

---

**From:** Steven Bell  
**Sent:** 20 October 2008 22:52  
**To:** Graeme Bissett (external contact); Stewart McGarrity  
**Cc:** Frank McFadden; Dennis Murray; Jim McEwan; Susan Clark; Willie Gallagher  
**Subject:** RE: BSC - The Way Forward

Tracking:	Recipient	Read
	Graeme Bissett (external contact)	
	Stewart McGarrity	
	Frank McFadden	Read: 21/10/2008 10:02
	Dennis Murray	Read: 21/10/2008 07:29
	Jim McEwan	Deleted: 18/11/2008 15:36
	Susan Clark	Read: 21/10/2008 07:19
	Willie Gallagher	Read: 20/10/2008 22:56

Graeme / Stewart

Constructive stuff from both you, thank you.

Some brief comments noted below. We will discuss tomorrow morning at the planned review.

Steven

Steven Bell  
Edinburgh Tram Project Director

**tie** Limited  
Citypoint  
65 Haymarket Terrace  
Edinburgh EH12 5HD

Tel: +44 (0) [REDACTED]

Fax: +44 (0) [REDACTED]

Email: [steven.bell@tie.ltd.uk](mailto:steven.bell@tie.ltd.uk)

[www.transforedinburgh.com](http://www.transforedinburgh.com)

[www.tie.ltd.uk](http://www.tie.ltd.uk)

---

**From:** Graeme Bissett [mailto:graeme.bissett@[REDACTED]]  
**Sent:** 20 October 2008 18:23  
**To:** Stewart McGarrity  
**Cc:** Frank McFadden; Steven Bell; Dennis Murray; Jim McEwan; Susan Clark; Willie Gallagher  
**Subject:** RE: BSC - The Way Forward

Thanks Stewart, a very useful paper. My concern here is that the range of complex inter-related programme, cost and legal issues means that it will be a serious challenge to achieve programme and cost re-calibration before the heavy lifting in January 09 starts. Even if we have the bandwidth and a plan, the ball and chain which is BB's lack of engagement is a constant threat to otherwise achievable timetables. Allowing for the Xmas break, we now have just a couple of months to get all of these issues nailed.

Taking Stewart's headings in turn, my additional suggestions are as follows. It looks to me as if there are three complicated and inter-related areas. I apologise in advance if matters have already progressed beyond my suggestions below.

#### V26 / V31

There seem to be points of legal principle which are material to the resolution (impact of failure to mobilize and to action mitigations ; the validity or otherwise of BSC's claim especially relative to sub-con costs). I'd recommend that we get a proper legal analysis documented from DLA so that our decision on commercial resolution is properly underpinned when it goes forward for approval.

**Dennis has already asked Andrew to provide documented comment on the elements of cost associated with such an Estimate.**

#### Base date design

We should also have here – if not already – a DLA documented response to the question about what constitutes the base design. I understand that we are awaiting a response to our legal position from BSC and that the delay may be telling. However, it would seem prudent to assume that BSC will seek to enter into a war of attrition and we should expect a rejection of our position even if we believe we are on safe ground.

**As discussed I do expect a war of attrition but we have both legal and claims consultant opinion to support our position on Base Date Design Information. We need to progress and, if appropriate, consider taking to DRP to our timescale provided the opinion continues to support our view.**

If I understand this, even if our position is accepted we then have a dangerous lack of design trail. We should have a clear documented view of the state of the design trail as soon as possible. This will enable us to understand where the big exposures lie so that we can plan tactics accordingly. If there is a large group of designs where relatively trivial changes have been made, presumably these can be horse-traded as to cost without prejudice to the legal principles relating to the bigger issues. Then we may need to deal on those bigger issues.

**We currently have a position where we consider all design is normal design development unless we have instructed a change. By exception. BSC highlight their view where it is beyond this and it is reviewed by tie accordingly. We have yet to receive any objective justification for such assertions despite numerous notifications of such design "out-with normal design development". This is a key issue to be resolved with BSC directly.**

A question : do any of the disputed design changes have the capacity to cause consequential programme complications ? if so, how will they be incorporated into the deal on V26 / V31?

**Dependent on how BSC play it, all of the disputed design changes have some potential to have a programme impact.**

#### Urgent issues

I don't have a good feel for the complexity and implications of the individual elements here but I'm assuming there is capacity to create significant programme and cost threat. I agree with the proposal that we should short-circuit debate and accelerate the action needed so long as the risk can be contained. I'm conscious there is probably a lot of work underway on these.

