

EDINBURGH TRAM NETWORK

FINANCIAL CLOSE – APPROVALS PROCESS

Legal Affairs Committee – 7th April 2008

This paper provides a basis to discuss and agree the approval process to support Financial Close. The content has been circulated previously but this paper should be regarded as comprehensive.

(1) Documents required by BBS for approval

BBS's request for formal documents has been previously assessed and is progressing as follows :

1. tie / CEC Operating Agreement – see below
2. Tram Acts delegation notice – CEC Legal to assess DLA drafts, see below
3. Letter from CEC Chief Executive authorizing the tie Chairman to sign the contracts – CEC Legal drafting appropriate wording
4. Certified copy of tie's Memo / Arts and Certificate of Incorporation – CEC Legal pursuing
5. Signed copy of the minute from the tie Limited Board meeting on 29th January 2008 which created the delegated authority for the tie Chairman to approve the final form of the contracts and to execute the operating agreement. Tie holds a signed copy of this – DLA to advise when this needs to be released.

In addition DLA and CEC Legal require to resolve the debate on LGCA.

(2) tie Operating Agreement

There is one final amendment to discuss (see Paper 1 attached), then the document is ready for signature with delegated authority already provided to Gill Lindsay and Willie Gallagher for CEC and tie respectively.

As set out in Paper 2 attached, there is a need for an exchange of letters between WG and TA to confirm the position of the FBC.

The signing of the tie Operating Agreement crystallises the need for formal notification of delegation to TS under the Act. Draft letters prepared by DLA are attached at Paper 3. These must be sent within 21 days of the operating agreement being signed.

CEC need to confirm whether a similar notification letter was sent to TS in 2006 in relation to MUDFA, if not now would be the time to catch up on the matter.

(3) TEL Operating Agreement

Paper 2 explains the change necessary to the TEL Operating Agreement to reflect the final FBC baseline position in the delegated authority given to TEL.

A similar exchange of letters between DM and TA is needed to confirm the position of the FBC.

The TEL Board will also require to amend the delegated authority it has approved for the TPB.

(4) Infraco Contract Suite

This is being progressed to completion under tie's direction with full support from DLA. The process to complete is :

- Negotiations finalised
- QC process applied by tie / DLA to documents
- Tie management confirm to tie Executive Chairman that documents are good for signature ; this will include approval of the final form of the Close Report and its consistency with the DLA Report and the tie reports on which the DLA report is partly based (see below) ; and consideration of the status of all key third party agreements.
- Tie Executive Chairman writes to CEC Chief Executive confirming same
- CEC Chief Executive writes to tie Executive Chairman confirming approval to sign
- Approvals Committee of WG, NR, DM meets to conclude on execution

The Close Report and DLA Reports will document the final terms, which are obviously not expected to vary materially from those already circulated.

(5) Close Report

Content well-known, will be updated and QC'd as necessary prior to Close.

(6) DLA Report

Content established and terms agreed with CEC. The letter and related appendices will be updated and QC'd as necessary prior to Close. In addition to the specific items reported, the following will be executed :

- Tie will update the report on Infraco terms on which DLA provide confirmation
- Tie will update the report on Risk of Procurement Challenge terms on which DLA provide confirmation
- DLA will update the risk matrix

Final form of report will be conformed with the Close Report.

(7) Third party agreements

The following are of importance to the approval of Financial Close :

- Framework Agreement with NR
- Forth Ports agreement on Lindsay Road junction
- SRU agreement

These should not impede Financial Close unless a major new issue emerges from closing discussions. The Council will be kept informed of progress and the Close Report will be updated to reflect the position immediately prior to Close.

The tie internal QC process is underway with respect to all of the main 3PAs.

(8) CEC internal briefing papers

Under CEC control.

