advised by tie that there are minimum standards and requirements set out in the Infraco suite which identify what SDS/BBS must comply with in terms of submitting "fit for purpose" drawings for approval.
- However, what CEC has had little or no visibility of is whether there is a differential between what CEC are expecting in terms of tram (whether as planning authority or as tram promoter) and what tie have negotiated on CEC's behalf.

To this end it appears that so long as BBS meet the minimum requirements set out in the Infraco suite (as agreed with tie), any requirement for change will be for CEC's account (ie in relation to increased cost of betterment and any consequential cost of delay). This appears to be fair to BBS as BBS can only be expected to comply with the requirements put upon them. However, as CEC has no real visibility on what is being delivered in relation to the currently unapproved drawings, this opens up the possibility of significant risk of increased cost to the project.

I should be grateful if you would confirm whether or not you are of the view that CEC should accept the unquantified risk of claims for compensation as a result of this situation. Unfortunately the only way to exclude this risk entirely would be to require all drawings to be approved before financial close, which will be impossible on the current timescales. Can you also please confirm whether you think tie should also be asked to confirm that they anticipate no mis-match between CEC's expectations and what tie has negotiated on CEC's behalf.

Once a decision has been taken whether or not to accept the inherent risk, there are a number of ancillary issues which will need to be progressed with DLA and BBS:

- If a timetable is agreed by all parties, who pays if the SDS design timetable slips again for non-CEC fault issues? We assume BBS will carry the cost in this case.
- How is snowballing of approvals delay dealt with? ie if drawings are not up to standard then they will be rejected and need to be re-submitted later. Given there is finite number of planners and approvals which can be achieved weekly, the re-submittal will presumably affect the approvals of other documents further on in the timetable. This needs provided for.
- Hidden claims - we need to rule out the possibility of SDS/BBS "hiding" delays caused by them behind delays caused by CEC. For example, CEC may request betterment resulting in a 6 week delay, but SDS may have caused a concurrent 5 week delay of their own. It would not be fair to CEC if SDS's delay is not taken into account as it is "hidden" by the longer CEC delay. There should be some form of proportionality. Note that this applies both ways - ie it would not be fair for CEC to hide its delays behind longer SDS delays.
- Pre-purchasing - Given there is likely to be a lead time for ordering, BBS will no doubt need to place pre-orders for materials. However, we would recommend that where BBS places orders for materials in relation to drawings which have not been approved by CEC then BBS should carry the risk of CEC not approving the drawings. It will remain to be seen whether BBS will accept this, especially where they consider that they have met the minimum requirements.

Kind regards

Nick

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