To be dealt with at 2 levels:

1. Critical issues meetings each week chaired by Frank to address the urgent problem items and these will be escalated and highlighted in the weekly flash report as necessary. I will include the relevant items at the tie exec report on a Tuesday morning.
2. Revised proposal for urgent changes based on Dennis's original work as previously discussed Bell/Walker. A Fitchie assisting in drafting subsidiary process / protocol linked to Clause 80. Response expected to be concluded by 22 October 2008.

On the other two main headings in Stewart's note :

BSC engagement

I agree that this is fundamental, but I fear that there is no immediate solution to the BB dimension. Experience says they will gouge when they can. The best way to resolve this is likely to be getting to a solution on all of the other aspects such that there is a re-calibrated programme and cost which they sign up to and which leaves much more limited wriggle room than the current position. BB (and PB) seem impervious to reputational risk, so continued subtle pressure though Siemens is the only relationship lever. There is a feeling that BB are concerned about LDs hanging over them, which might point to benefit in holding firmly to the LD contract structure, even if cushioned by the extension of time for V26 / V31.

**Agree**

Contract change mechanism

Nothing to add, the practical approach proposed seems entirely sensible. We should avoid allowing BSC to create any revisions to the contract, unless necessary or in our interest.

**See item above re urgent changes.**

In addition to the headings identified in the paper, we have to resolve the following, all of which have direct relevance to the re-calibration process :

1. MUDFA scope / scheduling changes and commercial resolution
2. Interface of MUDFA scope / scheduling changes with Infracore programme
3. The risk arising from a possible need to revise Princes Street traffic management arrangements on both MUDFA and Infracore
4. Assuming the initial (mainly V26 / V31) recalibration leads to a material extension to programme toward the end of 2011, the means by which we work with BSC to achieve acceleration (and the cost of achieving acceleration) needs to be addressed and programmed
5. The possibility of two-stage revenue service commencement as an option to mitigate overall programme delay.

I think it will be impossible to compile a credible plan that will lead to all of these strands of work being completed this side of the New Year. My suggested approach to the stages we need to construct is as follows :

Stage 1 - prior to Xmas 2008

The objective would be 1) to reach agreement with Carillion on all programme and commercial issues (and to achieve this asap) ; and 2) to reach agreement with BSC on a recalibrated programme and agreed commercial effect covering :

- V26 / V31
- Base date design
- The urgent issues
- Interface of MUDFA / Infracore
- Revised TM procedures

We could add to this the other cost issues including TEL charges, CEC costs and other more minor budget threats.

**Subject to reasonable cooperation from BSC.**

Stage 2 – post Xmas 2008 (timing to be assessed)

- Acceleration
- Two-stage revenue service commencement

**Add integration and access easement / embargo opportunities**

This approach will create two risks :

- 1) that the picture painted in December is a worst case, which may well go beyond £512m and will disclose a revenue service commencement date several months later than the July 2011 target.
- 2) That we do not have sufficient leverage over BSC to get them to engage on acceleration or two-stage commencement, unless we throw yet more money at them.

The first of these is largely presentational and reputational which we should be able to overcome. The key will be how credibly we can argue that good news on cost / programme will emerge in 2009.

The second is trickier, but would need to involve contractual agreement to some key principles this side of Xmas, with the detailed programme implications to be developed in the New Year. The principles would include that BSC will engage constructively on acceleration and two-stage commencement ; an agreed framework for the cost implications (plus and minus) ; and an agreed timetable in the New Year to develop proposals, which is tight enough to ensure that the opportunities do not disappear through passage of time and construction work being completed.

We can agree a revised Contract Programme but have a more aggressive construction programme. Would like to discuss at meeting tomorrow.

Finally, as an aide memoir, the approval hoops are as follows :

Approval process

The bigger issues may carry cost penalties > £1m and therefore require TPB approval. If they should aggregate >£10m, the Council (possibly through its Tram sub-committee, or T.I.E. Committee) will require to approve. It should be noted that these sums are measured against £512m so that the approval only moves to the TPB / Council if there is inadequate risk contingency. Uses of the contingency are reported to the TPB and there is clearly merit in proactive dialogue with the TPB on how these scenarios are moving, before legal commitment with BSC is entered into.

