
From: Nick Smith
Sent: 13 September 2010 08:46
To: Alastair Maclean
Subject: FW: Phase 2 issues

Kind regards

Nick

Nick Smith
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(t) [REDACTED]

Please note that I am not in the office on a Monday

From: Nick Smith
Sent: 26 August 2010 13:14
To: Andy Conway
Subject: FW: Phase 2 issues

Kind regards

Nick

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From: Nick Smith
Sent: 19 August 2010 17:10
To: Dave Anderson; Donald McGougan; Marshall Poulton
Cc: Carol Campbell; Alastair Maclean; Alan Coyle
Subject: Phase 2 issues

All

I have reviewed Tom's report re governance and fed back some comments to Alan. I think we need to be very careful re timing of the report as previously discussed. My current concern centres around ploughing ahead with plans for integration prematurely whilst the rest of the

project is uncertain. However, I can see the merit in progressing the planning for integration so that we are ready to move when Carlisle or some variant is sorted and agreed.

There are however a few issues:

- Despite repeated requests DLA have not provided their final views on the validity of the structure from a legal perspective. Subject to the point below, Graeme is correct in that there are likely no show-stoppers, but that piece of work remains critical. However, the reason why they have not provided it is because they do not want them distracted from the current dispute. I understand this from a practical perspective. Nevertheless this has an impact on timings and in my view we would not wish to promise further specific dates until we are sure we can deliver them.
- One of the key issues is whether it is competent for TEL to set transport strategy and be TA 1985 compliant when CEC directors and Councillors sit on the TEL board. DLA have yet to provide their final view on the matter but my own view is that this is potentially legally incompetent. If I am correct then transferring LB to TEL is premature. However, until we have DLA's advice (which we have repeatedly been assured by them gives the structure the all clear) we cannot form a final view.
- The two stage governance process has been in the planning for some time. I think the world has perhaps changed a little since the initial view. We need to take a view on what the role of TEL is going forward. If it is to be some sort of strategic transport delivery entity then it may have some purpose. If not then on one view we are effectively left with a holding company with little real use. In such circumstances I wonder whether it is worth keeping, as the operations could all be subsumed into LB as Graeme Bissett's email suggests.
- I'm not sure if any consideration has been given to whether LB and TEL would in fact merge at some point in the future. I believe the plan was in fact to move to a single operating company rather than a parent/subsidiary "group" but there were issues with LB on this front. This does however bring you back full circle to whether TEL is strictly necessary.
- I appreciate reviewing TEL's role would involve changing the communicated plan, but the dispute has opened up a new world of thinking here.
- If TEL ceased to exist, we would need to examine how any change would affect any rights to assign under the Infraco contract etc or indeed affect the tax planning and other issues.
- On one view an alternative does exist. tie and TEL deal with infrastructure delivery and LB (with ETL) are tasked with operational readiness. Some form of collaboration agreement could be put in place to deal with planning for integrated operations. After the infrastructure is delivered then tie and TEL's role will cease and LB will run tram and bus operations. I appreciate that it may in theory be easier to plan integration if both companies (LB and tie) are under the same control, but having the same chairman, crossover of board membership and a "one family" approach would all surely overcome any issues.

So, in summary:

- If TEL has a broader strategic role then it may have some use. If not, is it strictly needed/useful?
- If my view on TA 1985 is correct then no Councillors or Directors should sit on the TEL board if it is taking decisions re tram and bus (subject to DLA view).
- If this is the case then query how TEL can (or indeed whether it should) carry out Council strategy with no Council representation on the board.

Can you please let me have any views on the above? Happy to discuss.

Kind regards

Nick

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