

DRAFT Rev 4c 22 Programme Saving - Advice Note (subject to T&T internal approval and CEC final comment)

1 Introduction

1.1 Terms of reference

This note is a development of previous notes which respond to CEC's request for advice from Turner & Townsend. CEC have asked us to respond to two questions:

1. Change Order - In the first instance we were asked to advise on Infraco's entitlement to a Change Order amounting to £6.45M resulting from the removal of the embargoes and traffic management constraints on the On Street Section of the Works and how it should be evaluated commercially.
2. Consequences - The second item CEC asked us to advise on relates to the potential consequences if the contractor did not receive a Change Order for £6.45M, withdrew co-operation and pursued a dispute. In this instance CEC wish to review the wider costs and benefits of making different decisions.

In reading this advice the following should be noted:

- That there may be no merit in Infraco's claim to the £6.45M resulting from the value engineering initiatives and that Infraco are under a duty to complete by the contract completion date of 8th July 2014.
- That the value engineering programme saving is not contemplated in the Infraco Agreement or in Turner & Townsend's Contract. Turner & Townsend therefore consider there is no formal authority under its contract to advise on these matters however this note responds to a CEC request. CEC requested Turner & Townsend to provide a comparison of the possible commercial outcomes and a table is provided in Section 3 (Appraisal).
- That Turner & Townsend are not legal experts and as the contract is be-spoke, we have recommended that CEC should take legal advice regarding Infraco's entitlement to a Change Order. It is understood that legal advice has been provided, however at the time of writing CEC have requested that Turner & Townsend provide opinion without visibility of this advice.
- That this advice note does not address the issues relating to the Certifiers Opinion on the cost implications of moving from the Rev 3A programme to Rev Programme which set a contract completion date of 8th July 2014.

2 Entitlement to a Change Order

There are two interpretations:

1. By entering into the VE arrangements, the parties intended to collaborate and work together to save time and money by the client removing programme embargoes (Edinburgh Festival August 2012 and 2013, and removal of Traffic Management constraints which provided the contractor larger working areas). A benefit of up to 22 weeks saving on the completion date could be realised giving up to a £12.9M saving (for a full saving of 22 weeks) which would be shared 50/50 between CEC and Infraco. Infraco are currently reimbursed their full prelims and have not suffered any loss. Under these arrangements they have an incentive to finish early.
2. Owing to ongoing issues with utilities diversions, the project would have been 22 weeks late if programme savings were not secured. Infraco have now suggested that the basis of the value engineering programme savings was that in return for them re-sequencing their programme, they should be re-imbursed 50% of the projected prelim prolongation costs that that would have resulted from an expected 22 week delay to the contract completion date of 8th July 2014.

In our view, it would appear that the purpose of the value engineering sessions were to save time and money. We also believe that value engineering programme savings are not contemplated by the Infraco Contract and that Infraco were aware that the application of programme savings was not governed by the Contract. The evidence for this is:

- The notes from the meetings, the Baseline Project Instructions Report (Jan-12) identify benefits and values. Infraco presented the costs as a saving and showed the time saving for each of the work sections. The overall project finish date was 5 February 2014. The Independent Certifier confirmed the 22 week programme saving and £6.45M cost saving to CEC and Infraco in the Report and Turner & Townsend confirmed the revised completion dates and the cost savings in their section of the report.
- Infraco presented their input to the Baseline Project Instructions report by making reference to a 22 week saving resulting in a finish date of 5th February 2014 and the resulting saving in prelims costs using the weekly prolongation costs in the contract.
- Turner & Townsend were not privy to all meetings between CEC and Infraco; however at no point in any of the value engineering meetings did Infraco seek acceleration to obviate the necessity for an extension of time as envisaged by clause 61.2. It also cannot be proven that a 22 week delay would have occurred as Infraco is under a duty to mitigate and other contract omissions and de-scoping have also reduced the volume of work to be completed by Infraco.
- Infraco maintained that the contract programme should remain as Rev 4, later to become Rev 5, and that a shadow programme Rev4C should be used to monitor any erosion of the 22 weeks saving in relation to the finish date of V.E. date of 5 February 2014. Refer to Planning Programming Meeting 1st February 2012. This arrangement is beyond the scope contemplated by the contract and reinforces Infraco's intent to work collaboratively. Turner & Townsend advised CEC on the issues associated with this approach at the time.

