

Project SB File

Report Number One

**First Observations and
Emerging Thoughts**

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Prepared by:

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**REPORT NUMBER ONE
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1.0 THUMBNAIL PROFILES**Steven Bell**

Sure footed performance on facts, corrected his team on a number of points of detail. Did not have an answer on alternative contractor, completion of risk matrix (sensitivity analysis), or cost to complete on either scenario, Phoenix or Separation, reported that this was work in progress.

Richard Jeffrey

Reluctant chair of meeting, keen to keep discussion at high level. He and Tony contradicted one another on a number of points. Reluctant to take on the cost procurement definition of Haymarket to St Andrews "it will follow". Uneasy when point driven home on relationship governance between CEC and tie. No sense of alarm at prospect of tie being "sacrificial lamb" at the mediation.

Nigel Robson

Clearly expert in his field, though his advice seemed to be restricted up to a certain point. Would be keen to learn of his client instruction to date.

Brandon Nolan

Keen to establish "blue water" between McGrigors involvement and DLA, noted the offer of his initial report and statements throughout the day. A foundation stone of the overall problem are the contract provisions and novation of a part-completed design, with no control mechanism in the design specification by the client. NB. The exchange between David and Brandon re other conditions, viz land and Council consents to use their phrase that is the next set of financial "trap doors". Brandon needs an instruction to get his head round an acceptable outcome to think of a HOT that can follow on to contract adjustment if mediation is successful.

Tony Rush

Good grasp of people and technical issues, noted comments on time to prepare for Phoenix and Separation. Not enough time to do both, concentrate on Phoenix. I would agree with this, although Separation should be developed to some degree as a negotiating lever.

Tony, Brandon and Nigel can deliver a good performance, but they need to be organised/instructed by their client, Richard, who in turn should be mindful what his client needs.

**REPORT NUMBER ONE
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2.0 PROCESS

The mediation should be entered into trying to seek agreement on the two parties' issues:

1. Delivery of operations, Airport to St Andrews (to defer Haymarket to St Andrews only puts the problem on to others post mediation and could provide a second wave of bad news).
2. Cost recovery with a full contingency to deliver (1).
3. Mechanism to deal with design sign off, land acquisition and remaining consents.
4. Remedial works.

In addition, as a separate client action - How to fill funding gap and other matters noted in Appendix I

3.0 PROBLEM

The Contract appears to be flawed.

The parties are taking advantage of this contract circumstance to suit their own financial position. That situation can only lead to deadlock as it is ultimately unworkable and as a consequence the parties are now tainted with mistrust.

It would not be an option to sacrifice tie (indeed it may suit some, providing a scorched earth approach to files information) etc. In due course a forensic report will be required to see what may be able to be recovered.

For CEC to intervene, it should be on the basis of Airport to St Andrews at least as an opening position. Whole budget re-established and the contract implemented in a different manner.

**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

4.0 PROPOSAL FOR A BASIS TO MANAGE A POTENTIAL SOLUTION

I would suggest the below noted proposal to be discussed pre-mediation as a solution to be offered within the mediation process. This would need to be agreed and parties on our side would need to buy in to this suggestion before we go in to the mediation room.

Bilfinger Berger Siemens and CEC jointly appoint a chair to a new project Steering Group. The Chair to be of a technical and business background and respected at a high level politically.

The Steering Group has representation at a senior decision making level from CEC, Bilfinger Berger Siemens and tie. This group endeavours to apply the Contract as written, but also noting the original intent. The Chair has to be able to deliver that dual approach in managing the contract within the Steering Group.

This group can be monitored by Scottish and German government representatives.

Existing contract obligations to CEC from tie and tie to the Contractor remain as is.

I would be pleased to amplify on this proposal at your request.

5.0 TRACKER

I attach my first tracker by way of a note on progress.

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Appendix I – Review of Observation Points



**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

CS OBSERVATION POINTS FOR TEAM MEETING ON 29TH JANUARY 2011

✓ - Points covered to some degree 29/01/11

- Is the style of the mediator known? Consensual or Authoritative ✓
- Has someone researched the Mediator's past outcomes? ✓
- How will any solution be funded?
Can shares/future profits be used?
Who will hold the liability?
- Is the proposed venue sufficient, neutral and conducive? ✓
- Pre-Mediation Agreement – CS with McClures will provide a skeleton form
- Client / Consortium Group
 - Clear hierarchy ✓
 - Decision maker ✓
- Technical, Contractual, Financial – understanding with each member – not as at 29/01/11
- Get copy of contract – CS – ✓ Ask Steven, cc. SB
- Get copy of programme – CS - ✓ Ask Steven, cc. SB
- First set of project progress meeting notes – CS to review - ✓ Ask Steven, cc. SB
- Last set of project progress meeting notes – CS to review - ✓ Ask Steven, cc. SB
- Separate the problems/disputes from the people – ✓ See Hg proposal
- Is a backfill statement prepared for 1b, 2 and 3? (Delivery, timetable, land acquisition powers, developer contributions) – ✓ Not as at 29/01/11, no cost to complete
- What is the best alternative to a negotiated agreement? – ✓ Not fully defined
- Has a risk analysis matrix and fund been established based on:
 - (i) successful mediation
 - (ii) unsuccessful mediation
 } ✓ Only in part,
CS to request
copy
- Check levels of authority on both sides and within – ✓ Move this point to client group
- Are the key points of dispute clear/identified and are differences known and understood? – ✓ Not fully as at 29/01/11

**REPORT NUMBER ONE
FIRST OBSERVATIONS AND EMERGING THOUGHTS**

- Are our position points of argument based on a solid, technical, contractual position? Do we know our strengths and weaknesses? – Position now on table 29/01/11 – not fully defined

3.0 AN OVERVIEW OF TACTICS STRATEGY AND AIMS FROM MEDIATION

The attached report gathers the actions and strategy immediately post mediation.

The report was reviewed by Bilfinger Berger and Siemens ("Infracore") to ensure that all parties were content with the position prior to the first Principals (i.e. the senior directors of Bilfinger Berger, Siemens and CAF) meeting post mediation. The report was adopted by the Principals at that meeting.