

Property & Legal Meeting

4th September 2007

Present: **Duncan Fraser, Colin Mackenzie, Alan Squair, Nick Smith**

Apologies: **David Cooper, Steve Hajducki, Rebecca Andrew, Steve Sladdin, Alan Coyle**

Time Sheets

Action

Action

Re-iterate – Checking of processing of staff timesheets and then onto Oracle to enable them to be charged to the tie account.

All

DF to communicate with SFC

DF

Rebecca to communicate with her staff regarding the processing of timesheets

RA

Governance

Main Actions

1. Agree remit of tram sub committee. **Work in process.**
2. Work out what powers are to be delegated to Andrew Holmes. **Work in Process**
3. To conclude a Tram Operating Agreement with tie. **Draft by end of Sept.**
4. To conclude an Operating agreement with TEL. **Work in process**
5. Raise issue of Neil Renilson's job description at IPG.
6. Discuss IPG pathway for decision of tram making in an 8 week period.
7. Operating Agreement for Tram requires to be approved by full council by 20th December.
8. Paper on highlighting key issues to licensing and leasing options. **Maggie Dean working on this Draft expected by end of Sept.**
9. IPG to confirm that our Chief Executive is going to write to Dave Mackay to explain changes on reporting. **(Copy minutes to Chris Highcock)**
10. DF to draw diagram showing who reports to who.

NS

TA

DF

MD

TA

DF

Council are committed to £45m and the Scottish Executive £500m subject to financial agreement. Infraco bidders are seeking guarantee in relation to payment from both Scottish Executive and the Council.

Action

DF to get feedback from Transport Scotland and finance to see if further clarification of agreement is needed.

DF

There may require to be input to full September Executive Paper.

DF

DF has to prepare a presentation to tie explaining the Roles and Responsibilities of the council. **Presentation to take place on 7th September**

DF

Terms of Roles and Responsibilities are to be better defined with clear lines of authority both to officers of the council, Tram Project Board and Councillors through the Tram sub committee (which then reports to the Environmental and Infrastructure Committee which then reports to the Full Committee.

(This is in hand)

Action

Governance (Contd)

Report to Council was finalised last Thursday and is to be considered by Council on 24th August.

Legal Team leading on preparation of Governance paper with input from Finance and City Development. **AS/CMcK/RA**

External legal resources required. Colin Mackenzie to seek clarification with Council Solicitor. **(Refer to IPG Minutes)** **CMcK**

TPB report to Sub Committee then Full Committee.
Ensure TPB decisions are managed/controlled strategically by CEC while enabling technical day to day issues to be managed by tie.
Review of TPB power through an Operating Agreement.

Terms of the Grant award is still not finalised this is expected next week - Response by Legal and Finance to tie is in hand.

Council Solicitor declined that opportunity to appoint independent solicitors, instead choosing to rely upon DLA letter of comfort to act in the Council's interest subject to agreeing the appointment of DLA

Report to Council – Final Business Case

To date so far we have to progress a statement into the report on 25th October supporting and endorsing the recommendation of the preferred bidder.

Audit Scotland – process to which tie – question mark on final process. Request for final budget to include all of the £45m. i.e. total of £545m.

Councillor Solicitor - we are happy with most issues raised by DLA at the LAC which explain and identify many of the risks.

Also seeking clarification that the requirement for advice has been taken. Contact with DLA to be established with input on their paper from Finance/CDD/Solicitor.

Group seeking confirmation through Council Solicitor that the advice on contract from DLA (Infraco) can be relied upon in full.

It is the belief of the group that it is still prudent to seek legal advice before enabling the contractual approval. (SD to copy - minutes to A Holmes)

Tram Operative Agreement

1. Front End Legal Statements
2. Tie Key Objectives/Obligations
 - Will provide services – to be listed.
3. Issues
 - CEC expectation Scope of delivery
 - Sign up now but backdated, as they have acted in the Councils interest i.e. 'review of tram project now which they have to do
 - Assess Council solution operating agreement -laying down terms.



Action

- Tie wholly, and are we going to sue tie?
- What will penalty be for under performance? What is the solution?

Tie must fully comply with grant award constrains.

Developers Contributions

David Cooper is preparing a spreadsheet which updates on a monthly basis the Developers Contributions status. **DC**

David has a meeting with the Director on Friday (17th August) to discuss how to approach Forth Ports for their contribution. **DC**

Developers Contributions which may include the tram also includes provision for schools, sewers and roads.

Michaela Sutherland is to be contacted by Mike Connelly of tie regarding exhibition space for part of the planning for tram. **(Mike to be advised of this. SD sent e-mail to Mike Connelly)** **MC**

The need for a negotiator is to be explored. David Cooper is to report back on the meeting next week. (Note DF may go to meeting). **(This is in hand)** **DC/DF**

Paper referred to by Rebecca Andrew and David Cooper to be added to minutes

Looking for an update from David Cooper based on the paper he did with Rebecca. **(DF has spoken with David)** **DC**

Set up meeting with David, Allan, Keith Anderson next week re Forth Ports. **SD**

Internal meeting on how we are going to approach this and have a programme set up. **AS**

Business Case

Legal sources are to assess external resources.
Discuss Rebecca Andrew's paper.

DLA provided a draft Letter of Engagement on Friday 17th August (which alludes to advise the Council that risk through the Council for tie are the same of CEC for 2003 (Further discussions to take place after meeting).

