
From: Nick Smith
Sent: 22 January 2008 09:24
To: Gill Lindsay
Cc: Duncan Fraser; Colin MacKenzie
Subject: DLA

Gill

As discussed last night, my preliminary view is that the neatest way to protect the Council's interests re the consents issue is to seek confirmation from DLA that the Infraco suite of documents will only allow CEC to pay compensation for any delay in relation to consents/approvals in a limited set of circs. Those circs should be limited to (i) where CEC requests a change to the project which is outwith the agreed scope of works; or (ii) where CEC fail to meet deadlines as a result of CEC's own fault; or (iii) any other circs which City Dev confirm are ok.

To my mind, trying to get involved in detailed drafting could be difficult at this late stage. I think we'll have enough problems agreeing the principles in the time available, let alone the fine details. A confirmation of the position from DLA should cover all our concerns, providing it is suitable drafted. eg "DLA confirm that CEC shall have no liability to BBS under the Infraco suite in respect of the failure of BBS/SDS to obtain technical approvals and consents for the tram project except for the following limited circumstances....."

As I also mentioned to you, Rebecca is concerned that BBS have understandably advised that they will not waive the CEC guarantee where BBS cause CEC to breach the funding conditions. BBS are of the view that it is up to CEC to ensure the funding agreement/infraco terms are compatible. Rebecca thinks we need confirmation of this from DLA too.

Kind regards

Nick

Nick Smith
Senior Solicitor
Legal Services Division
City of Edinburgh Council
City Chambers
High Street
Edinburgh EH1 1YJ

(t) [REDACTED]
(f) 0131 529 3624

CEC01395085_0001