
From: Gill Lindsay
Sent: 22 March 2010 11:26
To: Nick Smith
Subject: RE: McGrigors

Nick

Thank you for forwarding the Confidential Restricted documents Project Pitchfork and hard copy of McGrigors opinion.

I have read very briefly since receipt around 1 hour ago - it would be good to have your view in respect of support/challenge to Tie when we meet.

My immediate comments in respect of support/challenge are

I do not immediately see a decision or recommendation re appeal of Wilson decision, question posed by McGrigors, with timescale of 14 April - do you know the final view. I would also be keen to know if DLA and McGrigors support the final view, legally and commercially.

It will be good to see a clear DRP plan, with proper narrative, expanding on the Action Plan in those documents and as discussed at IPG.

The McGrigors report refers at 9.21 to the Wiesbaden Agreement and that matters are still in discussion with Richard Keen QC - is this fully reflected in the Report on PP re influence and not final view?

following on from IPG comments by Marshall, Dave and Donald, it is not clear to me that there has been any proper additional or external, internal challenge to Tie (by way of support) as part of operation Pitchfork re project, programme management and operationally and strategically which appeared at IPG to be a potential issue and with very considerable potential current and future costs. This seems to be a current gap and particularly important in respect of current options and recommendations. This may form part of TMO plan.

It will be good to have DLA's report. There is no reason why this is not now provided by Tie and indeed we should have had opportunity to review leading to this report.

It would be good to quickly discuss and have update on current position and development of the business case, risk register and Transport Scotland perspective and role.

I will read more fully before we meet Nick, let me know when suits.

thanks
Gill

From: Gill Lindsay
Sent: 22 March 2010 09:22
To: Nick Smith
Subject: RE: McGrigors

Nick
Thank you. Yes, meeting Tues or Wed is good for me, let me know when. Can we use this time to chart progress on issues below and project forward to May Report, with visibility of actions and progress and arrangements moving forward.
Gill

From: Nick Smith
Sent: 17 March 2010 14:25
To: Gill Lindsay
Subject: RE: McGrigors

hi Gill

Answers below. Meeting this week likely to be difficult as I'm out all day tomorrow and interviewing all day Fri. Next Tues or Wed?

Kind regards

Nick

Nick Smith
Principal Solicitor
Legal Services Division
City of Edinburgh Council
City Chambers Business Centre L1
High Street
Edinburgh EH1 1YJ

(t) 0131 [REDACTED]
(f) 0131 529 3624

Please note that I am not in the office on a Monday

From: Gill Lindsay
Sent: 17 March 2010 13:52
To: Nick Smith
Subject: RE: McGrigors

Nick

Thanks. I have a few particular issues to clarify. Can you advise pl - would also appreciate brief update meeting this week to check actions re this, reporting and governance.

From TPB minute of 10 March, there is a reference to Performance Audits being conducted on design management, programme management and sub contractor arrangements and ref to independent analysis of the programme supporting Tie's position - also ref to Counsel's advice being analysed.

Do you know if Marshall as TMO has had access and opportunity to scrutinise the technical products referred to in this Minute and have we had opportunity to do likewise re Counsel's opinion. Having regard to what was said at IPG this am, Marshall may wish to consider more general audit re programme management in general and re PSSA as both a support and challenge to Tie as we move forward to identify lessons learned - has this been raised with him to date. I understand that Marshall is onto this issue and is having a meeting with tie to elevate such concerns. I think Acutus have been engaged to look at programme issues etc for tie. We haven't seen Counsel's opinion but his views are encompassed within the McGrigors report. Once we have the final report we can ask for this.

The IPG Report referred to Tie's production of an action plan, again do you know visibility by Marshall and others as support, challenge and active monitoring. I think the action plan is simply the result of the Pitchfork report which we do not have yet. Due shortly.

Can you provide Pitchfork report as soon as available Will do.

From McGrigors report,

is there an agreed plan yet on the points they raise re increased assertive use of contract and clear plan on actioning through DRP or otherwise, particularly the issue of where Tie dispute that a notified departure has occurred (page 32

of McGrigors report; If this relates to using 80.13 then yes, Richard advised yesterday that they are seeking to send letters next week which will likely initiate a formal dispute on this issue asap. Whether there is further agreement as to eg binding expert determination on this one issue remains to be seen.

what is the agreed position re taking DRP , Russell Road to litigation within the timescale highlighted by them of proceedings raised and served by 14 April (this will identify issues of publicity also). No further detail. I'll send you a couple of emails on this issue.

Have DLA provided a legal view on these issues which concurs or differs from McGrigors advice - the papers refer to a DLA Report of February 2010. No advice received from DLA re this report, nor do we have a copy of the 19 Feb report. I still await the final copy McGrigors report and will ask for the DLA one too.

Have DLA provided the updates on governance issues as scheduled and advised by Graeme Bissett outstanding action from last gov. meeting . No, I pointed out to Dave after this morning's IPG that DLA have likely been otherwise engaged and therefore have not looked at this. He is speaking to Graeme re this.

Many thanks
Gill

From: Nick Smith
Sent: 16 March 2010 15:26
To: Gill Lindsay
Subject: RE: McGrigors

Gill

Quick update for you:

- No final McGrigors report as yet. Will arrive shortly but likely unchanged from previous version.
- Final Pitchfork report being issued tomorrow in hard copy
- BSC looking at setting up a panel to look at top disputed issues, but Richard not hopeful re this.
- Letter about use of Clause 80.13 going out this week to hopefully kickstart dispute on the issue. May agree to go to binding adjudication.
- 3 further BDDI DRPs launched to tease out the arguments.
- tie can confirm that delivery still doable by mid-June 2012, but BSC looking at 2014.
- Work ongoing by tie on phasing and affordability.

Key issue is still breaking the 80.13 argument.

Kind regards

Nick

Nick Smith
Principal Solicitor
Legal Services Division
City of Edinburgh Council
City Chambers Business Centre L1
High Street
Edinburgh EH1 1YJ

(t) 0131 [REDACTED]
(f) 0131 529 3624

Please note that I am not in the office on a Monday

From: Gill Lindsay
Sent: 16 March 2010 10:48
To: Nick Smith
Subject: RE: McGrigors

Nick, can you let me have any update from your actions or from Tie, DLA or McGrigors pl on legal, commercial and transfer activities agreed for Dave Anderson.
Thanks
Gill

From: Nick Smith
Sent: 10 March 2010 17:17
To: Gill Lindsay
Subject: McGrigors

Gill

McGrigor's draft report attached as discussed. I don't have a copy of the Pitchfork report as they have only been issued in hard copy and only the exec summary so far. The final report is not due until Fri.

Please note that we have been given an advance copy of the McGrigors report to digest but that neither McGrigors nor DLA are aware we have it (indeed only David and Richard at tie and Dave, Donald and Alan are in the loop). Only you and I have the report in CEC.

Kind regards

Nick

Nick Smith
Principal Solicitor
Legal Services Division
City of Edinburgh Council
City Chambers Business Centre L1
High Street
Edinburgh EH1 1YJ

(t) 0131 [REDACTED]
(f) 0131 529 3624

Please note that I am not in the office on a Monday