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**From:** Fitchie, Andrew  
**Sent:** 06 December 2007 20:04  
**To:** 'Graeme Bissett'; 'Willie Gallagher'; 'david\_mackay@'; 'Renilson, Neil'  
**Cc:** 'Strachan, Norman'; 'Stewart McGarrity'  
**Subject:** RE: tie Operating Agreement UPDATE

Graeme

I would support this approach.

The absence of a **tie** Operating Agreement will result in the project and CEC's negotiating positions being impacted negatively.

I am very concerned indeed about the lack of understanding of the competition law issue, despite the care (and project funds) spent in structuring the project correctly. As we have advised in the past, sanctions for infraction of competition law include proceedings against directors. This is very pertinent to the project operational phase.

There is, in my view, no legal, administrative or public law or practical reason for CEC to put **tie**, TEL and LB at risk by insisting on the offending provisions in these agreements.

kind regards

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**From:** Graeme Bissett [mailto:graeme.bissett@];  
**Sent:** 06 December 2007 19:31  
**To:** 'Willie Gallagher'; david\_mackay@; 'Renilson, Neil'  
**Cc:** 'Strachan, Norman'; Fitchie, Andrew; 'Stewart McGarrity'  
**Subject:** RE: tie Operating Agreement UPDATE

I called Nick Smith this afternoon. The general drift is that he accepts the logic but feels compelled to ensure that his legal position is put in front of their Directors. They are firmly in the camp of looking to demonstrate how the Council controls **tie** (and the same will apply to TEL). I have explained again that the relationship has to be more mature than that, but they are adamant that "someone looking in from outside" sees a document which shows that CEC has **tie** in its grip. The argument about competition law doesn't seem to carry much weight.

This is frustrating to say the least, exacerbated by the inability within the Council to execute a process which has any sense of urgency. The legal team have arranged a meeting with Donald and Andrew for 4.45 pm next Tuesday 11th, and it is unclear what the drafting and approval process will be from there. This misses the **tie** Board that day and Nick offered the view that there would be difficulty getting the agreement finalized in time for the Council meeting on 20/12. He acknowledges the interest of BBS, but claims his hands are tied by the need to get Director meetings and approvals.

There will therefore be no agreement worthy of the name at the **tie** Board next Tuesday. The **tie** Directors will require a proper period to review the final form of any agreement and the production of that agreement is under CEC Legal control. I am not at all confident now that there will be a final form of agreement in time for the 20/12 meeting.

The position with the TEL agreement is even worse. There has been no progress on the document, the author remains Jenny Drummond who leaves tomorrow, there is no evidence that it has been handed over

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(you'd think Nick would be the logical choice, but he hasn't seen it) and the best I can offer is that I've asked Colin Mackenzie to call me to let me know if progress is happening that is invisible to me (and to Nick).

The bottom line is that there is no individual within CEC taking responsibility for the production of these documents, despite their importance and the critical interface with the BBS negotiations. Unless you want it played differently, this is how I intend to present the state of play at the TPB tomorrow.

Give me a call if you want to discuss any time between now and tomorrow morning.

Regards  
Graeme

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Graeme Bissett

m : [REDACTED]

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**From:** Julie Thompson [mailto:Julie.Thompson@tie.ltd.uk]

**Sent:** 06 December 2007 10:07

**To:** nick.smith@edinburgh.gov.uk

**Cc:** Willie Gallagher; Fitchie, Andrew; Steven Bell; Susan Clark; Stewart McGarrity; david\_mackay@[REDACTED]  
Renilson, Neil; Strachan, Norman; andrew.holmes@edinburgh.gov.uk; Donald McGougan; Rebecca Andrew;  
colin.mackenzie@edinburgh.gov.uk; Graeme Bissett

**Subject:** tie Operating Agreement

Sent on behalf of Graeme Bissett

Nick,

Following our discussion on Tuesday afternoon, I called Andrew Holmes to discuss the main/commercial points. We had a meeting yesterday and concluded on the points below:

Andrew ill correct me if I have not reflected our communication properly. I hope this helps to move things along.

This note is copied to a number of recipients who have a direct interest in the terms of the agreement. However it is work in progress and is particularly subject to Nick's views.

Following the numbers in my email to you at 3 December 2007:

1. This matter had been largely dealt with and we now need to see some consistent language in the tie Operating Agreement, Council Report and resolutions/minute.
2. Similarly, the wording of the guarantee is now in place and under review by BBS.
3. We would like a single agreement which addresses tie as a company, not just the tram project. This should only require an omnibus paragraph referring to 1) tie's authority to continue with pre-existing projects; and 2) tie's authority to engage in new projects but only with approval from [the Council (to define)].
4. and 5. The element solution to the question of Monitoring Officers' (MO) authority is that he/she continues (as described) to be the conduit between tie and the Council, but has no delegated

authority to approve matters, such authority being reserved to the existing machinery, starting with the project SRO and TPB.

6. The over-arching responsibility should be captured in a reference to “delivery of the project in line with the Business Case” [and provide definitions]. The salient items in the schedule of services should become part of “**tie**’s obligations” in the body of (or referred to in) Section 2.
8. Point agreed.
9. Point agreed.
10. Point agreed.
11. Point agreed: duty of care on **tie** to remain as stated, but duty of care in relation to third parties to have “best endeavours” qualification.
13. Replace 2.21 with a requirement that **tie** produces an annual statement, approved by its Remuneration Committee, to the M.O. which sets out the principles and justification for **tie**’s remuneration structure.
14. Replace 2.2 with a requirement that all incentive payments are based on achievement of significant project milestones. All such arrangements to be approved by the Remuneration Committee and subject to stated upper limits.
17. Remove clause 2.28.
18. Replace 2.29 with a requirement that **tie** produces a “Communications Protocol” for approval by [the Council (to define)] which would inter alia meet the requirements of the Funding Agreement.
20. # 3.1 please reinstate the “reasonable” qualification.
23. # 5.1 remove the square bracketed phrase here, but Finalisation of the indemnity is subject to clarity about the PI cover held by both **tie** and CEC to ensure that the Council is not exposed to any third party claims which could circumvent its own cover.

We did not discuss 7, 12, 15, 16, 19, 21, 22, 24 and 25 and I look forward to your comments on these points.

Two other points to address:

- the relationship of the surviving section of 5.1 to the existence of the performance guarantee from the Council.
- ensure that no threat arises from the replacement of the existing **tie** agreement with respect to Transport Scotland and **tie**’s EARL responsibilities.

The shorthand above will not do justice to the logic behind the proposed final position so I would be happy to discuss the issues further with you from a **tie** perspective. I hope however this note will now enable us to get to a further draft which is close to Final agreement form.

We have a **tie** Board meeting on 11<sup>th</sup> December and it is important the Directors see a copy of a near-final agreement.

Can you let me have your thoughts on how to achieve this? The interest of BBS is another time-critical dimension.

Andrew believes the terms of the TEL agreement require further thought. However we need to agree language on certain aspects which will satisfy BBS (future maintenance obligations). I would be grateful if Andrew Fitchie would address this.

I look forward to hearing from you on next steps.

Regards

Graeme

Julie Thompson  
PA to Executive Chairman

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

Direct line: [REDACTED]  
Fax: [REDACTED]  
Email: [julie.thompson@tie.ltd.uk](mailto:julie.thompson@tie.ltd.uk)

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

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