
From: Robert Burt
Sent: 22 February 2011 21:26
To: Steven Bell; Susan Clark; Nolan, Brandon
Cc: Iain McAlister; Anne Connolly; John Hughes; John QHughes
Subject: J086: FW: Items for Mediation Exhibits - STRICTLY PRIVATE AND CONFIDENTIAL AND PREPARED IN CONTEMPLATION OF LITIGATION - FOISA EXEMPT
Attachments: J086 - 1003z - Ver00 INTC 536 for tie mediation packages 22Feb11.pdf
Importance: High

Dear all – further to Steven’s email below and our subsequent telephone conversation earlier today, we have listed below (in red text) our suggestions on what we believe are ‘appropriate examples’ of the various “Key topic areas”. We will, as agreed, feed these examples to Brandon through the course of tomorrow.

In this regard, Iain has prepared some initial slides in relation to item ‘1’ below along with draft PowerPoint ‘notes’ regarding each slide. Those slides and notes are contained in the pdf file attached. For ease of reference, we will separate out those notes into a Word document tomorrow and reissue the slides and notes in separate files.

Kind regards

Robert

From: Steven Bell [mailto:Steven.Bell@tie.ltd.uk]
Sent: 21 February 2011 17:49
To: Robert Burt
Cc: Susan Clark; Brandon Nolan
Subject: Items for Mediation Exhibits

Legally Privileged and FOI(S)A Exempt

Robert

As discussed by telephone earlier, please find attached a list of key areas where any specific vignettes visible to Acutus through your work on RTNs or INTC 429/536 regarding the core issues raised in our mediation statement would be very helpful.

Key topic areas

1. Extension of Time and associated loss and expense relating to MUDFA works (INTC 429 & INTC 536)
Points to be addressed as follows:-
 - INTC 536 Estimate effectively ignores the INTC 429 decision and cherry picks from the reasons.
 - INTC 536 includes many other INTCs that pre-date INTC 429 and others that post date it.
 - It ignores actual progress.
 - It ignores all other INTCs and TCOs that pre-date it.
 - The analysis is entirely theoretical and does not accord with the factual situation on the ground.

As noted above, Iain has been working on some initial slides and the like in relation to the above as part of the INTC536 process. The initial output is attached – this will be finalised tomorrow.
2. Cessation works associated with the 99 INTCs mentioned in Infracore letter KDR6860 of 29 September

As discussed our current investigations have not focussed specifically on the 99 cessation INTC’s but it is likely that some crossover with other areas of investigation will have occurred. We will check this first thing tomorrow and confirm.

3. Obligations in relation to Programme Clause 60 etc. (all constituent parts; updating Rev1; incorporating progress etc.

Points to be addressed as follows:-

- The Programme is deficient of much of the information required by the ERs. Information on many pre-requisites to on-site commencement are missing. Consequently, the updating that has been reported by the Infraco in its Period Reports does not include this pertinent, and often critical, information.
- It has not been managed in accordance with the Infraco Contract. Specifically, it has not been updated to reflect changes to the Infraco's actual or planned order and manner for delivering the Infraco Works.
- It has also not been updated to take into account TCOs.
- Infraco submissions for EoT (other than MUDFA) have not followed the contractual mechanisms.
- It is also apparent that the SDS element of the Programme has not been integrated with the Infraco construction programme element. This has resulted in a growing misalignment between these two elements. Delays to the design are not being reflected in the construction programme. This has led to a misrepresentation of projected dates in that element of the Programme.
- By these actions the Infraco is obstructing the proper operation of the Infraco Contract with respect to Programme and EoT

4. Infraco Default:

- a. On Street Trackform Design and integration (see paragraph 2.2.1 of our "Interim view report" dated 14 February). Points to be addressed as follows:-

- Failure to programme "Deliverables" as required by Clause 10 of the Infraco Contract;
- Failure to (timeously) produce an integrated trackform design. *[Note: The contractual requirements concerning the precise timing of same are however areas for discussion]*
- Failure to submit an integrated design for tie's review in accordance with the Review Procedure (Schedule Part 14). *[See Note above]*
- Failure to obtain the necessary "Consents" which are, or appear to us to be, a condition precedent to issue of the relevant Permit to Commence Works.

- b. Princes Street works

The on-street trackform design and integration process (4'a' above) feeds into this RTN (specifically the road surface / rail interface issue). As discussed, we will (where time permits tomorrow) also endeavour to provide information concerning (i) kerb alignment defects; (ii) chamber cover defects; and (iii) drainage channel defects.

- c. Failure to progress

In terms of the current investigations this item is linked to 'd' & 'e' below. Time permitting tomorrow, we will aim to provide additional information re "Russell Road Bridge" and "Section 2A trackwork" as further examples.

- d. Structures in Section 5A, including necessary construction phase plan and monitoring with NR and approvals from NR.

