

Colin Smith

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**From:** Anthony Rush [rush\_aj@██████████]  
**Sent:** 06 March 2011 11:23  
**To:** 'Anthony Rush'; Brandon Nolan; Nigel Robson; Colin Smith  
**Cc:** Drysdale"Graham  
**Subject:** RE: AIDE MEMOIRE FOR PURPOSES OF MEDIATION  
**Attachments:** stripeddeckchair.xlsx

Below please find my thoughts on the various outputs I have to hand.

I found the "back-page" a useful prod to think about a structure to aim for (one of those ideas I wished was mine). You will see that I have added to it and restructured it but I trust its instigator will forgive me – after all I have to get into the "challenger" mood.

I am concerned (as I know we all are) on what is the Tipping Point in cost terms.

By testing the options against the top 5 thresholds of; Price Certainty; Programme Certainty; Operational Certainty; Best Value; and a Viable ETN, I think there is a premium value in obtaining these aims.

**Steven Bell's Risk Assessment**

It should be recognised that any evaluation of risk cannot be ascertained as a matter of fact.

I would like the assessment to be categorised and/or with "traffic lights".

I also note that it includes for:

|                                          |                |
|------------------------------------------|----------------|
| Haymarket to St Andrew Square            | £18 - £20.0 m  |
| Edinburgh Gateway                        | £9.5 - £11.5 m |
| Contingency and General Delay Provisions | £8 - £34 m     |

Should the latter be added to Alan's forecast?

All I can comment just now is that the Mean Risk appears to be c£40 million

**Comment on Alan Coyle's Updated "Deckchair".**

For the purposes of this note I have abstracted from the Spreadsheets provided by Alan the numbers which I think are pivotal to deciding the future of Project Phoenix. (see attachment "striped deckchair").

I have trouble "hacking" into Alan's spreadsheet but in Summary Column F amounts to:

|                               |          |
|-------------------------------|----------|
| Total BSC                     | £201.5 m |
| Interim Works & Reinstatement | £14.9 m  |
| New Procurement               | £189.4 m |
| Termination Costs             | £2.0 m   |
| Other costs                   | £271.4 m |
| Sub-total of Column F         | £679.2 m |
| Allowances elsewhere          |          |
| Settlement Premium            | £10 m    |

|                                                             |          |
|-------------------------------------------------------------|----------|
| Design & professional costs                                 | £15 m    |
| Total of Col F plus other allowances                        | £704.2 m |
| Add Steven Bell's Contingency and General Delay Provisions? | £34.0 m  |
| Potential Tipping Point not less than?                      | £738 m   |

Located at A8 (in striped deckchair) Alan deducts an accounting adjustment which was explained by Gregor Roberts as being on the basis of the mobilisation payment being treated as: "£24.2m of the total Initial payments as a prepayment (in respect of advance material purchases and mobilisation) and the remaining values counted as expenditure in the current year (2007/08)." But one can deduce from Schedule Part 4 Appendix F and Schedule Part 5 that the Mobilisation of £45.2 m was simply preliminaries in advance (split equally between Bilfinger Berger and Siemens). But in any case the amount certified is £124 m not £113 m as given in A9 (need to check that £124 m is paid).

The figures given therefore in Row 15 only increase what has been certified and paid to the Infraco plus increases in respect of CAF and SDS. In other words assuming an agreed termination (Project Separation) Alan assumes that the Infraco will "drop hands". However, Alan does allow a premium of £10 m for settlement elsewhere. GHP also thought that a "drop hands" solution was feasible from a valuation point of view.

Alan also accepts the QS opinion that the only differences between high and low forecasts for Separation are payments to CAF and SDS.

In Row 23 Alan opines that the Infrastructure Costs (Civils and Systems) Airport to Haymarket will be in the range of £140.8 to £169.2 million. He notes that these figures are taken from a paper prepared by Dennis Murray on 2 December 2010. It would be helpful if this paper was available on Monday.

I am minded that without Value Engineering, Dennis Murray has previously given an analysis of Contract Works Price of £91.73 million for Bilfinger Berger and £67.14 million for Siemens. This amounts to £158 million. From this we can deduct £19.5 million of Construction Milestones plus £15.3 in relative preliminaries (including advanced). Leaving £123 million left before Changes and Inflation.