It is for these reasons that we believe the 1st interpretation is correct and that the final saving is determined by the principles of the intent of the value engineering. The Cost Engineering

Baseline Project Instructions did not specify how savings would be shared in the event that less than 22 weeks was saved however the Turner & Townsend paper advised that the contractual arrangements were yet to be determined. Infraco insisted that a change order was not issued at this time as this would indicate early completion and the time saving may be eroded by the requirement to delay Infraco in certain areas to enable utilities to be diverted.

We have also recently advised that there is no entitlement to standard contract Change Order for Infraco's original share of the saving and that the project is administered in accordance with the agreed project procedure of measuring the impacts (delays and time savings from ongoing de-scoping) on the original 22 week time saving. This is consistent with the intent of the value engineering, to save time and money.

The various commercial evaluation strategies and their implications are attached at Appendix B.

3 Appraisal

We have assumed that likely erosion of the 22 week saving is 11 weeks to date, based upon agreements with Infraco, *[plus a further erosion of 4 weeks owing to the opening of a single lane on the North of York Place to keep the bus station open and two lanes during the Christmas period – to be confirmed]*. This results in an overall saving of -7 weeks (-22 + 15 weeks). This does not take into account any gains from future activities, e.g. omission of new kerbs, footway and scope transfers (foundations and ducting for traffic signal poles etc). It also does not account for ongoing construction efficiencies brought about by the removal of the traffic management constraints and wider working areas.

All programme assessments are expressed in weeks as time savings or additions to the contract completion date of 8th July 2014. All cost variances are expressed against the cost report which assumes contract prelims to 8th July 2014. The scenarios are categorised under "Change Order" or "No Change Order" to identify the potential consequences as referred in Section 1.1 above. Note: All costs expressed at an average £0.59M per week as referenced in the value engineering calculations. The contract contains specific prolongations costs for each work section and sub contractor and the overall delay cost if all sections of the work were affected would be c. £0.8M excluding CEC on-costs.

In the scenarios where co-operation is withdrawn, it is assumed that a clear programme window of 8 weeks is required where Infraco vacate the sites to enable all utility diversions to be completed. In this situation Infraco would return to site and complete the works. We have not allowed for further extension of time claims or slow productivity based upon further events or poor behaviours causing delay.

In responding to CEC's request we have considered six potential scenarios and an appraisal of each is given below:

1. Change Order - BBS position, co-operate, no further ex contract claims pursued and project completed successfully
2. Change Order - BBS position, further ex contract claims pursued
3. No Change Order - Contract application, 22 week saving results in revised completion date, extensions of time granted for delay
4. No Change Order - CEC negotiation, BBS held to intent of VE and negotiation on the financial outcome
5. No Change Order CEC don't pay £6.45M Change Order, Infraco lack of co-operation, CEC win dispute
6. No Change Order - CEC don't pay £6.45M Change Order, Infraco lack of co-operation, CEC lose dispute