| FINANCIAL CLOSE - QC PROCESS | Responsibilities : | | | | | Full DLA QC review | |
|---|--|-------------------|---------------------------|------|------|-----------------------------|---|
| | Finalisation (based on Schedule status doc 20.3.08) | Main QC Review | Secondary QC Review(s) | | | | |
| Documents | | | | | | | |
| Infraco Contract Suite : | | | | | | | |
| Infraco contract | GG / DLA | SB | DM | JM | SMcG | ✓ | |
| TSA | AR / DLA | SB | SMcG | DM | BC | ✓ | |
| TMA | AR / DLA | BC | SMcG | | | ✓ | |
| TSA Novation Agreement | AR / DLA | n/a | | | | ✓ | |
| TMA Novation Agreement | AR / DLA | n/a | | | | ✓ | |
| CEC guarantees | DLA / CEC | SMcG | | | | ✓ | |
| SDS Novation Agreement | JM / DLA | SB | DS | | | ✓ | |
| Principal schedules (in addition to above) - | | | | | | | |
| Definitions | GG / DLA | SB | DM | JM | SMcG | AR | ✓ |
| Employer's Requirements (Sch 2) | MC | SB | JM | DM | GG | AR | ✓ |
| Pricing (Sch 4) | GG / BD / DM | SMcG | SB | | | | ✓ |
| Milestone payments (Sch 5) | DM / ES | SMcG | | | | | ✓ |
| Maintenance pricing / payment (Sch 6/7) | AR | BC | SMcG | | | | ✓ |
| Security package (Sch 9) | DLA | SMcG | GG | | | | ✓ |
| DRP (Sch 10/11) | DLA | SB | DM | | | | ✓ |
| Insurances (Sch 12) | DLA | MH | SC | | | | ✓ |
| TPAs (Sch 14) | DLA | SC | SB | AS | | | ✓ |
| Design management (Sch 15) | DS | SB | SC | | | | ✓ |
| Programme (Sch 16) | TH | SB | SC | | | | ✓ |
| Tramco spare parts (Sch 26) | AR | BC | SMcG | | | | ✓ |
| tie obligations (Sch 27) | GG | SB | SC | | | | ✓ |
| Infraco Proposal (Sch 31) | MC | SB | JM | DM | GG | AR | ✓ |
| Building Fixing Agreement (Sch 34) | BD | SB | AS | | | | ✓ |
| Tram Inspector Agreement (Sch 36) | AR | BC | | | | | ✓ |
| Reporting Period end-dates (Sch 36) | BD | SMcG | DM | | | | ✓ |
| Phase 1B (Sch 38) | GG | SB | DM | SMcG | | | ✓ |
| TSA obligations (Sch 40) | AR | BC | SMcG | | | | ✓ |
| Environmental / H&S KPIs | SB | TC | | | | | ✓ |
| Ground condition information (Sch 42) | SB | GG | | | | | ✓ |
| Utilities information (Sch 43) | SB | GG | | | | | ✓ |
| Close Report : | | | | | | | |
| Introduction | Complete | SB | | | CEC | | |
| Infraco Contract Suite | GB | SB | | | CEC | | |
| Grant award letter | Complete | Complete | | | | | |
| Procurement risk | Complete | SB | | | CEC | | |
| Third Party Agreements | Complete | GB | DS | | CEC | | |
| Land Acquisition Agreements | Complete | GB | | | CEC | | |
| Governance & corporate matters | Complete | Complete | | | | | |
| Risk assessment - in-process & provisional matters | Complete | SC | MH | | CEC | | |
| Readiness for construction | Complete | JM | SC | | CEC | | |
| Specific confirmations | Complete | SMcG | | | CEC | | |
| App 1 - Design management | SC | SB | DS | | CEC | | |
| App 2 - Governance & Delegations | Complete | n/a | | | | | |

| FINANCIAL CLOSE - QC PROCESS | | Responsibilities : | | | | Full DLA QC review |
|---|----------|--|-------------------|---------------------------|-----|-----------------------------|
| | | Finalisation (based on Schedule status doc 20.3.08) | Main QC Review | Secondary QC Review(s) | | |
| Documents | | | | | | |
| DLA Report | | | | | | |
| Letter from DLA | DLA | GB | | | CEC | ✓ |
| Infraco summary including Council guarantee | GB | SB | DM | | CEC | ✓ |
| Procurement risk | Complete | SB | MC | JM | CEC | ✓ |
| Risk matrix | DLA | SMcG | SC | | CEC | ✓ |
| Other key documents : | | | | | | |
| Grant funding letter | Complete | n/a | | | | |
| Operating Agreement - tie / CEC | GB | n/a | | | | |
| Operating Agreement - TEL / CEC | GB | n/a | | | | |
| Third Party Agreements : | | | | | | |
| BAA license / lease | Complete | SC | DS | | | ✓ |
| Station change | Complete | SC | DS | | | ✓ |
| Depot change | Complete | SC | DS | | | ✓ |
| NR APA | Complete | SC | DS | | | ✓ |
| NR Framework agreement and sub agreements | Complete | SC | DS | | | ✓ |
| Forth Ports | SC | GB | DS | | | ✓ |
| SRU | SC | GB | DS | | | ✓ |
| License - West Craigs | Complete | SC | DS | | | ✓ |
| License - Gyle | Complete | SC | DS | | | ✓ |
| tie and TEL Parties : | | | | | | |
| Alastair Richards | AR | | | | | |
| Alasdair Sim | AS | | | | | |
| Bill Campbell | BC | | | | | |
| Bob Dawson | BD | | | | | |
| Dennis Murray | DM | | | | | |
| Damian Sharp | DS | | | | | |
| Eric Smith | ES | | | | | |
| Graeme Bissett | GB | | | | | |
| Geoff Gilbert | GG | | | | | |
| Jim McEwan | JM | | | | | |
| Matthew Crossie | MC | | | | | |
| Mark Hamill | MH | | | | | |
| Steven Bell | SB | | | | | |
| Susan Clark | SC | | | | | |
| Stewart McGarity | SMcG | | | | | |
| Tom Condie | TC | | | | | |
| Tom Hickman | TH | | | | | |