We should note:

- Siemens are seeking £136 million for the Systems Work alone (including trackwork).
- Steven Bell identifies £75 million of risk excluding risk to "drawing changes which he cannot quantify, but including £15 million of programme risk.
- GHP's prudent assessment is £219 million (£50 million in excess of Alan's).

There are two critical questions:

*Will the Infraco "drop hands" for £10 million?*

Not likely unless they believe that the alternative of Phoenix or Attrition is much worse for them.

*How prudent are Alan's forecasts for Separation?*

On the face of it they may be substantially under-estimated by not including enough for risk and the additional costs arising from procurement and time, especially in a period which may see costs inflate substantially (a 250 dollar barrel of oil!)

But the cost/km comparison is also a compelling thought. Excluding the Depot the total Infrastructure cost is c£194million based on Alan's forecast and costs to date.

It is not so simple as to take the running track as the total length as there is a substantial length of track in the Depot which will reduce the cost/km of running track of £16.8 million down to c £13 - 14m /km of total track.

There was also:

- substantial earthworks in preparing the site for the Depot which may not be included in the Depot Costs;
- heavy structures with substantial piling and working against Network Rail; and
- a major underpass at Gogar; but
- a substantial length of track is on existing bus-way.

GHP's more prudent estimate would add £4 – 4.5 million/km to Alan's forecast.

One can only make a judgement without market testing the costings, but I think that in light of the pivotal importance of the forecast I would be inclined to add to Alan's forecast if only that I suspect the cost of completing the Systems and track will prove very expensive.

My thoughts are that Alan's forecasts:

1. Do not allow enough (premium/risk) for an agreed termination payment to the Infraco.
2. Do not allow enough in contingency for risk and time.
3. Are based on Infrastructure costs which may be achievable in a "new build" but will prove low in this situation.
4. Do not recognise the inflationary pressures which are about to hit us.
5. Do not recognise the "bad reputation" premium the project has.

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This is an attractive concept if negotiations are deadlocked and/or there appears to be a willingness by the Infraco to reach an agreement. I also imagine that it may create useful "breathing space" at a difficult time in the fiscal calendar.

My suggestion is that our undertaking is to:

- Within the proposed new management structure set up the Joint Project Forum with immediate effect.
- To take reasonable steps to minimise the Infraco's losses.
- Establish dedicated points of responsibility in CEC to streamline approvals.
- Provide reasonable assistance to the Infraco to obtain third party approvals.
- Discuss with CAF re-novation back to tie.
- Transfer of ownership of materials and equipment at prices which are consistent with the original Contract Works Price.
- Maintain a "no-comment" attitude to the press and take steps to limit leaks.

They undertake:

- To minimise site overheads and other costs in recognition of their obligation to minimise tie's losses.
- To carry out remedial to Princes Street as instructed by tie and at their own cost and delivered by not later than end of September 2011
- Complete a mini test track and the Depot at earliest possible date and where necessary on a demonstrable cost basis for Changes.
- Carry out a value engineering exercise as provided for in Clause 81.3
- Provide Estimates for all outstanding INTC's within an agreed timescale including impact on programme.
- To agree to a non-obstructive procedure for agreeing Estimates
- Maintain a "no-comment" attitude to the press and take steps to limit leaks.

The Joint Project Forum will:

- Monitor the undertakings of each party.

- Commission an independent programming expert to prepare a programme for completion of the ETN Airport to St Andrew Square
- Seek to agree by compromise a revised price for completion of the ETN Airport to St Andrew Square

The Infraco will not be released from their obligations at any time to perform their contract obligations to design and build the Infraco Works with due expedition.

The agreement should be time limited and subject to a Minute of Agreement (not a Minute of Variation).

**Comments on "Revised Change Mechanism"**

Where I have a comment I have noted it:

1. tie will be required to issue a tie Notice of Change upon the occurrence of a change event, or upon Infraco notifying tie of such an occurrence, within five Business Days.

*Whether or not tie issues a tie Notice of Change is to be at the entire discretion of tie and any such tie Change will only relate to changes in the agreed Design (which has been warranted by Infraco to meet the Employer's Requirements). The definition of "tie Change" will remain as per the Infraco Contract as follows "means any addition, modification, reduction or omission in respect of the Infraco Works instructed in accordance with Clause 80 (tie Changes) or any other event which this Agreement specifically states will be a tie Change but which will not include any Small Works Change or any Accommodation Works Change".*

My comment:

Change "entire discretion" to "absolute discretion". Otherwise I agree with Drysdale.