	Probability of a successful outcome	Programme Variance	Cost Variance	Working Arrangements (refer assumptions above)
1	Possible	-7 weeks	£6.45M	No guarantee that Infraco will co-operate going forward but <u>the outcome may be a reduction in thees</u> risk of lack of co-operation. A number of <u>ex contract</u> commercial issues <u>would may still</u> remain (mark-ups, TM, <u>agreement of re-road re-construction re-measurement, sub-contractor claims for out of sequence workingete</u>)
2	Probable - initially BBS expectation met, however no guarantee of continued co-operation.	- 7 weeks	>£6.45M to £11.2m+ dependant on basis for extension of time claims and level of disruption (Assumes 8 week extension of time c. £4.72M in excess of £6.45M)	Assumes that Infraco will pursue further ex contract claims in addition to current commercial issues (refer above)
3	Unlikely – given Infraco's stated position	- 7 weeks	> £2.35M, (based upon -(£6.45M) + £8.80M for a 15 week extension of time) plus any further extensions of time	Lack of co-operation as BBS expectation not met and possibility of further delays
4	Possible – dependent upon negotiation offer	- 7 weeks	-(£2.05M) (assuming no merit to claim and VE principle applies) to +£6.45M based upon reimbursement of contract prelims and offer to settle issue	BBS co-operation dependent upon intention to pursue a dispute, likelihood of success and amount offered in negotiation.
5	Uncertain	+ 8 weeks	£4.72M prolongation +? disruption	BBS withdraw co-operation and 8 week EoT required to conclude utilities
6	Uncertain	+ 8 weeks	£4.72M prolongation +? disruption £6.45M for the original VE cost share Total £11.2M+ dependant on basis for extension of time claims	BBS withdraw co-operation and 8 week EoT required to conclude utilities

			and level of disruption	
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4 Recommendation

~~4.1 Introduction~~

~~As referred to above the entitlement to a Change Order for £6.45M should be distinguished from the rights of CEC and Infracore in the contract.~~

~~It should be noted that, if CEC make a decision, taking into account the wider consequences and interests, to step out of the contract, then a contract amendment may be required.~~

~~4.24.1 Contract Change Order~~

From the papers submitted in the Baseline Project Instructions it would appear that there is no clear substantiation for Infracore to be reimbursed the contract prelims to the 8th of July 2014 and to be paid an additional £6.45M for part share of the 22 week prelim saving. The £6.45M overlaps with the contract period, i.e. the same prelims cannot be claimed twice. (Note: the exception to this could be the £0.5M additional supervisions costs included in Infracore's proposal).

From our reading of the contract, it would appear that it does not contemplate shared programme savings; however CEC should obtain advice on this point from their legal advisors.

Given these findings Turner & Townsend cannot support the issue of a standard contract change order for £6.45M.

Owing to these findings and that the contract does not contemplate shared time savings; we recommend that the issue of a standard contract change order is not applicable to this situation.

~~If CEC, having appraised the advice in this note, along with the advice provided by their legal advisors, decide to pursue a negotiated settlement then a decision would need to be made regarding the method of payment. Our understanding is that this could take the form of the Certifier issuing a tie Change Order following determination of the costs or for CEC to agree to an ex contract payment which would require a side letter or other document to define what had been agreed and the commitments made by Infracore.~~

~~The cost consequences of this solution could be £2.05M to £6.45M depending upon:~~

- ~~• Entitlement to a claim for £6.45M from the VE (i.e. would Infracore and can Infracore take the matter to dispute and win)~~
- ~~• Willingness of Infracore to accept that early programme completion savings provide benefit to them;~~
- ~~• Willingness of Infracore to commit to mediation agreements and not to pursue ex contract claims;~~
- ~~• CEC's interests to secure ongoing commitment and willingness to allocate funds to a negotiated settlement.~~

4.34.2 Infraco's position and wider consequences

Infraco have suggested that they may withdraw co-operation and escalate the matter to dispute resolution. This comment has been made informally and this could either be a serious threat or positioning for a negotiation.

In the event that Infraco withdraws co-operation then there may be significant time and cost consequences including the trigger to move the On-Street works to cost reimbursable if extensions of time are not provided within the contract timescales.

Infraco may consider applying for an extension of time based upon a delay analysis showing the impacts on the contract programme. The implications of the delays resulting from utilities diversions have been monitored on the delay tracker, progressed versions of the contract programme submitted each period. We have not at this stage undertaken a detailed review of the contract, however we believe that the claim for an extension of time would need to prove the mitigation measures adopted, and why unsuccessful, and acceleration measures which could be taken to mitigate the effect of delay. It would also need to recognise that the removal of the embargoes provided additional working time and also the removal of the traffic management constraints reduced the number of phases and thereby time.

