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**From:** Nick Smith  
**Sent:** 22 August 2007 14:13  
**To:** Colin MacKenzie  
**Cc:** Alan Squair  
**Subject:** DLA

Colin/Alan

As requested, here are my thoughts on the new DLA letter.

As discussed earlier, DLA's revised letter is based almost entirely on a letter which had previously been provided to tie and was supposed to be passed to the Council in 2005. Broadly speaking, the new letter simply makes it clear that DLA will now regard CEC as a joint client (as opposed to a simple extended duty of care). However, this is caveated on the basis that DLA are (and have always been) instructed by tie and that such instructions are assumed (and have been assumed) to take into account all of CEC's requirements, objectives and best interests.

From our previous discussions, it is not clear to what extent the Council has been consulted over the past four years in relation to the complex deal structure and negotiations. Accordingly, I understand from you that it is considered unlikely that it will be possible for the Council to categorically accept that such instructions have always taken the Council's requirements, objectives and best interests into account. This leaves us with the position that unless the Council is prepared to so accept and approve tie's actions to date, the new DLA letter places us in no real better position. The critical issue is that DLA are unlikely to be able to advise CEC what the outcome of the negotiations would have been had DLA received their instructions direct from CEC for the past four years.

I therefore conclude that unless such a decision can be taken to effectively trust and approve tie's actions for the past few years as always being in the Council's best interests, creating a joint client relationship will put the Council in no substantive better position (especially re approving the contracts) than simply having a duty of care in CEC's favour.

Finally, whilst it is correct for Andrew Fitchie to state that there has to be a commonality of interest on the project, he goes on to note that there will be and will have been detailed discussions to achieve such commonality. The issue here as I understand it is that it is not clear whether such discussions have ever taken place and, if that is the case, whether such commonality has actually ever been reached.

I Hope this assists.

Kind regards

Nick

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