



## tie Limited

### Minute of the CEC/tie Legal Affairs Group Meeting

**Date:** Thursday 30<sup>th</sup> August 2007

**Time:** 16:30 to 18:30

**Venue:** Meeting Room G11, Waverley Court

In attendance	Andrew Holmes	CEC	AH
	Gill Lindsay	CEC	GL
	Duncan Fraser	CEC	DF
	Rebecca Andrews	CEC	RA
	Colin McKenzie	CEC	CM
	Willie Gallagher	<b>tie</b>	WG
	Graeme Bissett	<b>tie</b>	GB
	Susan Clark	<b>tie</b>	SC
	Lesley McCourt	<b>tie</b>	LM
	Barry Cross	<b>tie</b>	BC
	Alasdair Sim	<b>tie</b>	AS
	Andrew Fitchie	DLA Piper	AF
	Sharon Fitzgerald	DLA Piper	SF

Apologies Jim Inch CEC  
Circulation Above

**ACTION By**

#### 1. Purpose of the Meeting

WG explained the objectives of the Legal Affairs Group to those participants who had not been involved in this forum to date, these being:

- To jointly review the forthcoming tram work programme to enable all contracts and other legal agreements to be put in place timeously
- To ensure adequate resource is in place and available to allow milestones to be achieved
- To provide a managed forum to discuss and agree resolutions to issues that may impact on the achievement of the above

WG noted that a presentation had been prepared to cover risk allocation arising from the INFRACO contract and other issues including funding and land assembly progress. A copy of the presentation is attached and that points noted in the presentation will not be repeated in this minute.

AH noted that whilst funding is clearly an important issue, he felt that the Legal Affairs Group was not the correct forum to progress these



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discussions. It was recognised that there are other forums available to more usefully deal with funding separately.

CM noted that CEC Legal wish to be advised of all legal documents/agreements that CEC will be required to sign, or be a party to. GL suggested a more detailed session with tie on these matters is required. SC to arrange.

SC

### 2. Update on Current Position

SC outlined the current status of the TRAMCO and INFRACO contracts as noted in the presentation.

SC to prepare a 'day to day' tracker on the TRAMCO and INFRACO contract position, and containing:

- Dates where CEC inputs will be required
- Dates where drafting changes on contract Heads of Terms will be available
- Dates where revisions to Risk Allocation Matrices will be available for review, and;
- The process to convert identified risks and probability of occurrence to cost exposure to CEC (if any)

This tracker to be made available to the Legal Affairs Group participants.

SC

### 3. Risk Allocation

AF noted that risks identified within the TRAMCO contract are passed down into the INFRACO contract as a result of the novation, and for this reason he would focus his presentation on the INFRACO contract.

The current risk allocation matrix was presented to the group, AF emphasising that this is a moving document, subject to change until the contracts are finalised. Documents provided to CEC on risk allocation on 24/8/07 and 28/08/07 are intended to give CEC clarity on these issues.

AF presented high level risks grouped under Design and Planning, Construction & Commissioning, Operation & Maintenance and Termination noting that there were overlaps between particular areas.

AH and GL emphasised that CEC need to understand what these risks could mean in monetary terms, as this will need to be reported to Council Members.

Points/queries raised during the discussion included:



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- The definition of what constitutes a 'compensation event' is contained within the contract drafting – some changes to the scope of works could trigger such an event. Potential for cost sharing for certain changes will depend on the circumstances of that change.
- DF asked what protections were in place to protect CEC from claims arising from INFRACO as a result of poor MUDFA related works. SF described the dispute resolution procedure and mechanism for this liability to be passed on to the MUDFA contractor.
- It was noted that INFRACO are obliged to manage interfaces with other (tram and non tram) related works which may have an impact on INFRACO activities.
- SDS are responsible for obtaining all consents. This risk is transferred to INFRACO under novation.
- Prior approval risk lies with INFRACO should a change be raised by INFRACO.
- What does the Owner Controlled Insurance Policy (OCIP) cover and what does it not cover? SC noted that the **tie** Insurance Manager, Tracy Kinloch is available to answer any queries CEC may have, and if required a meeting can be arranged. CEC to advise.
- The liability for unidentified utilities ultimately rests with MUDFA.
- The DPOFA contract passes over operator risks to TRANSDEV.
- The obligation to abide by the terms of the Code of Construction Practice (COCP), and the Code of Maintenance Practice (COMP) are enshrined within the INFRACO contract.
- The successful novation of SDS and TRAMCO into INFRACO will be subject (to a degree) on the Due Diligence process to be undertaken by the INFRACO bidders.

CM

The possibility of setting up a series of meetings to inform CEC of emerging negotiations with the INFRACO bidders was discussed.

However, given the short timeframes involved, it was agreed that it would be more useful for SC to disseminate information on the INFRACO negotiations using the tracker (see section 2 above) and face to face discussions with CEC finance and legal representatives as required. WG noted the importance of having these individuals available at City Point to facilitate this process in the next few weeks.



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GL and RA to consider implications and ensure sufficient resource is available to allow this to happen.

**GL/RA**

As a general point, it was recognised that the INFRACO negotiations are focused on achieving the best possible deal for CEC, and that clarity of these matters would be essential in reporting back to Council.

**AH/GL**

### 4. Funding

GB asked that CEC provided a marked up response to the Transport Scotland Grant Letter (based on his draft) by close of business Monday 3 September. CEC Finance and Legal input required.

**RA/CM**

It was noted that the next Parliamentary debate on transport is scheduled for 21<sup>st</sup> September. It is important that matters around the grant letter are resolved before then.

**GB/CEC**

RA noted that CEC require a letter from Transport Scotland regarding concessionary fares and the tram. GB to request this from TS.

**GB**

### 5. Land Assembly & Other Legal Agreements

AS presented an updated programme, summarising the key stakeholder progress as follows:

#### **BAA**

- Aiming to conclude agreements by end of September 2007.

#### **Network Rail**

- Still experiencing difficulty in progressing matters with NR and their lawyers. Pushing hard to move things – may require some high level intervention. AS will advise.

**AS**

#### **Forth Ports**

- Design matters to be concluded around Ocean Terminal and Lindsay Road. BC to assist in negotiations with Forth Ports.
- Outstanding issues around the requirements for the adoption of the Ocean Drive Bridges – long term issue between CEC and FP.



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### 6. Any Other Business

GB asked CEC about the status of the operating agreements between CEC and **tie** and CEC and TEL. CM indicated that both documents are currently being redrafted, with the intention that the documents will go to Council for approval. CM to advise on timing.

**CM**

GB noted that the Final Business Case contains a Governance Chapter and will therefore require updating to reflect the current position on these operating arrangements. There is also a Gateway 3 Review to consider.

### 7. Date of Next Meeting

AS to arrange a weekly meeting schedule for Monday afternoons from 17:00 at City Point (for the next 6 weeks or so until the INFRACO and TRAMCO contracts are finalised). The purpose of this meeting would be to ensure CEC are informed of all emerging issues.

**AS**

The first meeting will be Monday 10 September.