Infraco can take the issue to Dispute Resolution, provided the difference of opinion arises from the Agreement. CEC should take legal advice on whether the intent of the value engineering to save time and money, the application of a shadow programme to monitor actual progress against the 22 weeks saving, falls within the scope of the Agreement.

It should also be recognised that there is no guarantee if sums are paid out that Infraco will not in the future withdraw co-operation. Infraco made commitments in the mediation agreement and the On Street Works Protocol, by withdrawing co-operation and pursuing a dispute Infraco is moving away from commitments made. In addition it should be recognised by CEC that Infraco continue to seek maximum return on all commercial issues irrespective of the contract conditions.

Ultimately CEC will need to decide, having appraised the advice in this note along with the advice provided by their legal advisors, whether a negotiated settlement meets the best interests of the project. If it is decided to pursue a negotiated settlement, then a decision would need to be made regarding the method of payment. Our understanding is that this could take the form of the Certifier issuing a Certifier's Change Order following determination of the entitlement, or for CEC to agree to an ex contract payment which would require a side letter or other document to define what had been agreed and the commitments made by Infraco. Legal opinion should be sought on the method of certification. It should be noted that, if CEC make a decision to make a payment and to step out of the contract, then a contract amendment may be required.

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The cost consequences of this solution could be -£2.05M to £6.45M depending upon:

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- Entitlement to a claim for £6.45M from the VE (i.e. would Infraco and can Infraco take the matter to dispute and win)

- Willingness of Infraco to accept that early programme completion savings provide benefit to them;
- Willingness of Infraco to commit to mediation agreements and not to pursue ex contract claims;
- CEC's interests to secure ongoing commitment and willingness to allocate funds to a negotiated settlement.

4.44.3 Governance

If CEC wish to pursue a negotiated compromise route position, we would advise that the CEC Senior Management Team ~~and or~~ Project Board ~~considers~~consider the financial impact on the overall project budget. This will depend on the amount proposed to retain Infraco's co-operation, the out-turn forecasts for all elements of the project and the need for a robust risk allowance to complete. This process complies with good governance; CEC's Delegated Authority Rules and provides an audit trail for record purposes.

The Settlement Agreement provides an escalation route through the contract provisions, the Joint Project Forum, the Principals Group and then Dispute Resolution. Turner & Townsend are not privy to the Joint Project Forum or the Principals Group therefore CEC would need to confirm how this issue has been addressed at these meetings.

4.54.4 Negotiation Strategy

Infraco have stated that they are not prepared to negotiate on the matter, however there is a concern that if CEC decide to make a payment in this instance, what assurances can be provided that similar threats will not be made in the future. For these reasons and to secure the best financial outcome for the project, a negotiated route position could be promoted offered to Infraco by CEC. This proposal could be structured as follows:

- The Cost Engineering Instructions which have been endorsed by the Principals Forum represent the programme saving as a cost saving not a cost addition;
- Infraco have benefitted from an increase in working durations through the removal of embargoes, increased working efficiency through larger working areas and less risk through de-scoping of work;
- The current assessment of delay caused by utilities is c. 11 weeks; Infraco have been reimbursed their prelims and suffered no loss. In addition once retained logic is removed for de-scoped items such as retention of existing footways then further programme improvements are expected.
- Infraco committed to a "substantive cultural shift in the behaviour of all parties" in the mediation heads of terms and committed to the "On Street Works Protocol" in the Settlement Agreement. This envisages providing "reasonable access to working areas for all parties" and "collaborating in joint site co-ordination";

- CEC have met their commitment to co-operate and have shown flexibility through de-scoping works, removal of OHP/Prelims on value engineering items and snagging issues;
- Infraco cannot prove any loss from the arrangements and in fact stand to benefit by 50% from costs saved as a result of actual time saved;
- The backstop is that irrespective of the out workings of the intent from the value engineering, any claim from Infraco must have merit to pursue those time related rights and entitlements to client delay to the contract Completion date - if Infraco were to claim then presumably the contract measure would be accelerative measures to achieve a date prior to the original Completion date (usually requiring an express instruction). In this situation no acceleration measures were adopted owing to the length of durations in the contract programme and the time benefits from the relaxation of the Embargoes and Traffic Management constraints. In this situation prelims are paid based upon the contracted period (i.e. they cannot claim twice for £6.45M of prelims covering a period included in the contract period).

