
From: Donald McGougan
Sent: 27 February 2007 12:37
To: Rebecca Andrew
Subject: FW: TRAMS FOR EDINBURGH

Importance: High

From: Colin MacKenzie
Sent: 27 February 2007 12:11
To: Donald McGougan; Andrew Holmes
Cc: Duncan Fraser; Alan Squair; Stephen Sladdin; Gill Lindsay
Subject: TRAMS FOR EDINBURGH
Importance: High

Donald and Andrew,

The draft grant letter from Transport Scotland was provided to us by Rebecca. The terms and conditions have been carefully considered in light of the acute need for the Council to serve the Second General Vesting Declaration tomorrow, 28 February.

I think it would be helpful if I set out below the various considerations to be taken into account before the GVD Notices can safely be signed and served.

1. The draft award makes it clear that only Phase 1a work can be pursued using this instalment of grant. However, Damian Sharp appears to have indicated to the most recent meeting of the Tram Project Board that Transport Scotland has no power to approve Phase 1b in the meantime. This may not have been unexpected, but is there a realistic timescale for approval of spending on Phase 1b ?
2. Presumably there will be political and public relations implications arising from the award letter being restricted to Phase 1a. Does the Council have a strategy for dealing with this, for some stakeholders, disappointing news ?
3. It struck a number of us on the Property and Legal Issues Group that the grant award fell short of expectations, being only an award in respect of spending for 2007/2008. Perhaps we were mistaken, but it had been assumed that the award would deal with the whole project approval over its lifetime: in other words a letter giving approval of approximately £490 million. Again there are likely to be political and public relations implications arising.
4. On current timetable it is noted that the Infraco contract could be concluded in October 2007, with a scheduled start on Phase 1a construction in December 2007. The grant award makes no reference to construction works being included within the £60 million. What confidence does that give the Council and the Infraco bidders, since presumably the Council and/or Transport Scotland will be asked to act as guarantor for TIE in its contractual relationship with Infraco ?
5. Whilst the draft grant letter makes no reference to land acquisition costs, it appears that the previous correspondence and award letter from Transport Scotland dated 29 December 2006 deals with this matter. Can the Council be certain that there is sufficient free funding within the current financial year to safely commit itself to service of the GVD Notices on 28 February in respect of Phase 1a land only ?
6. Paragraph 10.1 refer to a "contractual relationship between the Council and tie limited." The only contract I am aware of is the general Operating Agreement which deals with all of tie's activities. For some time it has been clear that there is no specific Tram contract. In my opinion that situation should be rectified, as the absence of such an agreement presents a significant risk for the Council. The risks are highlighted by the fact that tie is entering into all the contracts, whilst the Council bears all the grant obligations in respect of expending the money where it is not a contracting party ! Separate from the current exercise, I would be obliged to receive your written instructions to commence drafting an agreement to protect the Council's interests. (This is, in effect, supported by Paragraph 19 requirements for robust project controls.)

7. Paragraph 18 states that the Scottish Ministers shall by 31 March 2007 supply comments on updating the draft Final Business Case. Significantly, this post dates the issue of the GVD Notices when the Council will have taken a major step in terms of commitment to the project. The remainder of Paragraph 18 does not particularly inspire confidence that the Minister will or can "approve" the Project tomorrow.

All of the above matters represent varying degrees of risk to the Council. I would be obliged if you consider same in the context of the scheduled service of the GVD Notices tomorrow. Alan Squair is attending at the offices of Dundas & Wilson tomorrow, in readiness to sign 250 Phase 1a Notices. They have indicated that at present it is only proposed to proceed with certain of the acquisitions, namely Haymarket to Roseburn Street and Gogar Roundabout to the Airport.

Before Alan Squair is in a position to sign the GVD Notices we will require to see a signed offer of grant from Transport Scotland and written confirmation from yourselves that, taking all matters above into account, the GVD Notices should be signed and served. If that confirmation can be provided to me I will arrange the signing with Alan Squair.

Kind regards,

Colin MacKenzie
for Council Solicitor