

From Gill Lindsay
Council Solicitor

MEMORANDUM

To Colin MacKenzie
Principal Solicitor

Our Ref

Date 17 August 2007

Your Ref

Dear Colin,

TRAM PROJECT

At this stage and after my numerous attempts to secure discussion with you I am extremely concerned at the content of your recent email re the position which appears to have been reached as regards this Division's input to the project.

From the information you have supplied to me and from other information which I have been required to source elsewhere I am of the view that professional negligence is more likely to arise if the Council were to adopt a "do nothing approach" being the preferred option in your paper. The reality is that the project is now at a crucial delivery phase. We have notification that the now changed financial relationships of the parties will require some form of comfort from the Council to the preferred bidder. We do not yet know if indeed this is the case or what form it will take but we require to prepare for it. It is for this reason that the decision to instruct DLA on behalf of both Tie and the Council in extension of the previous duty of care arrangement was taken over a week ago. I did not understand and certainly had not been advised of DLA not being in a position to so act.

You were present at and participated in the meeting with the Director of Corporate Services, Finance, City Development and Graham Bissett when inter alia it was agreed by all that DLA should be asked to regard the Council as the ultimate or joint client. You expressed no concerns or alternative view. Tie advise you were present at the meeting with DLA this week. Matters were again discussed at this week's meeting with Willie Gallacher and the Director. Neither you nor Alan attended the Division's project co-ordination meeting, scheduled in advance of the above meeting, and did not provide the required report despite various requests and despite being provided with copies of all relevant paperwork for the meeting. The information you provided in substitution of the required report in fact advises that we will be advised by Tie mid-September of what they may require of us when it will certainly be too late.

The person vested with reporting to Members is the Director of Corporate Services who is also the Monitoring Officer to whom I am professionally responsible. Your reporting role is in terms of the Divisional structure and to me. Circumstances have dictated the current position and though far from ideal we are required to advise and proceed in that context. Proper communication and progress in these challenging matters is by discussion, agreed reports, complying with protocols and attendance at agreed meetings which allow communication and consensus whilst facilitating delivery to timescales set. You advised me that you had agreed the Report to Members directly with the Director despite my written request for your comments and my attempts to reach you by telephone.

On the subject of resources, this Division has provided over some considerable time two full-time equivalents devoted to this project, one of whom recently advised he has insufficient work. I am aware of the legal work which D&W are undertaking, of the legal work which DLA are undertaking, of the legal work Tie are undertaking, but I still have not received from you the requested list of legal activities which you and your team are undertaking, nor have I received their current positioning or exception reporting. I am advised by receipt from you of a draft report to Council that the operating agreement between the Council and Tie is outstanding. I am also without relevant time records requested. I recently raised with you issues of your other commitments and you undertook to provide a decision thereon. This is still awaited despite further discussions and your assurance that you would revert to me without delay. In all the circumstances I now consider the situation sufficiently critical to strongly recommend that you detail all your work commitments other than this project to John McMurdo, Depute Council Solicitor immediately in order where appropriate that these can be reallocated. This would allow you to focus more fully on this project at this crucial stage full time with Nick Smith, who is also full-time, and relevant participation by Alan Squair.

I still require from you the completed Report together with the outstanding list of legal activities for you and your team. I also require a future work plan showing utilisation for August - October of the 40/50 allocated days each month and to which particular tasks each are allocated. This requires to be provided to me immediately.

I fully understand the challenging nature of this project. As one of my most experienced practitioners and former principal solicitor of Commercial Practice you are the ideal legal resource to manage and deliver this Division's input to this project and have been doing so over a lengthy period with support from colleagues. To facilitate this it is essential that means of contact be improved immediately. I am advised that you have declined the offer of a PDA now available to senior managers and contact through a work mobile telephone has to be established and maintained at all relevant times, or availability of a contact number must at all times be available. Please liaise with Kirsty-Louise Campbell in this regard.

I am advised that you cancelled and have not agreed any rearranged time for our 1 to 1. This requires to be rearranged without delay. I will make time in my diary next week to receive and consider the material requested and discuss outstanding issues with you. In addition I would offer a brief daily meeting with you if you consider this will assist you with the delivery of this project.

As you will recollect from my email of 10 August contact was to be made with DLA to reflect the new relationship agreed by all interested parties. Following DLA's risk analysis etc it was intended to determine the extent and type of additional diligence which the Council may require. In view of the critical timescales involved I did myself make contact with Andrew Fitchie of DLA. Mr Fitchie has advised that he has no difficulties of the nature you outline in your correspondence and has written to confirm the basis on which he is acting for Tie and the Council following discussions with Graham Bissett.

I attached hereto copy letter and initial draft from Mr Fitchie which will require to be considered and adjusted in light of the approved way forward for the project. The draft requires to be revised to reflect the content of my email of 10 August and Andrew Fitchie's email of 16 August and to secure all required interests. From my telephone discussion with Mr Fitchie it appears that an adequate consensus can be achieved and this must be prioritised immediately. It is critical that a response is forwarded to DLA immediately and to that end I will make time available later today to discuss this.

Such is the importance of this project that following discussion with Mr Fitchie, I took the opportunity of updating the Director. In all the circumstances there will be no further dialogue of this nature. Future communication must be confined to advance the agreed way forward and I am certain that we can successfully deliver this Division's input to the project.

Yours sincerely,

GILL LINDSAY
Council Solicitor