Any delay beyond July 2011 of > 3 months will need to go through the Council process, below that it is up to the TPB.

Claims greater than £500k or £1m over a 12 month period require Council / Committee approval, whether accommodated by the risk contingency or not. "Claims" are not defined, so we need to apply a common sense definition. I think that there is merit in codifying this and I wonder if a combination of Dennis, Steven and DLA could not provide a simple framework definition to ensure that this approval requirement is fulfilled where necessary. Having the TPB approve the framework would be logical.

**Can do**

I hope some of this is useful.

Regards  
Graeme

-----  
Graeme Bissett

m : +[REDACTED]

-----  
**From:** Stewart McGarrity [mailto:Stewart.McGarrity@tie.ltd.uk]  
**Sent:** 17 October 2008 16:07  
**To:** Frank McFadden; Steven Bell; Dennis Murray; Jim McEwan; Susan Clark  
**Cc:** Graeme Bissett  
**Subject:** RE: BSC - The Way Forward

All,

I'm not able to join your phone call on Sunday due to a personal commitment I cannot move and which means I'll be 3,000ft up a mountain at the time.

Attached is a note I've written of issues involved after discussions with Frank, Dennis and Jim over Wed/Thur. It falls short of suggesting magic bullets or a detailed programme of workstreams to move Infracore into the place we want them but I hope it's helpful and feel free to humiliate me if there are inaccuracies or misunderstanding therein.

We need to develop workstreams and owners around this which leads to a clean slate by the end of the calendar year (reporting to the Nov TPB will be the aspiration) and prior to the start of the Princes St work in January, even if we don't have an agreed programme which gets us back to a July 11 finish by that point.

Obviously a big part of what I'm expected to deliver is the overall picture of where our £512m budget is going and I will continue to work on that with my previous note attached my email of 12<sup>th</sup> August as a reference.

Stewart

Stewart McGarrity  
Finance Director  
tie Limited  
Mobile [REDACTED]

---

**From:** Frank McFadden  
**Sent:** 17 October 2008 11:06  
**To:** Stewart McGarrity; Steven Bell  
**Cc:** Dennis Murray; Jim McEwan; Susan Clark  
**Subject:** BSC - The Way Forward

Steven/Stewart

Just a quick update on where we are with the three parallel streams of activity:-

### **Stream 1**

Meeting arranged Monday 20 October 08, at 1100 hours. Attendees:- Colin Brady; Graham Duff; Steven Sharp; Frank McFadden; Dennis Murray; and Michael Paterson. The following items will be discussed:-

1. V26 to V31 – time and cost impact
2. Agree timeline programme to establish Baseline 2 – 6 programmes

### **Stream 2**

Proposal for Emergency Instruction Process will be discussed at Monday's meeting.

### **Stream 3**

We have approximately 27 locations where BSC believe there is a design/approvals blockage. A meeting will be held on Thursday 23 October to review each of these locations and develop an action plan to remove the block.

The priorities will be:-

- Russell Road retaining walls
- Roseburn Street viaduct
- Gogarburn Bridge
- Gogarburn Landfill area
- South Gyle Access Bridge
- Water of Leith Bridge
- Murrayfield Underpass
- Baird Drive retaining wall
- Carricknowe Bridge
- Murrayfield Stadium tram stop
- NWR interface works

Best Regards,

**Frank McFadden**  
**Infraco Director**

tie Ltd  
9 Lochside Avenue

Edinburgh  
EH12 9DJ

Tel: [REDACTED]  
Frank.McFadden@tie.ltd.uk

---

The information transmitted is intended only for the person to whom it is addressed and may contain confidential and/or privileged material. If you are not the intended recipient of this e-mail please notify the sender immediately at the email address above, and then delete it.

E-mails sent to and by our staff are monitored for operational and lawful business purposes including assessing compliance with our company rules and system performance. TIE reserves the right to monitor emails sent to or from addresses under its control.

No liability is accepted for any harm that may be caused to your systems or data by this e-mail. It is the recipient's responsibility to scan this e-mail and any attachments for computer viruses.

Senders and recipients of e-mail should be aware that under Scottish Freedom of Information legislation and the Data Protection legislation these contents may have to be disclosed to third parties in response to a request.

tie Limited registered in Scotland No. SC230949. Registered office - City Chambers, High Street, Edinburgh, EH1 1YT.

---