

LEGALLY PRIVILEGED FOISA EXEMPT
DISPUTE RESOLUTION PROCEDURE CASE 5b: INFRACO NOTIFICATION of tie
Change Number 115 dated 16 September 2008 re IFC drawing for Carrick Knowe Bridge
COMMENT BY McGRIGORS IN RELATION TO tie's CASE

CONTEXT

- 1 Reference is made to the Inventory of Documents and to the documents referred to therein.
- 2 The Dispute which tie intend to refer to the Internal Dispute Resolution Procedure is narrated in paragraph 2.1 of the Position Paper.

ANALYSIS

- 3 The position in respect of 5b turns on the same issues which have been commented upon in relation to 5a subject to one important difference. In 5b it is accepted that a Notified Departure exists but **only** in respect of the Galleries which involved amendment from the drawings forming the BDDI as a consequence of the requirements of an Approval Body. In terms of Clause 3.4.1.3 of the Schedule Part 4 this is a change from the Pricing Assumptions and therefore constitutes a Notified Departure.
- 4 The declarations sought in terms of the Required Redress in the Position Paper should **firstly** seek declaration to the effect that the Notified Departure is only in respect of the Galleries.
- 5 It is intended to invoke Clause 80.15. However, it is recognised that Infraco may argue (on a literal interpretation) that Clause 80.15 is only applicable where a Notified Departure is accepted and it is only the Estimate that has been referred to the DRP for determination. It would not be possible to carry out the work in relation to the Galleries without building the new structure.
- 6 With regard to everything other than the Galleries it is disputed that there is a Notified Departure. It is also disputed that the Estimate satisfies the requirements of Clause 80.4. The comments in respect of 5a apply equally here.

CONCLUSION

- 7 The comments in respect of 5a are entirely applicable and are not narrated again.
- 8 It may be difficult to successfully invoke Clause 80.15 if Infraco challenge this for the reasons set out in paragraph 5 above.

McGrigors LLP
26 August 2009