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**From:** Graeme Bissett [graeme.bissett@[REDACTED]]  
**Sent:** 14 December 2007 12:26  
**To:** Stewart McGarrity  
**Subject:** FW: Operating Agreement, related documents and approvals  
**Attachments:** Operating Agreement v14 121207 vGB.doc

Regards  
Graeme

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Graeme Bissett

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**From:** Graeme Bissett [mailto:graeme.bissett@[REDACTED]]  
**Sent:** 12 December 2007 18:18  
**To:** 'Fitchie, Andrew'; 'Stewart McGarrity'; 'Tracey Kinloch'; 'Susan Clark'; 'Alasdair Sim'  
**Subject:** Operating Agreement, related documents and approvals

Colleagues, here is my mark-up. As discussed, it will be quicker to turn the pages around the table rather than email and we have agreed 7.30am tomorrow morning on the 2<sup>nd</sup> floor. I'm going to suggest a meeting with CEC to finalise tomorrow at 2.30pm here, let me know if that suits.

I've also noted below :

- The other matters which need to be addressed to finalise the draft tie O/A
- Other documents and approvals required by 14/12 including the actions agreed at the CEC meeting this morning
- Main January 08 documents

The outstanding matters in the tie O/A are set out below and some queries in comments on face of document :

- Consistency and conflict check with the current tie O/A (AF) – suggested over-arching words ? (AF)
- Preamble 6 Should this go into the body of the agreement ? (AF)
- In-house provider language to come for inclusion relative to procurement concern (AF)
- 2.12 / 2.13 Advice from Heath Lambert : Due to the requirement of insurable interest tie cannot agree to this amendment. In terms of the OCIP, CEC are owners and funders of the assets therefore they have an insurable interest and are included as an insured party under the OCIP for the Construction All Risks and Third Party Liability sections (TK / HL)
- 2.12 / 2.13 Advice from HL : The contracts will be between tie and the respective contractors and consultants. Tie's interest as the principal is covered under the indemnity to principals clauses in

the contractors' and consultants' policies. CEC would need to demonstrate that CEC is also a principal under the contract to be able to benefit from the indemnity to principals clause in the contractors' and consultants' policies. This is a legal matter and CEC should obtain legal advice. (TK / HL / AF)

- 2.13A Need to discuss inclusion (TK / HL)
- 2.12 and 2.13 Can we say that we are fully compliant at present and have actions in place to continue to be so, especially into the construction period ? (TK)
- 3.1 Ensure this is a watertight delegation and is consistent with the resolutions in the Council report (AF)
- 3.3 Confirm this will not cause difficulty with BBS – existence of and reference to the guarantee at 3.2 should provide (AF)
- 3.9 Words inserted by CEC Legal except for my amendments, which seem appropriate. Views welcome on the balance of interests of all parties (All)
- Sch 1 The draft doesn't reflect the tie proposal – what is the state of play here ? (SC)
- Sch 2 To be included – do we have it from the Report (SMcG)

#### Other O/A matters in short term :

- Need wording for tie Board resolutions creating Executive Chairman delegated authority responsive to O/A wording but also to require that WG has TPB approval ; also need back to back wording for TPB approval (AF)
- Finalisation of performance guarantee and approval by all parties (AF)
- Council Report / resolutions (SMcG / AF)
- Review and informal approval by TEL Chairman and CEO (GB)
- Confirmation that BBS do not need any authority mechanism to be provided to TEL at this stage ? (AF)
- Ensure full alignment (where relevant) with funding letter (SMcG)
- Summary of personal exposure risk for tie directors (to discuss)
- Confirm NRSWA issue covered elsewhere (AF)

#### Other documents and approvals required by 14/12 :

- Depot changes – AS to action agreement with key parties and prepare paper for CEC on background, programme and extent of agreement with FSR, BBS and (as necessary) NR demonstrating level of risk ; comfort letter to be sought from FSR and BBS (SC / AS)
- Station changes – As for depot changes (SC / AS)
- Car park compensation – AS to document basis of budget estimate with input from DV, comparative Station Zero terms via TS, gameplan to reach commercial agreement with NR / FSR and take all possible action to execute (SC / AS)
- NR framework and related agreements – comfort letter to be sought from NR on state of play and all key aspects to complete (SC with AS / SB)
  
- FBC v2 (SMcG)
- Updated risk matrices and DLA report to CEC (AF)
- Note for CEC on SDS novation process focussed on risk of non-completion (AF)
  
- Confirm finalisation of BAA lease and license (AS)
- Ditto CEC / tie license (AS)
- Confirm Forth Ports up to date position (AS)

Main January 08 documents :

- TEL equivalent O/A
- Documentation of all delegations including within CEC
- Finalisation of detailed governance paper and its approval
- Approval mechanisms for Award notification and Close, including Andrew Holmes “authority to sign” letter to WG

I hope that’s comprehensive and should cover all the items under review by LAC.

Regards

Graeme

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