2. Failure to issue a tie Notice of Change may result in the matter being referred to DRP.

*As mentioned above, the issue of a tie Notice of Change will be at the entire discretion of tie.*

3. Infraco will prepare an Estimate within the existing contractual timescales, following receipt of a tie Notice of Change.

*Any extension to the existing contractual timescales in respect of the preparation of Estimate will be at the entire discretion of tie.*

4. A finite period will be allowed for agreement of the Estimate, failing which the matter may be referred to DRP.

*There will be no ability to refer the Estimate to DRP.*

My comment:

I am content with reference to DRP but if there is a finite period then there has to be an undertaking by the Infraco to get on with the work in the meantime and the Estimates must be submitted within 18 business days.

5. Infraco will commit, if required by tie, to carrying out the works associated with the tie Change in advance of agreement or determination of the Estimate, and where necessary, in advance of the production of an Estimate in accordance with the PPP Programme.

# ABSTRACT FROM DECKCHAIR

|                                            | A                                                       | B                                                       | C                                                    | D                       | E                           | F                        | G                        | H                        | I                          |
|--------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------|-------------------------|-----------------------------|--------------------------|--------------------------|--------------------------|----------------------------|
|                                            | COWD<br>to P11<br>Jan-11<br>(fcst Cert<br>Feb-11)<br>£m | Win<br>litigation<br>(Infraco<br>Default)<br>High<br>£m | Lose<br>litigation<br>(tie<br>Default)<br>High<br>£m | Termination             |                             |                          | Infraco                  | Infraco Build to HYM     |                            |
|                                            |                                                         |                                                         |                                                      | Separation<br>Low<br>£m | Separation<br>QS View<br>£m | Separation<br>High<br>£m | Phoenix<br>QS View<br>£m | Phoenix<br>QS View<br>£m | Phoenix<br>BB 'View'<br>£m |
| <b>BB+S</b>                                |                                                         |                                                         |                                                      |                         |                             |                          |                          |                          |                            |
| 1 Constn Works Price (BB+S)                | 68.2                                                    | 68.2                                                    | 68.2                                                 | 68.2                    | 68.2                        | 68.2                     | 68.2                     | 68.2                     | 68.2                       |
| 2                                          |                                                         |                                                         |                                                      |                         |                             |                          |                          |                          |                            |
| 3 Existing Change - Princes St             | 9.5                                                     | 9.5                                                     | 9.5                                                  | 9.5                     | 9.5                         | 9.5                      | 9.5                      | 9.5                      | 9.5                        |
| 4 Existing Change - Other                  | 13.1                                                    | 13.1                                                    | 13.1                                                 | 13.1                    | 13.1                        | 13.1                     | 13.1                     | 13.1                     | 13.1                       |
| 5 Entitlement for work done (BB+S)         | 90.8                                                    | 90.8                                                    | 90.8                                                 | 90.8                    | 90.8                        | 90.8                     | 90.8                     | 90.8                     | 90.8                       |
| 6 Certified in advance of work done (BB+S) | 33.2                                                    | 33.2                                                    | 33.2                                                 | 33.2                    | 33.2                        | 33.2                     | 33.2                     | 33.2                     | 33.2                       |
| 7 Certified to Date (BB+S)                 | 124.0                                                   | 124.0                                                   | 124.0                                                | 124.0                   | 124.0                       | 124.0                    | 124.0                    | 124.0                    | 124.0                      |
| 8                                          | (11.0)                                                  |                                                         |                                                      |                         |                             |                          |                          |                          |                            |
| 9 Infrastructure (BB+S) Certified          | 113.0                                                   | 124.0                                                   | 124.0                                                | 124.0                   | 124.0                       | 124.0                    | 124.0                    | 124.0                    | 124.0                      |
| 10                                         |                                                         |                                                         |                                                      |                         |                             |                          |                          |                          |                            |
| 11 Infraco Build to Haymarket              |                                                         |                                                         |                                                      |                         |                             |                          | 144.8                    | 144.8                    | 249.9                      |
| 12 Vehicles (CAF)                          | 47.5                                                    | 63.5                                                    | 63.5                                                 | 61.5                    | 62.5                        | 63.5                     | 62.5                     | 62.5                     | 60.0                       |
| 13 Design Post Novation (SDS)              | 8.0                                                     | 8.0                                                     | 8.0                                                  | 8.0                     | 8.0                         | 8.0                      | 8.0                      | 8.0                      | 8.0                        |
| 14 SDS design risk                         | 1.0                                                     | 6.0                                                     | 6.0                                                  | 2.0                     | 2.0                         | 6.0                      | 2.0                      | 2.0                      | 8.0                        |
| 15 Total BSC                               | 169.5                                                   | 201.5                                                   | 201.5                                                | 195.5                   | 196.5                       | 201.5                    | 341.3                    | 341.3                    | 449.9                      |