- **Track Monitoring Action Plan:** Infraco defaults with respect to same are related to the requirements of the NR/SP/MTC/088 Management of Changed Assets. This requires that the Infraco formalises its proposals for NR approval with respect to the provision of a Track Monitoring Action Plan. The Infraco's most recent submission covering Haymarket Station to Edinburgh Park has failed to meet the requirements of NR. The Infraco has failed to comply with NR / tie requests to provide a competent / compliant revision to its initial submission.
- **WPP and Form C delays:** issues identified include (i) late release of the WPP; (ii) outstanding signatures required from the Infraco's CRE for WPP submissions; and (iii) Late release and incomplete provision of Form 'C' information.

- e. Failure to produce Estimates and incomplete nature of Estimates As discussed we will, in the first instance, cite two main examples of delayed Estimates as follows:-

- **INTC 106 Murrayfield Stadium Retaining Walls (S21B):** this INTC was issued by the Infraco on the 15/09/2008 (circa 53 calendar days after IFC issue). This Estimate was submitted **590 calendar days** later than the extension of time granted by tie.
- **INTC 625 Ground Improvement Works:** This is a key element in unlocking commencement in Section 5A. Resolution of INTC 625 is also likely to have a consequential effect on INTC's 106, 109, 147 & 667/667a. While the contractual process now (but only very recently) requires tie action, it is notable that tie's ability to close out this issue was dependent on receipt of the relevant Estimate

for INTC 625. That was submitted **154 days** later than the period provided by the Contract. As discussed we will also look into the nature / completeness of that Estimate.

(Further examples of the periods taken for provision of Section 5A INTC Estimates can also be provided over the course of tomorrow or Thursday if required.)

- f. Gogarburn Retaining Wall design and approvals including those from EAL, particularly in relation to flood modelling
- **INTC 682 Impact on Tram Infrastructure on Flood Risk in the Gogarburn:** The failure of the Infraco to manage the Design at the Gogarburn Retaining Walls (W14C and W14D) centres on the fact that the IFC drawings remain outstanding for these structures. We note that the delay in the release of those drawings is circa **31 months later** than originally planned (in this regard reference is made to IFC submission programme dated 09/10/2008). Our initial investigations indicate that the issues surrounding the release of the IFC drawings for these structures are as follows:-
 - (a) alterations to the Edinburgh Tram Stop necessitated a revised design;
 - (b) that redesign was undertaken more than once by the Infraco / SDS (Including 3 separate piling designs) – we will address the multiple IFC issue;
 - (c) the most recent design solution (which realigns the retaining walls) has received no objection from EAL and as such CEC have granted an Approval in Principle (AIP);
 - (d) the Infraco has offered no reasonable explanation as to why ‘workable’ IFC drawings (which meet CEC and EAL approvals) were not submitted as programmed and why the Design took so long to be resolved;
 - (e) EAL are currently unable to remove their outstanding “Flooding Objection” until further analysis and discussions take place on the [potential] additional works to the embankments and clarification on the functionality of the new upstream has been obtained. However it is our understanding that the EAL “Flood Objections” may be close to resolution.In light of the foregoing the Infraco has stated that it will require a Compensation Event (under cover of INTC 682) in order to close out any potential] outstanding flood risk issues associated with the Gogar Burn (this includes work which has to be undertaken outwith the LOD). In addition to the above, there are various INTC’s (currently 9 identified) which have various outstanding issues attaching; analysis of same is currently ongoing. In the majority of cases the Infraco have provided a “Design Only” Estimate to date. The “Construction Elements” remain outstanding.
 - **INTC 155c BDDI to IFC Changes to Gogarburn Retaining Walls:** As at the 21/02/2011 the Infraco have yet to submit IFC drawings (and as a consequence) the Estimate for Gogarburn Retaining Wall (W14C).
5. Any other “good example” you feel you have uncovered as you have worked through the RTN study.
- **Russell Road Bridge** (see 4’c’ above)
 - **Construction Phase Plan:** the Infraco has failed to formally update the Construction Phase Plan. Without an updated plan, Network Rail will not allow the Infraco to proceed with the works.
 - **IFC / INTC Interface:** there are a number of instances where the Infraco has taken an inordinate amount of time to produce INTC's following the IFC issue date. Examples for Section 5A include:-
 1. Murrayfield Retaining Walls (S21D): INTC 147 was issued by the Infraco on the 14/10/2008 (circa 75 calendar days after IFC issue on 01/08/2008).
 2. Murrayfield Stadium Underpass (S21C): INTC 414 was issued by the Infraco on the 16/06/2009 (circa 148 calendar days after the *latest* IFC issue). *Initial* IFC issued on 25/07/2008, *latest* IFC issued on 20/01/2009.

Look forward to a call tomorrow morning.

Regards

Steven

Steven Bell
Project Director

Edinburgh Trams

Citypoint
65 Haymarket Terrace
Edinburgh
EH12 5HD

Tel: (+44) [REDACTED]
Mobile: (+44) [REDACTED]
Email: steven.bell@tie.ltd.uk

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