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**From:** Nick Smith  
**Sent:** 13 October 2010 10:05  
**To:** Alastair Maclean  
**Subject:** RE: Next steps - strictly private and confidential

I'll just await the backlash..... Not sure copying in everyone was the right call but I understand your frustration.

Kind regards

Nick

Nick Smith  
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(t) [REDACTED]

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

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**From:** Alastair Maclean  
**Sent:** 13 October 2010 09:57  
**To:** Nick Smith  
**Subject:** Re: Next steps - strictly private and confidential

Thank you. I had just finished dictating to Debbie....

On 13 Oct 2010, at 09:52, "Nick Smith" <[Nick.Smith@edinburgh.gov.uk](mailto:Nick.Smith@edinburgh.gov.uk)> wrote:

Thanks Richard.

In order to progress matters we also need to have the information requested last week be available from DLA and tie yesterday so that we can get CEC's lawyers up to speed. Can you please get this information made available immediately and all delays will have a consequential impact.

Kind regards

Nick

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**From:** Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]

**Sent:** 13 October 2010 09:38

**To:** Tom Aitchison; Donald McGougan; Andy Conway; Alan Coyle; Steven Bell; Susan Clark; Mandy Haeburn-Little; david\_mackay@██████████ Dave Anderson; Nick Smith; Alastair Maclean

**Subject:** Next steps - strictly private and confidential

Dear all,

There is much to be done over the next few weeks if we are to be in a position to recommend termination of the contract in late November/December. Of course no decision has yet been taken that this will be our recommendation, but it is prudent that we plan for such an eventuality.

Please treat this as work in progress.

To assist with the planning (and building on my previous e-mail from a week or so ago) I set out my thoughts below.

Firstly, in order to simplify things let's assume

We do not have a completed integrated design by the time we terminate

There is little physical progress on site compared to where we are today

If either of these assumptions turn out to be wrong, we can adjust our plans accordingly.

I set out my thoughts along several lines

Firstly, what questions do we need answers to from the Council, and what evidence do we need to inform these choices

Question 1

Do we want to terminate the current BSC contract

Evidence required

- What are the alternatives

- Carry on with the current contract, where does this lead?
- Reach a commercial settlement, on what terms, how long will this take?
- What are the possible consequences of termination
  - Legal risk, how strong is the case if it goes to litigation?
  - What is the upside/downside if we win/lose?
  - What will it cost and how long will it take to litigate?
- What actually needs to happen post termination (this of course is linked with the answers to some of the questions, see work stream 1 in the note below)

#### Question 2

If we terminate the contract what do we want to do with the project?

- Cancel
- Postpone until we have settlement with BSC
- Continue
- What are the consequences of each?

#### Question 3

What activities need to be undertaken, and what is the governance around these activities, in particular what subsequent decisions need to be referred back to full council and when, see note below.

#### Question 4

Do we wish to re-novate CAF back to tie, in effect still agreeing to purchase the trams?

- What are the pros and cons of this?
- Is there a bigger role for CAF over and above being the tram supplier, early indications are that there may be, how firm is this?

#### Question 5

What about Siemens materials off site?

- In the absence of a completed assured design, do we want to purchase any of Siemens materials?

#### Question 6

What do we do about design

- How do we complete the design
- Who will do this
- How long will it take
- How much will it cost

#### Question 6

When can we come up with reliable revised cost and programme estimates for Airport to St Andrew Square?

Does CEC still wish tie to administer the project?

- If not, then who
- Pros and cons of changing project management agencies at this point

#### Question 7

- Does there need to be some form of interim 'inquiry', organised by CEC? (Opportunity for Sue Bruce to commission?)

Actions to follow termination

In the event of termination, several things will need to happen quickly and in parallel, and will need co-ordinating as they are inter related.

1. A dedicated commercial and legal team will need to bring closure to the Infraco contract. There are several prescribed activities that need to be undertaken, and we would seek to conclude a financial settlement with the consortium to avoid if possible the issue reaching the courts. We must however recognise that this issue may end up being resolved in the courts, which is expensive, lengthy and risky for all parties, and has no certainty of outcome.
2. A team must very quickly secure the physical works, establish what we have in our possession, e.g. design and its status, what is actually built on the ground etc. (this work could start now)
3. Very quickly, and in parallel to the above, (informed by item 2) the City Council must decide if it wishes to complete any part of the physical work that is currently underway, or immediately cease all works (apart from the minimum required to make safe). We must also decide what to do on issues such as defects that have not yet been rectified, temporary reinstatement etc
4. In addition, the city council must decide if it still wishes to take delivery of the tram vehicles, or to cancel the vehicles as part of the contract termination and seek the return of all monies paid for the vehicles on the grounds of breach of contract by the consortium. (This will clearly have an impact on workstream 1 above). A similar debate may arise over materials which Siemens say they have already purchased. Clearly this decision will have to be made in anticipation of workstream 6 below.
5. In parallel, a team should assess the options for the way forward for the project, (including cancellation of the project), and present these options to the City Council in due course (how long will this take and what is the political timetable). Until new reliable estimates of cost and programme, together with suitable risk allowances (at least to St Andrew Square) are produced there can be no certainty of future cost or timescale. I do not believe it is reasonable to ask the City (or the project management) if it wishes to proceed with the project if we cannot give certainty on cost/scope or programme. This work will require funding.
6. Tie/CEC will need to re-assess its manpower requirement in light of the above.
7. And finally, if the project is to proceed, there must be a formal lessons learned session (NOT a public witch hunt) to identify some of the underlying root causes of the current situation and ensure that they are not repeated (I have my views which I can share in a separate note).

Regards

Richard

**Richard Jeffrey**

*Chief Executive*

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