**16 Interim Works & Reinstatement**

|                                             |              |              |              |              |              |              |              |              |
|---------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 17 Interim Works during Reprocure           | 9.9          | 9.9          | 9.9          | 9.9          | 9.9          | 0.0          | 0.0          | 0.0          |
| 18 Reinstatement/remedials during Reprocure | 5.0          | 5.0          | 1.5          | 2.5          | 5.0          | 2.5          | 2.5          | 2.5          |
| 19 Reinstatement following cancellation     |              |              |              |              |              |              |              |              |
| <b>20 Total</b>                             | <b>14.9</b>  | <b>14.9</b>  | <b>11.4</b>  | <b>12.4</b>  | <b>14.9</b>  | <b>2.5</b>   | <b>2.5</b>   | <b>2.5</b>   |
| 21                                          |              |              |              |              |              |              |              |              |
| <b>22 New Procurement Costs</b>             |              |              |              |              |              |              |              |              |
| 23 Infrastructure - to HYM                  | 169.2        | 169.2        | 140.8        | 144.8        | 169.2        |              |              |              |
| 24 Infrastructure - to SAS                  | 20.2         | 20.2         | 17.4         | 19.2         | 20.2         | 19.2         | 19.2         | 19.2         |
| 25                                          |              |              |              |              |              |              |              |              |
| <b>26 Total New Procurement</b>             | <b>0.0</b>   | <b>189.4</b> | <b>189.4</b> | <b>158.2</b> | <b>164.0</b> | <b>189.4</b> | <b>19.2</b>  | <b>19.2</b>  |
| 27                                          |              |              |              |              |              |              |              |              |
| <b>28 Termination Costs</b>                 |              |              |              |              |              |              |              |              |
| 29 Securing sites                           | 2.0          | 2.0          | 2.0          | 2.0          | 2.0          | 0.0          | 0.0          | 0.0          |
| 30 Scenario)                                |              |              |              |              |              |              |              |              |
| <b>31 Total Termination Costs</b>           | <b>2.0</b>   | <b>2.0</b>   | <b>2.0</b>   | <b>2.0</b>   | <b>2.0</b>   | <b>0.0</b>   | <b>0.0</b>   | <b>0.0</b>   |
| 32                                          |              |              |              |              |              |              |              |              |
| <b>33 Other Costs</b>                       |              |              |              |              |              |              |              |              |
| 34 procurement                              |              |              |              |              |              |              |              |              |
| 35 Value Engineering Opportunities          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          |
| 36 3rd Party funded (base allowed)          | (4.3)        | (4.3)        | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          |
| 37 Ph1b Payment to BSC                      | 3.2          | 3.2          | 3.2          | 3.2          | 3.2          | 3.2          | 3.2          | 3.2          |
| 38 Design Pre Nov incl Ph1b and Utilities   | 28.7         | 28.7         | 28.7         | 28.7         | 28.7         | 28.7         | 28.7         | 28.7         |
| 39 Utilities and Other Infrastructure       | 95.2         | 100.1        | 100.1        | 100.1        | 100.1        | 100.1        | 100.1        | 100.1        |
| 40 Project Costs - to date                  | 74.2         | 74.2         | 74.2         | 74.2         | 74.2         | 74.2         | 74.2         | 74.2         |
| 41 Project Costs - to go                    |              | 28.2         | 28.2         | 28.2         | 28.2         | 28.2         | 23.2         | 23.2         |
| 42 Other Costs - Incl Land                  | 35.2         | 37.0         | 37.0         | 37.0         | 37.0         | 37.0         | 37.0         | 37.0         |
| <b>43 Other Costs</b>                       | <b>236.5</b> | <b>267.1</b> | <b>267.1</b> | <b>271.4</b> | <b>271.4</b> | <b>271.4</b> | <b>266.4</b> | <b>266.4</b> |