Additional resources to review contract "Infraco" (2006).

Timescales and specialist nature of bespoke of contract external expertise to ask questions – Council Solicitor so as to enable us to ensure the quality of document is fit for purpose through engagement of tie and DLA.

	Action
<u>Business Case (Contd)</u>	
Steve Sladdin had meeting on 13 th August with Alistair Sim and Lesley McCourt to discuss (DLA indemnity) 3 weeks to come back with assessment of audit. Duncan to speak with Matthew Crosse.	
Capital Receipts – Value and potential could run to £10m; however there may be a reduction of this if 1b does not go ahead. Capital Report £2.8m - £6.9m	
Check all land take in 1a and attribute a value to it.	SS
DF to contact Miriam regarding the progress on the gateway review report. (<i>This is in hand – input is required</i>). The Gateway Review will be paid by tie.	DF
Direction to be sought through the IPG for the report for full council is required – September – this could include information on Financial Risk to the Council arising from the Infraco Contract. This is being progressed	DF
Duncan Fraser to discuss with Chris Highcock future dates for IPG. Discuss the Business Case input and format next week. Potential Cash flow programme regarding the release of £500m.	DF
Business Case draft has been placed on extranet this week by. Arrange to get Colin Mackenzie, Allan Squair and Steve Hajducki authorisation to allow them access to extranet. (Miriam Thorne)	DF
<u>Scottish Power</u>	
Both Scottish Power and Telewest delays according to tie relate to new personnel within the companies reviewing the existing documentation. E-mail tie to ensure Council position is protected with work starting in Leith Walk. Contract for Scottish Power and Telewest to be signed off tomorrow.	AS/CMcK
<u>District Valuer</u>	
Steve Sladdin to agree protocol with tie as to the processes and information required within agreed timescales. (<i>Pro-forma by DV at the end of September. Duty of Care letter in hand D&W to proceed.</i>) Value of land to sell Net estimated value - £11m.	SS
Leith Walk Garage Tower Street Lorry Park Roseburn Goods Yard (1b) Broomhouse Balgreen Nurseries (Pansy Walk) Greenside St Mary's - Picardy Place	

	Action
<u>Leith Walk Old Tram Depot Garage</u>	
Steve Sladdin and Steve Hajducki to have meeting to discuss this. Agreed sub station location aligns with the frontage building yet is contained within the front of the old tram building.	SS/SH
<u>Haymarket</u>	
Ongoing.	
<u>BAA</u>	
D&W minutes of the meeting of 15 th August regarding the lease - AS to get these minutes at LAC meeting today.	AS
Growing confidence Legal Agreement can be reached with BAA and CEC.	
There is an issue about termination of the lease and this is being considered. D&W taking this forward.	
Programme needs to be embedded in	
<u>Shandwick Place - Statutory Repairs</u>	
There has been a discussion (Property Consultation) with Murdo Mcleod and a request made to review the scaffolding protocol with SFC and specifically at Shandwick Place to incorporate a clear span on footway when scaffolding is reconstructed within new contract.	
No further update since last week signed contracts have still not been received.	
<u>GVD</u>	
GVD 3 - Out	
GVD 4 - This is now being processed part out, part being signed by Friday. GV investing date 19 th October.	
GVD 5 - By end of year.	
There may be further paunches of land BAA and Forth Ports which may be titled. Finance paper to be circulated to some other members. Input from others to RA on paper. e.g. note on land compensation (claim, interest on payments planning performances) seek funding for this	
<i>No updates.</i>	
<u>Network Rail</u>	
Set up milestone to Network Rail for Agreement. Update Indemnity clause at LAC meeting today. Take to D&W to set up meeting with date which have been put forward.	AS/CMcK

The Network Rail draft has been received stating that the Council will stand surety for tie's obligations. **Action**

Write to Matthew Crosse seeking clarification with them to risks that the Council may be drawn into.

Arrange to get a copy of "Employers Requirement" from Bob Dawson **SD**

Grant Award letter sum is £497.3m

Internal Legal Team has been set up against action to external legal advisors to address specific issues with DLA and Council.

Contract Law action, consequential Financial action of risks and liability of the contract on the Council's behalf which will then lead to a justification for appropriate headroom within the budget.

Independent advice has the advantage of:

- Appropriate professional expertise
- Adequate reasons to meet timescale
- Professional Indemnity Cover

Prior Approvals

We will review actual progress week by week and report back to tie.

We have e-mailed tie seeking confirmation that Prior Approvals programme integrates with the Infraco Contract. Currently some Prior Approvals are being presented out of sequence (which is ok meantime) and we still await future deliveries to tie in with programme.

Have now prepared current programme,

Escalating Council covers with tie at same level.

Revise programme and process was agreed with tie and CEC on Friday 31st August.

New programme is now to be integrated with tie's master programme (Tom Hickman)

Earl & Park & Ride

Confirm financial agreement with Transport Scotland is a lump sum of £500m to cover all costs including Tram and inflation.

Copy of Legal Affairs minutes received from Sheena attached to minutes

Anticipate agreement to be signed off next week



	Action
<u>CEC Land</u>	
E-mail to Gavin Murray to seek design layouts in areas where there are expected capital receipts.	
Steve sending copy of design layouts to DF (Follow on next week)	SS
Legal issues are ongoing.	
Next Meeting 11th September in the Isambard Room on the 2nd Floor, City Point @ 10:00	