To aid resolution analysis of the further programme benefits based upon progress on site and the time savings resulting from the de-scoping of the pavement repairs and road reconstruction should be taken into account. Equally the impacts of residual utilities diversions and TM for the bus station should be taken into account.

We also recommend that CEC consider who should participate in the negotiations as the strategy should be to hold Infraco to commitments made at mediation and also statements made at the Joint Project Forum meetings.

4.5 Recommendations

We provide below our recommendations to the two questions to which ~~that~~ CEC have requested a response: ~~on:~~

1. Is the contractor entitled to a Change Order for the relaxation of the embargoes and traffic management constraints and re-programming the works?

From our analysis of the papers submitted for the value engineering and collaboration since the Baseline Project Instructions were issued in January 2012, we believe that there is no clear entitlement to a standard contract change order for £6.45M. The contract provides for the evaluation of losses that the contractor can prove he has incurred. This has not been provided by the contractor.

On this basis, and within the parameters of T&T’s scope of service, T&T cannot recommend the issue of a standard change order for £6.45m. However it is recognised that CEC may wish to consider the issue a change order, through an Independent Certifier’s Change Order or an ex contract payment by making a contract amendment. The amount would be based on a negotiated settlement, settlement; taking into account the potential consequences of the scenarios discussed within this paper (see ~~below~~ below).

2. -What are the potential consequences if the contractor does not receive a standard change order for £6.45M for the relaxation of the embargoes and traffic management constraints and re-programming the works

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~~The contract provides mechanisms to evaluate change and relief events, escalation procedures and also restrictions on what can be taken to dispute resolution. Infraco could withdraw co-operation and move the project into dispute whilst pursuing claims for extensions of time and disruption. which This -could have significant cost and time impacts (refer to scenarios within Section 3). -Entitlement would be subject to the contract provisions.~~

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~~-CEC should consider that, having taken legal advice, whether that all routes have been exhausted and whether that the potential impacts are -unacceptable. -Having completed this appraisal given their wider project objectives.-~~

If Infraco were to maintain current progress then it is likely that they will complete earlier than the contract completion date.

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CEC may wish to ~~could~~ consider a negotiated route to reduce the risk of future lack of cooperation by ~~infraco~~Infraco, provided sufficient funds have been allocated from the budget for this issue and the other risks that exist e.g. outcome on the Rev3A to Rev 4 programme change. The potential cost impact of the resulting this Change Order or ex contract payment is difficult to determine as it depends upon the reasonableness of Infraco or their intransigence. It should be noted that there is no guarantee that Infraco will not withdraw co-operation in the future if a payment is made on this issue.

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It is our understanding, not being legal experts, that the method of certification could either be an Independent Certifier's Change Order, following determination of the costs, or for CEC to agree an ex contract payment through a side letter or agreement amending the contract. This would be required to provide clarity on what has been agreed and what commitments have been secured.

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Appendix A

The Infraco contract re-commenced October 2011 following mediation and execution of the Settlement Agreement. Following a review of the utilities diversions it became apparent that there were a significant number of utility conflicts arising from incomplete work on the original MUDFA utilities diversion contract, OLE foundation bases and traffic signal pole foundations clashing with utilities. It was apparent that the Infraco programme would be affected.

CEC, Infraco, Turner & Townsend and Transport Scotland took part in a value engineering process, November 2011 to January 2012. This culminated in a number of recommendations to de-scope elements of the project, implement value engineering initiatives and collaborate to achieve programme saving resulting from the removal of embargoes and traffic management constraints.

The recommendations were incorporated into the Baseline Project Instructions January 2012 which was endorsed by the parties at the Joint Project Forum.]

