**From:** Stephen Hajducki
**Sent:** 07 February 2008 17:06
**To:** Colin MacKenzie; Andy Conway; Linda Nicol; Francis Newton; Jamie Gray; Shaun Hughes; Bill Stewart; David Wilson; Bob McCafferty; David Leslie
**Cc:** Duncan Fraser; Alan Henderson; Jim Grieve; Alan Coyle; Nick Smith
**Subject:** RE: Tram - CEC Approvals

I agree with Colin. CEC as Planning Authority cannot commit to timescales where we are bound by statutory procedures outwith our control. However, we can undertake to make every endeavour to deliver as quickly as possible, but tie/sds/bbs will also have to play their part -- we're not accepting responsibility for delays occasioned by inadequate submissions. In particular, where we give advice or ask for amendments we expect these to be addressed in the re-submissions. I would suggest, given the current programme slippage, we should be following this principle in order to get a complete set of acceptable consents through quickly, and we can always discuss variations or departures with BBS or whoever at a later stage.

Steve

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**From:** Colin MacKenzie
**Sent:** 07 February 2008 14:03
**To:** Andy Conway; Linda Nicol; Francis Newton; Jamie Gray; Shaun Hughes; Stephen Hajducki; Bill Stewart; David Wilson; Bob McCafferty; David Leslie
**Cc:** Duncan Fraser; Alan Henderson; Jim Grieve; Alan Coyle; Nick Smith
**Subject:** RE: Tram - CEC Approvals
**Importance:** High

Andy,

Thanks for your message. Whilst I appreciate your sterling efforts to facilitate a practical solution to the challenge facing the project, I do have some reservations.

You make reference to the need for everybody, including CEC, to commit to a programme. It is of course open to CEC as authorised undertaker to commit to a programme; quite how it does so when it is not a contracting party with BBS is a technical legal question. I suppose in the end of the day the Council is locked in through its guarantee of **tie's** financial obligations to BBS. However, the Council is also the Planning and Roads authority, respectively, under separate statutory regimes. I would urge great caution for each of these roles: the statutory powers ( including timescales ) should not be fettered or compromised. I repeat my earlier cautionary advice to Legal Affairs Committee that SDS and BBS must be made aware of the different hats worn by the Council.

Willie Gallagher at LAC on 4 February recognised the historical disconnect between SDS obligations in obtaining prior approvals, and the fact that BBS and Tramlines participation was " conditional on not taking liability for discretionary aspects of consents." This tends to lead to the conclusion that in the end of the day the Council as client will be liable for the cost of any compensatory events to BBS if the prior approvals are late, or later than agreed. I have consistently advised that there should be a clear distinction between the consequences of any changes requested by the Council as client and the implications of any conditioned prior approvals or delays to issuing same as a result of inadequate applications by SDS/BBS. Unless BBS depart from the point of principle described earlier in this paragraph and take some of the responsibility and risk, I find it difficult to believe that CEC risk can be minimised.

If the basis of an agreement is reached I suspect that DLA will have to come up with some wording on behalf of **tie** in its contract with BBS. That wording should be accompanied by an explanation and quantification of the risks to the Council. That should be made available to the Council Solicitor in advance of the tripartite report to Tom Aitchison seeking his approval to conclude the contracts.

Regards,

Colin MacKenzie
for Council Solicitor

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**From:** Andy Conway
**Sent:** 06 February 2008 16:30
**To:** Linda Nicol; Francis Newton; Jamie Gray; Shaun Hughes; Stephen Hajducki; Bill Stewart; David Wilson; Bob McCafferty; David Leslie
**Cc:** Duncan Fraser; Alan Henderson; Jim Grieve; Alan Coyle; Colin MacKenzie
**Subject:** Tram - CEC Approvals

Dear all,

We're currently reviewing the tram delivery programme with *tie*, BBS and SDS to minimise the risk to the project and the Council. Not surprisingly, the necessary CEC approvals feature very high on the hit list of issues that needs urgent attention. We're trying to close out the BBS deal which will require everybody to contractually commit to a programme (which will include CEC). At the moment, there are quite a few of the approvals that need to be brought forward (for a variety of reasons) to enable the construction works to commence as planned (and as priced by BBS). If we do not commence the construction when planned, for whatever reason, this exposes the Council to additional risks and significant costs.

With this in mind, and to minimise the financial risk to CEC, I suggested to *tie* this morning that we could do the following:

**Planning**
To review the CEC approval time periods for the prior approvals to 7 weeks for areas outwith the World Heritage Site (WHS). This would only apply to prior approvals that have had no objections raised during the consultation period. Obviously, if we can reduce all time periods then that will improve the overall programme, but I though that this was a reasonable way forward, that on the face of it appears to be achievable. All the prior approvals within the WHS, and those that attract objections will remain at the 8 week approval period. To monitor progress we are now reviewing the prior approvals on a daily basis.

**Transport**
SDS (Halcrow's) and CEC structures team are to review the proposed programme to hopefully agree to remove the two week period post TAA approval because CEC comments appear to be getting resolved as the technical approval process continues. CEC will also need to review the approvals for the structures to determine what can be approved now in an attempt to minimise our risk exposure. Again, progress is now being monitored daily.

If you have any comments on the above, can you get back to me asap please. *tie* are reviewing the programme today with a view to seeking CEC approval on Friday.

Regards

Andy Conway

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