

**Mandy Wilson**

**From:** Gill Lindsay  
**Sent:** 07 December 2006 17:53  
**To:** Colin MacKenzie; Matthew Clarke  
**Subject:** FW: dbfc

Colin, on trams, as discussed. Thank you for actioning.

Matthew, I had prepared detailed note in advance of discussing with Jim but had opportunity to raise this pm. Jim agrees position re insurers. His view now is as stated below that we advise Peter from legal perspective as we consider appropriate and confirm detailed liaison with Jim from judgement perspective (following Peter raising with him) that agreed view is to recommend to him that you have flexibility to negotiate commencing low and using your judgement up to £80,000 as we have suggested and then lodging tender at our top sum. Can you pl keep me updated on Peters instructions to us and outcome of mediation pl.

Thank you for briefing me so fully this morning which was very helpful.

Gill

**From:** Gill Lindsay  
**Sent:** 07 December 2006 17:36  
**To:** Jim Inch  
**Subject:** FW: dbfc

2006/6

Jim

As discussed, many of points we made on last final draft version not fully incorporated. We are responding again picking up various issues and have added resources at point 12 as discussed.

Colin will revert to you re Balfour Beattie and PPP2 corresp.

On [REDACTED], as agreed we will revert to Peter Gabbittas advising of our view and confirming your judgement as joint view commencing low on settlement at mediation but recognising position which our insurers have, recommending flexibility for Matthew to negotiate as he judges appropriate up to £80,000 to permit realistic legal tender to then be lodged from a commercial perspective.

Regards

Gill

**From:** Colin MacKenzie  
**Sent:** 07 December 2006 17:11  
**To:** Lex Harrison; Duncan Fraser; Max Thomson; Ewan Kennedy  
**Cc:** Alan Squair; Gill Lindsay; Rebecca Andrew  
**Subject:** RE: dbfc

Lex,

We refer to our submissions in relation to the working draft report on Trams for the Council meeting on 21 December. Thank you for the most recently amended version. We have discussed this with the Council Solicitor and have the following comments to make on the version of the report which you sent to me on 6 December at 18.12 hours.

1. We note that the issues raised in Alan Squair's memo of 5 December on the specific question of Developer Contributions do not appear to have been taken on board in any way. We presume that you have received

08/12/2006

WED00000488\_0001

instructions from Andrew Holmes to that particular effect. As these contributions constitute over 50% of the Council's overall contribution, the deliverability, or not, is a matter of considerable importance.

2. A new comment on paragraphs 1.1 and 6.1 together. Should the Council not be asked formally to instruct the appropriate Directors to submit the Business Case to Transport Scotland ?

3. A new comment re the table at 4.43: the second date should be 15 February 2007 for approval by the Transport Minister. Is there still a plan to report to Council in February 2007 ?

4. Paragraph 3.7 deals very helpfully with the financial assistance for small businesses affected during the construction period. If there are financial consequences for the Council should this not be explained ?

5. Paragraph 3.10. Thanks for taking on board the point made in submissions to you about the Tram Act powers. As we discussed there does not appear to be a formal written agreement in place between the Council and Tie regarding construction, procurement etc. There is clearly a pressing need for such an agreement to regulate what, in effect, is an agency role.

6. Paragraph 3.17 at (f) in the last line the reference should be to compulsory **purchase** powers.

7. Paragraph 3.21: in the last line would it not be more appropriate to say that Tie will be the party to these contracts ?

8. Paragraph 4.9 : should it not be made clear to members how much commitment there is at present from Transport Scotland through the grant of £32.7 million. This is in fairly stark contrast to the expectation of a total of £500 million sometime in the future. How certain can the Council be about the commitment of Transport Scotland ? What is said in the "covering agreement" referred to ?

9. Paragraph 4.14 : as part of the approval process of Tie's annual business plan the should be required to enter into an agreement with the Council regulating their involvement in delivery of the Tram project as the Council's agents. In particular, having regard to paragraph 4.27, the Council should have appropriate terms of control over costs and phasing of construction. The requirement for such an agreement should be reflected in the Recommendations section of the Report.

10. Paragraph 5.25. You have taken on board part of the submissions re risk of outright ownership versus a long lease. For the avoidance of doubt this issue relates to only two stretches of the route. In my view members should be asked to weigh up this risk and to make a decision on whether to accept that a long lease on the most favourable conditions which can be achieved for the Council. If the relevant landlords have too much power in terms of irritancy, this could at worst stop the Trams from running.

11. Paragraph 4.32: when will there be certainty over this issue ?

12. The Director and the Council Solicitor are still concerned about the lack of clarity on internal costs relating to Legal Services and Corporate Communications. The report is too vague on this. This matter was previously discussed with Willie Gallagher who was supportive of our position Can you please ensure that the report is more specific in this regard and that these costs will be met in full. The Risk Register requires that there be no unforeseen costs.

Kind regards,

Colin MacKenzie  
for Council Solicitor

---

**From:** Lex Harrison [mailto:lex.harrison@edinburgh.gov.uk]  
**Sent:** 06 December 2006 18:12  
**To:** Duncan Fraser; Colin MacKenzie; Max Thomson; Ewan Kennedy  
**Subject:** dbfc

please find most recent version of dbfc

Lex

08/12/2006

WED00000488\_0002