Turner & Townsend advised that the removal of the constraints should be governed by an instruction however Infraco stated that they did not require a Change Order since this would reset the completion date. Turner & Townsend advised that informal arrangements suited Infraco. Following discussions with CEC and BBS it was agreed that a letter would be issued to confirm the relaxation of the constraints and that the impact of delays on the 22 week saving would be agreed at each reporting period.

It was understood that the costs savings resulting from the actual out-turn programme saving would be shared on a 50 / 50 basis. The Turner & Townsend cost reports did not include the benefit of saving prelims from the 22 weeks as forecast prelims expenditure was aligned with the master schedule which indicated completion slightly ahead of the 8th of July 14. This approach has been consistent as this reflects a position where BBS are reimbursed prelims for the forecast prelims expenditure rather than being entitled to a one off additional payment of £6.46M over and above contract prelims.

In July 2013 BBS changed their position and requested a Change Order for their share of the original 22 saving at £6.45M. Turner & Townsend advised that a Change Order should not be issued in this form as this extended beyond the contract provisions and that CEC should obtain legal advice. We understand that CEC have obtained legal advice, this has not been provided.

Turner & Townsend presented an analysis of the differing interpretations at the CEC Client Instruction Meeting 27th August 2012.

At the BBS valuation meeting on the 5th of September 2012, the issue was discussed. The Independent Certifier invited Turner & Townsend and Infraco to state their positions. Turner & Townsend stated that the intent of the value engineering programme initiatives was to save time and save money and therefore the actual cost saving would be determined by the actual time saving. BBS stated that their position was that they were entitled to all contract prelims and a Change Order for £6.45M. The matter was not resolved at the meeting.

Appendix B – Commercial Evaluation

	Option	Comments
1	BBS position	<p>BBS believe that they are entitled to the full contract prelims to 8th July 2014 and a Change Order for £6.45M in addition to their contract prelims. They believe that this position was understood by CEC and TS. They have implied that they will take the matter to Dispute Resolution if they do not receive a Change Order for the full amount including contract prelims.</p> <p>Under this scenario Infraco are benefitting from the relaxation of the constraints and are seeking 50% of their prelims costs for 22 weeks as well as being paid their original prelims. A loss has not been suffered and there is overlap of the same prelims costs. An element of double recovery would be secured which is not contemplated by the contract.</p> <p><u>Outcome:</u></p> <ul style="list-style-type: none"> ▪ <u>BBS receive a change order for £6.45M however there is no guarantee that Infraco will co-operate, there is potential that further extension of time claims are pursued.</u> ▪ <u>If further extension of time claims were pursued, 8 weeks to remove utilities would equate to an additional £4.72M in prolongation costs and disruption costs would be in addition. This results in a total of £11.2M</u> ▪ <u>Probability of success: Possible</u>
2	Intent of Value Engineering	<p>The intent of the value engineering was to save time and money and both parties would share the incentive the cost saving based upon a 50/50 share of prelims determined by actual time saved in relation to the original 22 weeks. (Note: the 50/50 basis is included in the contract for Infraco promoted changes and this was endorsed by the Baseline Project Instructions Report).</p> <p>If this option was pursued then a standard contract Change Order would not be issued (as agreed previously with Infraco). Commitment would be made for all parties to work together to mitigate any potential delays to the programme and identify programme saving opportunities. (This is mandated in the mediation heads of terms and also the On Street Works Protocol, refer Section 4 Recommendation below).</p> <p>Lack of co-operation could include a reversion to the contract programme Rev 5 to execute the works and confrontational working arrangements resulting in the need to deploy additional staff to prevent delay. Under this circumstance we confirm below in Section 4 Recommendation how this could be addressed.</p> <p><u>Outcome:</u></p> <ul style="list-style-type: none"> ▪ <u>BBS is held to the intent of the value engineering however given Infraco's position a negotiated route may be required to be pursued.</u> ▪ <u>Probability of success: Possible, depending upon the amount required to secure agreement</u>
3	Contract	<p>The contract does not contemplate how programme savings are governed, however it does provide for 50% of the cost of Infraco promoted changes to be</p>

