
From: Alan Coyle
Sent: 07 February 2008 16:47
To: Colin MacKenzie
Cc: Andy Conway; Nick Smith
Subject: RE: Tram - CEC Approvals

A point to note chaps. I had a chat with Mark Hamill yesterday (tie's charming risk manager not the guy from star wars). Apparently he is not in a position to calculate the black flag risks. He is reliant on information from Geoff Gilbert et al. He apologised for the mistakes on the ETN risk register and has been tasked with collating the info from Geoff/Stewart on all the outstanding areas relating to item 5 on our list.
Alan

From: Colin MacKenzie
Sent: 07 February 2008 16:33
To: Alan Coyle
Cc: Andy Conway; Nick Smith
Subject: RE: Tram - CEC Approvals

Alan,

Fair point. As Rudolph Giuliani says in his autobiography "assume nothing."

Andy, in your discussions with **tie** can you impress upon them the need for these figures.

Kind regards,

Colin MacKenzie
for Council Solicitor

From: Alan Coyle
Sent: 07 February 2008 16:23
To: Colin MacKenzie
Cc: Andy Conway
Subject: RE: Tram - CEC Approvals

As long as the figures to make a judgement on this balancing act are forthcoming!

From: Colin MacKenzie
Sent: 07 February 2008 16:21
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

Andy,

Thanks and understood. I think it has long been accepted within the Council that it could ultimately come down to a balancing act between on the one hand the inflationary cost of delaying project award and on the other hand the quantification of risk such as discussed below. That is a matter for Andrew, Donald and Gill to address in their advice to Tom Aitchison.

Good luck with your proposals.

Kind regards,

Colin MacKenzie
for Council Solicitor

From: Andy Conway
Sent: 07 February 2008 15:08
To: Colin MacKenzie; 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

Points noted Colin.

The recent 'unofficial' discussions in here are that SDS and BBS do not intend to carry the risk of approvals (as we suspected). If that is indeed the case, we will be expecting *tie* to identify this within the QRA (which the project may, or may not be able to afford). If this does occur, all delays by SDS, (for whatever reason) will result in CEC being responsible for a compensation event to BBS. Given the track record of SDS, this is a very significant risk.

As things stand, if we don't review the approvals periods (as suggested below or by some other means), it's unlikely that the project will be able to start when programmed because there will not be many approvals in place, particularly the structures and the Depot. I agree that the Council should not be in this position, however I cannot see another way around it; other than delaying the start date and we all know how costly that would be with the rate of construction inflation. Given the nature of the alterations being suggested, I believe this approach minimises the risk to CEC. Of course, Andrew will have the last say with regard to the prior and technical approvals.

Yet another 'we are where we are' situation...

Regards

Andy Conway

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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

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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

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 thought 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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