

Current Position on Outstanding issues

1: Final Business Case

I have sent a draft note to Ministers to Bill as discussed. It is focussed on

- a) £500m for both 1a and then 1b – ref recent letter from Willie Gallagher letter to Malcolm R and Tom Aitchison
- b) Concessionary Fares – again as previously agreed, and
- c) The timetable to Financial Close and whether we need go to Cabinet for decision

2: Grant Letter

a) Apart from the above, CEC remain anxious that there should be an agreed Dispute Resolution Procedure that spells out what when and how much either party is responsible for and they want to see this as part of the grant letter. In the absence of any formal Heads of Terms agreement / protocol this is the only vehicle that we have to settle this need.

b) Following yesterday's meeting with Dundas & Wilson, they firmly agree that TS interests are better served by developing a comprehensive grant procedure particularly as we don't have any formal dispute procedure available to call on. They intend to comment / redraft the CEC amended version to provide a final draft grant letter for agreement. (they consider that the dispute resolution model chosen by CEC is not the best for our interests) They also advised that we should have an additional "protocol" document which clearly sets out the underlying governance, reporting and monitoring and communication requirements necessary to support Ministers wishes for the "hands off " governance.

c) In parallel I have asked Corp Finance for their views on the CEC draft – its adherence to the SPFM etc

3. Misc CEC issues

a) I have attached a note of where we are in relation to the other issues that CEC have raised. In part they cross over some of the key issues above but also other points are also covered as they have been highlighted by Rebecca Andrew

CEC commentary on current grant letter negotiations

Blue = Rebecca Andrew's queries – Red our response

1) TS is sympathetic to the Council's desire to protect itself, but there is limited flexibility to treat CEC differently than other grant recipients.

While there is no reason to treat either CEC and the Tram project any differently to any other part of the TS Major Programme, we do have ministers' interests and wishes to account for whilst balancing the requirements of the Scottish Public Finance Manual. However both parties recognize the need for success especially now that ministers appear to recognize Trams in the context of the Edinburgh airport solution

2) TS would like to see profile for financial spend and little deviation from this. It is accepted that final profile will not be available until Financial Close, when programme has been agreed with contractor.

Agreed, tho' always subject to mutual agreement. Again it is in our mutual interests to maintain a regular monthly or more frequent payment process rather than larger scale milestone payments which can lead to budget spiking and accruals etc, and not terribly suited to any parties interests'

3) TS can undertake to pay within two weeks of receipt of grant claim, and are willing to pay in advance. Can this be put in the grant letter?

Yes if acceptable to TS Finance and if supported by both Invoices and a robust spend profile. It is TS interests to ensure that CEC is able to run and maintain a regular frequent payment profile that does not involve relatively large payment spikes and / or the large accrual issues that we presently see. This will however require something like a wholesale improvement in CEC / Tie financial management compared to current situation

4) Dispute resolution/default - TS want to see this separately from the grant letter, in a separate protocol which includes comms issues, etc. What legal protection will this give CEC?

Dundas & Wilson agree that this should be a key component of the grant letter –Also they will draft an appropriate dispute / default process, and cover other pertinent issues in a formal Protocol of agreement

5) Asset disposals - TS want to set the de minimus lower to conform to standard S70 letter and public finance manual.

Again why treat the Tram project differently? If there is a comparable scale precedent available, then by all means use it but why should it be seen as being such an issue?

6) TS to send calculation of grant remaining so that we can agree the amount of grant (£381 or 385 or somewhere in between)

Agreed

7) TS stated that standard clause on yearly under spends (slippage) contradicts minister's wishes on £500m contribution. Can letter be amended accordingly?

This is a reference to the apparent tension between Ministers' wishes to fund to cap of £500m and the standard S70 grant clause / SPFM criteria which are aimed at preventing undue underspend claims and rogue invoices falling into subsequent financial years – causing unnecessary pressures on TS accounting above normal accrual limits. CEC / tie are guilty on both counts with structural accrual and annual underspend issues. Accordingly they feel that this may jeopardize their ability to claim on the full £500m or whatever. The answer to this is the 4 weekly reporting mechanism, realistic proactive accounting by CEC and mutual trust applied flexibility and common sense, not something that is necessarily required in a grant letter

8) TS stated that they would be unwilling to alter the yearly amounts paid, once agreed, but may allow the % to be altered if this suits TS. How can the grant letter be altered to confirm this and protect CEC?

We are required by IDM to ensure that overall the percentage funding allocation of 91:9% is maintained. I explained this but also suggested however that a flexible policy would best suit our joint purposes, particularly where it might suit TS needs from time to time. As above this is not recommended for the grant letter

9) TS insisted on separate bank account for the project and CEC requirement for quarterly certification that grant conditions are being met.

This was recommended by Damian Sharp and seems a very useful mechanism if we have to be seen to be applying the philosophy of the SPFM regarding accessibility and visibility. CEC confirm that this is more or less current practice – with the exception of the land transfers so again not an issue of great sensitivity but something that I think we should cover in any final grant letter.

10) TS stated the desire to get the finalized letter to TS board on 10th October.

No - this was the target identified by Damian Sharp but we were clear that we would / could not justify this in terms of the standard IDM pre-meeting procedures etc. instead we have identified the November meeting once we have cleared ministers wishes etc on the 2 key points of the £500m and Concessionary Fares

From our discussions there seemed to be a difference between what you were prepared to put in the grant letter, and how you saw things working in practice. I would be grateful if you could clarify how you propose to deal with this and what protection it would give CEC.

This reaction is worrying. I had expected a much better appreciation and more mature reaction to why TS has to maintain a degree of flexibility which is in our mutual interests but not if set out in a formal grant letter context.