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**From:** Marshall Poulton  
**Sent:** 17 March 2010 10:13  
**To:** Nick Smith  
**Subject:** RE: Tram

Thanks Nick, this is good clear advice from Alastair.

Marshall

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

From: Nick Smith <[Nick.Smith@edinburgh.gov.uk](mailto:Nick.Smith@edinburgh.gov.uk)>  
Sent: 17 March 2010 10:01  
To: Marshall Poulton <[Marshall.Poulton@edinburgh.gov.uk](mailto:Marshall.Poulton@edinburgh.gov.uk)>  
Subject: FW: Tram

Kind regards

Nick

Nick Smith  
Principal Solicitor  
Legal Services Division  
City of Edinburgh Council

City Chambers Business Centre L1

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(t) [REDACTED]

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

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From: Nick Smith  
Sent: 17 March 2010 10:01  
To: Jim Inch  
Cc: Dave Anderson; Donald McGougan  
Subject: FW: Tram

Jim

For your information.

Kind regards

Nick

Nick Smith  
Principal Solicitor  
Legal Services Division  
City of Edinburgh Council

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From: Alastair Maclean  
Sent: 16 March 2010 21:57  
To: Tom Aitchison  
Subject: Tram

Tom

My preliminary view is that the letter from Richard Walker is a mixture of:

1. The consortium positioning themselves to enable them to say that CEC as guarantor 'has been warned';
2. An attempt to make you get tie 'to see sense'; and
3. An attempt to drive a wedge between CEC and tie.

I have also seen a copy of the letter from Kenneth Reid to David Mackay which is much more encouraging but who knows if believable/genuinely conciliatory.

Either way it does appear that recent efforts by tie to up the ante are working.

The commercial position of CEC and tie appears to be aligned at the moment and we should probably keep it that way for the time being.

Whilst I have not seen the terms of the guarantee (which will need to be checked to make sure that I am not missing anything) my initial view is that we should not allow ourselves to be dragged into this correspondence.

How we respond is going to be largely a matter of strategy but I would suggest a brief letter back:

1. Noting what they say;
2. Laying a marker down that we do not agree;
3. Making it clear that we are fully up to speed with the issues, in regular contact with our good friends tie and benefiting from a veritable battalion of professional advisers on all aspects of the contractual dispute;
4. Tie is the principal contracting party and any dispute is a matter between the principal obligants to the contract ie tie and the consortium; and
5. We will continue to remain interested in the matter but that our line of communication at this stage will be between ourselves and tie.

The only caveat I would add is that we should be careful from a comms/pr perspective in case the response gets into the public domain and of course any correspondence should be marked without prejudice and look as legalistic as possible.

Happy to draft something if it helps.

Aside from the letter, going forward we obtained a strategy review from Dundas + Wilson and that has come up with some good ideas in addition to the McGrigors review which tie obtained. My feeling is that the pressure should be kept on by tie with a view to forcing a realistic settlement or a mutually acceptable way forward. As a matter of negotiation (but I may not be close enough to this and Dave and Donald will be better able to comment) we probably shouldn't blink at this stage.

A