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**From:** Nick Smith  
**Sent:** 24 September 2010 09:06  
**To:** Dave Anderson; Donald McGougan; Marshall Poulton  
**Cc:** Sheena Raeburn  
**Subject:** RE: STRICTLY PRIVATE AN CONFIDENTIAL - PREPARED IN ANTICIPATION OF LITIGATION

Thanks Dave. I'll await further developments.

Kind regards

Nick

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

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**From:** Dave Anderson  
**Sent:** 23 September 2010 18:15  
**To:** Nick Smith; Donald McGougan; Marshall Poulton  
**Cc:** Sheena Raeburn  
**Subject:** RE: STRICTLY PRIVATE AN CONFIDENTIAL - PREPARED IN ANTICIPATION OF LITIGATION

Nick Richard phoned me last night with the following timetable to potential termination:

- last date for response to final RBN 10/11
- Issue of fourth underperformance warning notice 15/11
- Tram Project Board meeting 17/11
- QC opinion on tie case for termination 19/11
- tie Response 24/11
- Council meeting 9/12
- Earliest date for termination subject to QC guidance 10/12.

At yesterday's TPB it clearly seemed no significant progress is being made on Carlisle and that tie has made the psychological switch to the seeming inevitability of Notice and is preparing accordingly. 10/12 would appear to be the earliest date that Notice could be implemented subject to the strength of QC advice. tie is clearly proceeding on the basis that they will be able to establish just cause. However, given that their earlier legal levers have proven to be ineffective I think the 'grind on' option should not be completely discounted at this stage and it is not unreasonable therefore to ask Richard to respond to your questions. I'll have a chat with Donald first thing tomorrow and revert to you again following that. Regards. Dave

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**From:** Nick Smith  
**Sent:** 23 September 2010 15:55  
**To:** Nick Smith; Dave Anderson; Donald McGougan; Marshall Poulton  
**Subject:** RE: STRICTLY PRIVATE AN CONFIDENTIAL - PREPARED IN ANTICIPATION OF LITIGATION

Sorry

This was my proposed response to an email from Richard re the 80.20 issues, not a fully comprehensive response to the email below which merits a more full discussion/response.

Kind regards

Nick

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**From:** Nick Smith  
**Sent:** 23 September 2010 15:31  
**To:** Dave Anderson; Donald McGougan  
**Subject:** RE: STRICTLY PRIVATE AND CONFIDENTIAL - PREPARED IN ANTICIPATION OF LITIGATION

Dave, Donald, Marshall

This is text I was planning to send to Richard but thought I had better get signoff, especially re the last para. It will increase the workload of the team considering Pitchfork options, but given the uncertain grounds of termination on the basis of Infraco default, and the potential adverse consequences of termination by tie without cause, continuing with the existing contract may be the 'least worst' option (at least until more compelling grounds of Infraco fault can be established). With this in mind, tie need to identify exactly what in the current contract is causing the issues and if there is any effective way to address these.

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Many thanks Richard

It looks as though 80.20 may at least remove some of the ability of Infraco to fail to progress works under tie's instruction. Whilst it will not cure all the issues with the contract, it would at least force work to be carried out in the case of a disputed Notified Departure pending resolution of the sums due.

I note that Richard Keen has recommended proceeding to adjudication on 34.1/80.20 as soon as possible and in order to proceed to DRP, one or more clear examples of disputed Notified Departures should be identified, in relation to which a strong document trail needs to be in place. Can you please let me know if and how tie will be taking this forward?

More generally, given the latest update I also think that we will likely need to look at the "grind on" option in greater detail. Is there a paper which sets out exactly what issues are causing most problem with the contract and where it simply does not work in tie's opinion? If the expert advice is eventually that Infraco default is difficult to prove and BSC won't do a workable deal under Carlisle or exit voluntarily then "grind on" may be the default. If so we should be prepared.

Kind regards

Nick

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**From:** Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]

**Sent:** 23 September 2010 12:32

**To:** Dave Anderson; Donald McGougan; Nick Smith

**Subject:** STRICTLY PRIVATE AND CONFIDENTIAL - PREPARED IN ANTICIPATION OF LITIGATION

Guys, Susan has postponed this pm's workshop. There are a number of reasons for this, but mostly I just want to take stock of where we are, and where we are going, so the workshop can be focussed on the right things.

On the assumption that termination of the contract is now a distinct possibility, we should think about what decisions will be required, and what strategy we will follow post termination. I set out my thoughts below for your consideration. You will see that some of these will need CEC input before we can move forward. I would welcome your reaction to this e-mail and an early meeting to discuss.

In the event of termination, several things will need to happen quickly and in parallel, and will need co-ordinating as they are inter related.

Here are my thoughts

1. Firstly a dedicated commercial and legal team will need to bring closure to the Infraco contract. There are several prescribed activities that need to be undertaken, and we would seek to conclude a financial settlement with the consortium to avoid if possible the issue reaching the courts. We must however recognise that this issue may end up being resolved in the courts, which is expensive, lengthy and risky for all parties, and has no certainty of outcome.
2. A team must very quickly secure the physical works, establish what we have in our possession, e.g. design and its status, what is actually built on the ground etc.
3. CEC must decide if at this stage it wishes to continue to administer the project in the short term. If not, then who? (see also workstream 6 below)
4. Very quickly, and in parallel to the above, (informed by item 2) the City Council must decide if it wishes to complete any part of the work that is currently underway, or immediately cease all works (apart from the minimum required to make safe).
5. In addition, the city council must decide if it still wishes to take delivery of the tram vehicles, or to cancel the vehicles as part of the contract termination and seek the return of all monies paid for the vehicles on the grounds of breach of contract by the consortium. (This will clearly have an impact on workstream 1 above). A similar debate may arise over materials which Siemens say they have already purchased. Clearly this decision will have to be made in anticipation of workstream 6 below.

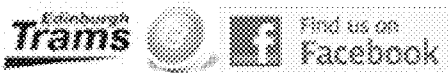
1. In parallel, a team (which in my view, given the body of knowledge that now exists, should be made up from the existing people within tie) should take 6 months (is that long enough?) to assess the options for the way forward for the project, (including cancellation of the project), and present these options to the City Council. Until this work is done there can be no certainty of future cost or timescale, so all existing expectations should be seen as off the table. I do not believe it is reasonable to ask the City (or the project management) if it wishes to proceed with the project if we cannot give certainty on cost/scope or programme. This work will require funding. Who will do this work over the next 6 months , tie (and/or TEL) or someone else? ( see 3 above). Included in the recommendations on the way forward, if the decision is to continue with the project, will this be under tie's management or will the City Council/Funders seek an alternative approach.
2. Tie will need to re-assess its manpower requirement in light of the above.
3. And finally, if the project is to proceed, there must be a formal lessons learned session (NOT a public witch hunt) to identify some of the underlying root causes of the current situation and ensure that they are not repeated (I have my views which I can share in a separate note).

**Richard Jeffrey**  
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