
From: Nick Smith
Sent: 08 April 2008 15:46
To: Colin MacKenzie
Subject: RE: EDINBURGH TRAM UPDATE

Colin

From memory, I think the delegations agreed in the tie OA at 3.1 were tied into what was approved by the Council in Dec. What authority related to MUDFA was presumably in place when MUDFA signed. Is it now competent for CEC to amend the agreement as requested by tie without recourse back to the Council for approval? Just a thought. We can discuss on wed.

Kind regards

Nick

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From: Colin MacKenzie
Sent: 04 April 2008 17:46
To: Gill Lindsay
Cc: Nick Smith
Subject: EDINBURGH TRAM UPDATE
Importance: High

Gill,

I thought you would appreciate an update on the Tram Project following your holiday. I hope that went well.

There was no need for me to exercise the authority you delegated to me in connection with execution of deeds. As you forecast, Financial Close was put back, probably until 15 April. Accordingly, the Council's Guarantee will wait until then for execution.

I have had a dialogue with Andrew Fitchie and Graham Bissett following a very helpful paper from Graham about governance matters to be resolved in the run-up to Financial Close. I have asked John Sturt about certification of the Council report and minute of 20 December 2007. I reckon he is the Proper Officer for that purpose. He returns from holiday on 7 April. I am also dealing with the statutory intimation to Transport Scotland of the tie Operating Agreement. Finally, I have indicated I would have a stab at drafting the Chief Executive's letter to Willie Gallagher. I shall forward this draft to you next week.

You will note from one of Graeme Bissett's e-mails (dated 1 April) that he wishes to re-open the tie/TEL Operating Agreements. My recollection was that you had signed both of these agreements. I have only acknowledged Graeme's e-mail, and not offered a substantive response. In some ways his request comes as no surprise: these are issues which gave me concern from the Council's perspective and fed the debate on materiality of change to the Chief

Executive's delegated authority. You already have my views on that matter, and I will therefore summarise only the recommendation that these, in my view, material changes, require to be explained to Council on 1 May and further instructions sought. The FBC has changed and now you are being asked to change the Operating Agreements, styles of which were noted by Council on 20 December 2007. Presumably you will wish to discuss direct with Graeme how this matter is resolved.

I met with some of the internal clients this afternoon to review the CEC Spreadsheet "Critical Contractual Decisions". There has not been a great deal of movement since the last meeting of the IPG. Duncan Fraser wrote to Susan Clark and Graeme Bissett on 19 March setting out a list of points to be closed out by **tie**. A number of matters remain open. A meeting is to be held on 7 April between Finance and City Development to review this Spreadsheet once again.

There is likely to be an LAG meeting on 7 April, although no agenda has been issued yet. I will be absent and have notified the clients and **tie**. Colleagues in Finance and City Development may be having a pre-meeting around 4.30 pm on Monday at City Point. The new Head of Transport starts with the Council on Monday and it is possible he will be attending LAG and any pre-meeting. Thereafter, it looks like there will be a TPB on Wednesday 9th April, but I have no papers for that.

You will also have seen Willie's e-mail about the Sheriff Court action against **tie**. This is due to call in Court soon and will require **tie** to prepare Defences. It does not look like there is room for compromise between the parties: the Pursuer company seems intent on having a day in Court. Willie will be able to update LAG on this matter.

I should also draw to your attention the continuing concern about SDS and the submission of Prior and Technical Approvals. This shows no sign of improving, so much so that Planning have written a formal letter to Willie Gallagher expressing concern. That was probably appropriate given Planning's independent statutory role, distinct from the Council as client and Promoter of Tram. However, the fact that Planning have had to write in formal terms leads me to question what implications there may be for the Council in the longer term as client and funder should the **tie**/SDS collaboration not get its act together.

No doubt we will catch up on Wednesday 9 April when I return from leave.

Regards,

Colin MacKenzie
for Council Solicitor