

DRAFT - CONFIDENTIAL

Infraco/Tramco Options

Option 1 – CEC Legal carry out a review of all relevant documentation

Pro – the work is carried out in-house and the team is already aware of the terms of the wider project.

Con – CEC Legal has neither the experience nor the resources to carry out such a review, especially within the timescale available.

Conclusion – Unlikely to be practicable given timescales.

Option 2 – DLA are asked to provide CEC with an issues paper, setting out what they would have advised had CEC been the client rather than tie. This could be done via a Chinese wall arrangement or otherwise.

Pro – DLA are up to speed with all the documents and negotiations.

Con – DLA are advising tie and are likely to consider themselves conflicted and therefore unable to advise CEC direct on such issues. In addition they will likely say that they cannot provide such advice as CEC's advice/responses over the past few years re the negotiations may have differed from ties, thereby changing any potential negotiated outcomes. ie their task could be considered impossible.

Conclusion – Theoretically possible and desirable, but unlikely to succeed and would always come back to the fact that the advice was based on tie's, not CEC's, instructions to DLA.

Option 3 – An independent law firm is asked to review the documentation afresh.

Pro – CEC could be certain that all relevant issues have been looked at in detail and any particular concerns dealt with appropriately.

Con - Unlikely to be practicable given timescales, especially given the amount of documentation involved and the lengthy history of the project.

Conclusion – likely to be impracticable in the circumstances.

Option 4 – CEC simply rely on what tie to have done to date and approve that CEC's position has been considered and covered-off as best as tie could achieve on CEC's behalf.

Pro – easily achievable within the timescale available.

Con – Relies on tie having considered CEC's interests as opposed to their own throughout the negotiations – note that even DLA advised that the two parties will have different interests from time to time (eg tie interested in delivery of a tram, CEC interested in wider operating ramifications). May invite criticism of CEC with regard

to why there has not been more involvement in the process to date. Councillors may seek signoff from the Council Solicitor from CEC's perspective in any event, which is not possible without a full review which will take time. Ultimately, the decision as to whether to "trust" what they have done is a commercial, not a legal, decision.

Conclusion – likely to be the most practicable solution given timescales, but clearly open to criticism on a number of fronts. Increases CEC's risk profile as CEC signing up to arrangements it did not negotiate.