
From: Nick Smith
Sent: 11 April 2008 10:53
To: Gill Lindsay
Cc: Colin MacKenzie
Subject: Tie/TEL agreements

Gill/Colin

I have briefly considered the issues arising from the tie/TEL agreements and the changes proposed by tie recently. I have the following initial views:

TEL

- My understanding is that it is up to Council officials to determine the exact terms of the TEL agreement in accordance with the terms of the December Council report. Accordingly, the officials have a relatively free hand here as all that is really happening is giving TPB powers in line with what has been delegated to tie in relation to the project. It was proposed that TEL's wider role would be agreed at a later date.
- The new final costs figure is to be inserted. In my view there is no problem with this, nor with the £10m variable, so long as Finance remain happy.
- However, it is now proposed that the delivery date simply shift to 31 July 2011 without formal reference to the Council members. This is a full four months later than the 31 March previously set out and originally proposed by tie in their drafts. Given that tie/TPB themselves clearly considered that any delay of over 3 months past 31 March 2011 required Council approval, it is very difficult to see how a 4 month delay as presently proposed can simply be deemed to not require such Council approval. Furthermore, it is now proposed that the Council only get to approve delays of over 3 months with reference to the new date of 31 July 2011. I am of the view that given 4 months delay has already occurred at such an early stage the Council should have power/knowledge of any further delay of even a month. ie approval for 3 months delay may have been acceptable when the finish line was 31 March 2011, but surely the project and funding is in deeper waters should the delay continue to or beyond 4/5 months. In short, in my view the Council should be appraised of the proposed changes before tie sign up to the contracts and further delays of over one month beyond 31 July would also require Council approval.

TIE

- I understand that matters are in hand to obtain a view on the delegation of powers etc in relation to MUDFA from D&W. This will be critical in terms of the changes proposed.
- You will recall that the terms of the delegations in the Dec Report were carefully negotiated with Andrew Fitchie and mirrored in the tie agreement at 3.1.
- Provided that D&W confirm that the MUDFA delegation was all validly carried out and approved than in my view the Council should have little problem with this being reflected in the new tie agreement. However, a decision would need to be taken as to whether a "new delegation" was given in this regard, or whether it is simply noted that such delegations were conferred previously and specifically refer to them. Bear in mind that if insufficient delegation has occurred originally then fresh powers will need to be sought from the Council before the change can be made. However, if this is the case then there will no doubt be further problems in any event.
- Colin and I are unhappy with the wording proposed in relation to "acting as transport authority" under NRSWA. It needs to say acting as agent as originally drafted.
- tie have also proposed a general delegation in relation to all the agreements involved. It is difficult to see what issues with Council has with this given that tie is the contracting

authority and needs to be able to deal under these contracts. However, you will recall that we spent a large amount of time not creating a general agency position so would be keen not to see this eroded. You will no doubt have your own views on this matter.

On a more general point, I am of the view that tie's proposal to simply note the significant changes between the FBC and the present position in order to allow the Chief Executive's signoff as per the December report is wholly inadequate, especially given the proximity to the next Council meeting on 1 May. I agree with Colin's view that the best course has to be to appraise the members of all the new facts and figures and seek fresh approval for tie signing. This would keep all the delegations and authorisations clean and ensure that there could be no question of whether certain of the new risks were validly authorised.

Kind regards

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