

2007/13

**Ysella Jago**

---

**From:** Fitchie, Andrew [Andrew.Fitchie@dlapiper.com]  
**Sent:** 13 December 2007 11:14  
**To:** Gill Lindsay; Graeme Bissett  
**Cc:** Willie Gallagher; Andrew Holmes; david\_mackay [REDACTED] Colin MacKenzie; Moffat, Hazel  
**Subject:** RE: CEC Resolution  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Gill

Thank you for this. Apologies that my thoughts were delivered very late last night. Long day.

I have spoken at some length now with my partner, Hazel Moffat, who is our public law specialist. In summary:

1. Appreciate that CEC may have a preference as to whom authority to conclude the contract suite is delegated because of the status of the project.
2. DLA Piper's advice to CEC is in essence that the CEC delegation here is one which would be taking place under specific private legislation - Section 69(2) of the Tram Acts to be precise. We are not therefore within the normal statutory delegation arena in which the Council operates in order to function using its local government powers. CEC wants tie to enter into contracts to deliver the tram scheme and the powers deployed to authorise this are the Tram Act powers, in CEC's capacity as statutory Authorised Undertaker.

Our concern is that a sub-delegation from Council officers to tie Limited to enter into the contracts might be challenged and there is jurisprudence on this, even within the normal delegation of local government power.

3. Our recommendation is therefore in line with my e-mail last night, that the issue of tie reporting back before contract close is dealt with through the project governance mechanics: under a specific tie Board resolution and the TPB. The resolutions themselves are a delegation under Section 69 (2) of the Tram Acts. to tie Limited, as preciously drafted in outline. We believe that this is the right approach for CEC and it use of powers, leaving aside the issue of what BBS legal team may advise (which we consider the above will satisfy, provided it links to the operating agreement.

If you would wish this, I can arrange for Hazel to call. Please let me know if this will assist.

Kind regards

-----Original Message-----

**From:** Gill Lindsay [mailto:Gill.Lindsay@edinburgh.gov.uk]  
**Sent:** 13 December 2007 09:26  
**To:** Fitchie, Andrew; Gill Lindsay; Graeme Bissett  
**Cc:** Willie Gallagher; Andrew Holmes; david\_mackay [REDACTED]  
**Subject:** RE: CEC Resolution

Andrew I see the need to be able to fully satisfy BBS but the issue is that the Council are not yet at the stage of the preferred option. At present subject to having enough in place for Monday as we agreed yesterday there would be the specific delegations as we discussed here on Tuesday and at our meeting yesterday. Even though there is a statutory issue here that should not preclude the Council proceeding this way and I do not see it as causing a difficulty. Let me know when you get your opn.



Gill

-----Original Message-----

From: "Fitchie, Andrew" <Andrew.Fitchie@dlapiper.com>  
To: "Gill Lindsay" <Gill.Lindsay@edinburgh.gov.uk>; "Graeme Bissett"  
<graeme.bissett@██████████>  
Cc: "Willie Gallagher" <Willie.Gallagher@tie.ltd.uk>; "Andrew Holmes"  
<Andrew.Holmes@edinburgh.gov.uk>; "david\_mackay" <david\_mackay@██████████>  
<david\_mackay@tiscali.co.uk>  
Sent: 12/12/07 23:51  
Subject: CEC Resolution

Gill, Andrew  
David  
Graeme  
Willie

Why I am focused on the notion of a Resolution which delegates the Council powers other than direct to tie Limited :

\* If delegation is , say to Gill, Andrew and Donald, to receive tie's best counsel and declare themselves satisfied, can they, as Council officers, in fact legally pass on the statutory delegation of CEC in its capacity as AU for the Tram Acts -which is what we need to happen. I am getting expert input on this tomorrow morning.

\* If delegation was direct to tie, but had to be perfected by tie satisfying GILL, Andrew and Donald in a transparent and pre-arranged way, does this operate without legal blemish? What would happen, for example, if one of the referees disagreed with tie's approach?

Both the above are likely to be open to probing by BBS in an unhelpful way.

I think the answer is a clean delegation to tie by Resolutions as we envisaged, but the tie Board determines now by extraordinary resolution that it must have the endorsement of the TEL Board and TPB, before authorising Willie to sign up. This gives CEC Officers definitive influence over how tie satisfies CEC and so far as :

The outside world is concerned tie is moving ahead, fully authorised

BBS is concerned they are told that Willie has hoops to go through that they must assist on and at their peril if they do not.

Thoughts welcome.

Andrew Fitchie  
Partner, Finance & Projects  
DLA Piper Scotland LLP  
T: +44 (0) ██████████  
M: +44 (0) ██████████  
F: +44 (0) ██████████

P Please consider the environment before printing my email

-----  
-----  
This email is from DLA Piper Scotland LLP. DLA Piper is participating in the Lion's Den Challenge in aid of the Prince's Trust, Scotland. Please visit [www.atreefortwocities.com](http://www.atreefortwocities.com) and support our project. The contents of this email and any attachments are confidential to the intended recipient. They may not be disclosed to or used by or copied in any way by anyone other than the intended

