
From: Colin McLauchlan
Sent: 07 April 2008 10:31
To: Mike Connelly
Subject: RE: Cow Corner v TIE

absolutely

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From: Mike Connelly
Sent: 07 April 2008 10:29
To: Colin McLauchlan
Subject: RE: Cow Corner v TIE
Importance: High

The day of the long knives has just started!!!

Mike Connelly
Stakeholder Relationship Manager

tie limited

From: Ann Faulds [mailto:Ann.Faulds@dundas-wilson.com]
Sent: 07 April 2008 10:29
To: Willie Gallagher; Colin Hutton; Colin McLauchlan; Mike Connelly; Graeme Bissett; Graeme Bissett (external contact); Fitchie, Andrew
Cc: Trudi Craggs; Lorna Sibbald; Graham Middleton; Gill Lindsay; Colin McLauchlan; Andrew Holmes; Michael McAuley
Subject: RE: Cow Corner v TIE

Willie

I fully understand your position given the appointment of 3 legal firms at the outset of this contract.

My understanding is that an Operating Agreement was prepared when tie was set up. It was drafted by the Council but the Council did not want tie to have the formal status as 'agent' of the Council. Gill will probably know more about the background to that decision. I also understand that the Agreement was updated in 2005 to accommodate the EARL project.

Last week, our litigators asked to see the Operating Agreement because there appeared to be no formal transfer of powers from the Council to tie under the Tram Acts. As you know, they were looking for the audit trail of powers behind the various contracts to support a statutory defence to claims arising from the contracts.

In April and May 2006 the Tram Acts received Royal Assent. In February 2006, Trudi sent the attached note on Transfer of Powers to Ian Kendall as Project Director.

As we are not advising you on the procurement contracts, I do not know what happened in relation to the MUDFA contract although I think that the Operating Agreement is now being revised to accommodate the INFRACO contract? Anyway, Andrew will know the background to these contractual matters.

We will do everything possible to assist with the governance issues within the scope of our contract. If you would like to discuss or meet, please let me know.

Regards

Ann

Ann Faulds
Partner
Infrastructure Group
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From: Willie Gallagher [mailto:Willie.Gallagher@tie.ltd.uk]
Sent: 06 April 2008 08:31 PM
To: Colin Hutton; Colin McLauchlan; Mike Connelly; Graeme Bissett; Graeme Bissett (external contact); Fitchie, Andrew
Cc: Trudi Craggs; Ann Faulds; Lorna Sibbald; Graham Middleton; Gill Lindsay; Colin McLauchlan; Andrew Holmes
Subject: RE: Cow Corner v TIE

Colin,

I have reflected on the predicament. Please go ahead and instruct the local agent, I see no reasonable alternative.

For the avoidance of doubt, I am extremely troubled that I find myself in this position. Given all the legal advice tie has been involved with since the conception of the project, for us not to be convinced that we are acting under statutory powers for MUDFA is almost beyond comprehension.

I will pick up with the team on Monday / Tuesday, and we will then work hard to ensure that the necessary audit trail for Governance is robust and in place.

Regards,

Willie

From: Colin Hutton [mailto:Colin.Hutton@dundas-wilson.com]
Sent: 04 April 2008 16:23
To: Willie Gallagher; Colin McLauchlan; Mike Connelly; Graeme Bissett; Graeme Bissett (external contact)
Cc: Trudi Craggs; Ann Faulds; Lorna Sibbald; Graham Middleton
Subject: Cow Corner v TIE

Willie,

As Lorna mentioned, I shall be supervising this matter next week.

As regards the hearing on Tuesday the recommended strategy is to instruct a local agent to appear to fix a further hearing at which the Sheriff will hear parties arguments before determining the claim. The hearing on Tuesday is procedural in nature and I agree with Lorna that representation by TIE at the hearing or even D&W would be unusual and of itself may attract comment. Instructing a local agent is therefore entirely consistent with what would normally happen at this stage in the Summary Cause Procedure and indeed is the most costs effective manner in which to deal with the hearing. Instructing a local agent also provides the advantage of placing a legitimate buffer between ourselves and the Court at this stage in the event that discussion before the Sheriff moves to the question of statutory authority. We shall, of course, ensure that the local agent is appropriately briefed for the hearing.

You indicated that you wish to consider this over the weekend. It would be helpful to instruct the local agent on Monday morning and I'd be grateful if you could revert to me then.

I understand that Trudi is corresponding with you separately on the issue of reviewing the draft Operating Agreement.

If you have any queries, please call.

Regards

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