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		<p>added to the contract price after the saving has been made.</p> <p>This option would need to be governed by a variation to the contract setting out the changes to scope and constraints which brought about the programme saving. The financial adjustments would include:</p> <ul style="list-style-type: none"> ▪ A deduction for the full saving, (£12,920K) which includes the addition of the supervision costs; ▪ An addition for Infraco’s share based upon 50% of the saving, (£6,460K); ▪ Reference to the agreement that additional supervision will be deployed and that the constraints on the number of track laying gangs have been removed; and ▪ Re-setting the completion date 22 weeks earlier. <p>Infraco would have a duty to mitigate the impacts of delays; however Infraco would be entitled to an extension of time with full prolongation costs if they were unable to mitigate the delay. If the delay was less than 11 weeks there would be a cost benefit to CEC. The cost per week beyond 11 weeks would be c. £0.59M630K per week and result in an addition to the cost forecast.</p> <p>Note: It should be noted that a consequence of this option is the potential lack of co-operation from BBS to complete the project diligently and they may look to finish on the completion date or look to exploit extensions of time.</p> <p>Lack of co-operation could include a reversion to the contract programme Rev 5 to execute the works and confrontational working arrangements resulting in the need to deploy additional staff to prevent delay. Under this circumstance we confirm below in Section 2 Recommendation how this could be addressed.</p> <p><u>Outcome:</u></p> <ul style="list-style-type: none"> ▪ <u>BBS shares original saving with CEC, - (£6.45M) then a 15 week extension is provided from the revised earlier completion date. This assumes that Infraco co-operate and further extensions of time are not sought.</u> ▪ <u>Probability of success: Unlikely</u>
4	Negotiated Agreement	<p>The consequences of Infraco not receiving what they believe their entitlement include; potential lack of co-operation, withdrawal of the shadow programme 4c/5c and a return to the execution of the works in the sequence envisaged by the contract programme (currently Rev 5). A return to the multi-phased sequence of the contract programme would be difficult given that Infraco has enjoyed the benefit of the removal of the TM constraints and wider working areas. In an extreme scenario they could reduce manpower on site and attempt to work to the contract activity dates. The contract does provide some protection where the contractor can be requested to re-programme when the works on site diverge from the contract programme.</p> <p>CEC could consider <u>a negotiated route other alternatives</u> to ensure momentum is maintained to complete the On Street programme as quickly as possible and thereby minimise disruption to businesses and the public.</p> <p>A position could be built on the basis that the contractor has had the opportunity to benefit from the relaxation of embargoes and traffic management and that they retain a financial benefit from finishing early. In return for Infraco co-operating and aiming to finishing early, an alternative share arrangement could be agreed or depending on commitments made, the contract prelims could be paid in full should that be beneficial to CEC.</p> <p>This option has the benefit of providing certainty of outcome to CEC. Infraco would receive the financial benefit from early completion, e.g. 11 weeks were</p>

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		<p>saved Infraco would benefit by £6.45M.</p> <p>This option could be governed by an Independent Certifier's Change Order or through a side letter confirming agreement between the parties. This would need to confirm agreements for the application of the shadow programme Rev 4c, now Rev5c and the Rev 5 Contract programme. It would also need to govern any impact of delay beyond the 22 week saving in accordance with the current time bank measures.</p> <p><u>Outcome and Probability: as intent of VE above at item 3.</u></p>
<p><u>No change order, dispute pursued</u></p>		<p><u>Under this scenario a change order is not issued and the contract provisions are applied and the escalation route is followed. BBS are likely to withdraw co-operation and an 8 week extension is required to remove the remaining utilities.</u></p> <p><u>Outcome:</u></p> <ul style="list-style-type: none"> ▪ <u>CEC win dispute and avoid paying for the change order, however an 8 week extension of time is awarded. This amounts to £4.72m plus disruption costs.</u> ▪ <u>CEC lose dispute and an 8 week extension of time is awarded. This amounts to £6.45M plus £4.72m = £11.2M</u> ▪ <u>Probability of success: Uncertain</u>

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