

Steve Reynolds,
Parsons Brinckerhoff,
Edinburgh Tram Network Project,
Citypoint,
65 Haymarket Terrace,
Edinburgh,
EH12 5HD

Our ref: DEV-COR-352

Date: 5th May 2007

Dear Alan,

Works Outwith Parliamentary Limits of Deviation

Your letter of 2nd May 2007 deals with the issue above in the context of the Constitution Street utilities diversions. I believe there are two issues raised by your note and they are linked.

The first issue is that of the utility diversions required because of the constraints which apply in Constitution Street. It appears from your work so far that three of the eight utilities can be accommodated but five of them cannot and would require to be diverted. This issue is how we move this work along quickly given the delays that could be caused by lack of progress. You believe either that you should be instructed by a change notice to design for diversions outside the Limits of Deviation (LoD) or that this work should be done by the utility companies.

The second issue is the matter of what work SDS has been contracted to do. In your note of 2nd May you provide an argument that SDS are contracted only to carry out works which are within the Limits of Deviation (LoD). I do not accept this and believe that SDS are contracted to design a Tram system in Edinburgh. It may be the case that the LoD definition provides for a more straightforward approval process where works lie inside it, but there is nothing to prevent the seeking of approvals for works elsewhere if they are required to deliver the Tram system to best effect.

On this basis, and in respect of the issue of utility diversions, I believe we should proceed on the basis that SDS complete the design work for diversions outside the LoD (to the degree required) and that if it is helpful to moving the works along tie will issue a change order to this effect. However, the substantive issue of the responsibilities of SDS remains and must be settled. To this end the issue of the change order does imply acceptance by tie of the arguments set out in your letter of 2nd May in respect of SDS responsibilities.

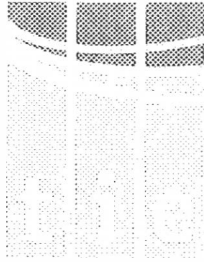
David Crawley - Director of Engineering

Citypoint - Edinburgh - 044 (0)131 623 8684 - email: david.crawley@tie.co.uk

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Registered in Scotland No: 230989 at City Chambers, High Street, Edinburgh EH1 1TJ

TIE00205889_0001



Please confirm that you will complete this design work in the manner specified on receipt of the change order. In respect of costs you confirmed in our conversation that you did not believe that putting design work out to the Utility companies constituted a reduction in SDS scope as you were coordinating the design at the same cost. I assume it follows that re-commencing the design will lead to the same position where your coordinating effort can be diverted to design activity at the same cost. Please confirm this also.

Yours sincerely



David Crawley
Director of Engineering
Edinburgh Tram Project

David Crawley - Director of Engineering

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TIE00205889_0002

Ref ULE90130-SW-LET-00631

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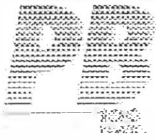
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**Parsons
Brinckerhoff**

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Our Ref: ULE90130-SW-LET-00631

2nd May 2007

tie Limited
CityPoint, 1st Floor
65 Haymarket Terrace
Edinburgh
EH12 5HD

Attention: David Crawley

Dear David

Works Outwith Parliamentary Limits of Deviation

At the Critical Issues Meeting on Thursday 26th April 2007, you tasked me to "provide **tie** with the wording for the Change Instruction" to enable the utilities design solution to be prepared in order to satisfy the Statutory Utility Companies requirements outwith Constitution Street.

As discussed previously the Statutory Utility Companies design solution is to remove the major sections of utilities out of Constitution Street away from the swept path of the Tram alignment. They have the powers to dictate this requirement to **tie** as it is stated so in the Utilities Agreements signed between each Statutory Utility Company and **tie**.

The design solution advocated by each Utility Company is to move the utilities outwith the Limits of Deviation (LoD). This being the problem.

As previously discussed, our legal understanding is such that the SDS specific obligation within the Agreement between **tie** and SDS is "... to perform the Services... so as to ensure compliance with the Tram Legislation".

if SDS were to design work or attempt to procure design work situate outwith the LoD, such works would be beyond the powers on location defined by the Edinburgh Tram (Line One) and (Line Two) 2006.

SDS set out below their understanding both of the legal constraints that apply to this matter and the contractual basis upon which SDS tendered for this design commission.

Legal Constraints

Based on my experience with the design of similar UK street tramways I have examined closely the provisions of the enabling Acts, the Edinburgh Tram (Line One) and (Line Two) Acts 2006, (referred to hereafter as "The Acts"). The detailed provisions of Clause 1 of Part 1 of The Acts is specific that powers granted by Parliament make and/or maintain the "authorised works" identified in the Acts are limited to the Limits of Deviation (LoDs) or, where applicable, the Limits of Land to be Acquired or Used (LLAUs) defined by the Parliamentary Plans, and contained within Schedules 1 through 7 (inclusive) of The Acts. Specific



reference is made elsewhere in the relevant Clauses of The Acts to the powers to undertake works associated with utilities apparatus, drains, structures and roads being restricted to within the LoDs. The Powers to Deviate in Clause 2 of Part 1 of The Acts again restricts the exercise of these powers to within the LoDs.

In summary then, I do not believe that either CEC as the "authorised undertaker" or tie as its delegated body, possess powers under The Acts to make works associated with the Edinburgh Tram Network outwith the LoDs or LLAUs.

It may well be the case that CEC themselves possess other legal powers that would allow them to construct and maintain drains, structures and roadworks incidental to, or otherwise accommodate the tramway works; but the basis of these powers and the means by which CEC might propose to exercise them has not been disclosed to SDS.

The application of the provisions of Clause 72 of Part 5, and Schedule 9 of The Acts again restricts the exercise of powers under The Acts, as it affects Statutory Utility Companies' apparatus, to lands within the LoDs and LLAUs. The Statutory Utility Companies (SUCs) possess powers under their own respective enabling legislation to lay and maintain equipment in the street or elsewhere, as necessary; so CEC as "transport authority" would have to treat separately with the SUCs under the terms of the New Roads & Streetworks Act for apparatus diversion outwith LoDs & LLAUs.

Contractual Basis

Clause 2.1.4 of Schedule 1 (Scope of Services) of the SDS Agreement states "The SDS Provider shall ensure that the design covers all aspects of the Edinburgh Tram Network and the associated works adjacent to the proposed alignment." The tie representatives assert that the latter phrase is to be construed as obligating SDS to design any works associated with, or necessary to accommodate the tramway, whether within or outwith LoDs and LLAUs. I contend that such interpretation is in direct conflict with SDS' specific obligation in Clause 3.3.6 of the SDS Agreement "...to perform the Services... so as to ensure compliance with the Tram Legislation". It is evident that were SDS to design works situate outwith the LoDs & LLAUs, these works would be beyond the powers on location defined in The Acts.

SDS would further state, as experienced designers of UK street tramways, SDS did not at tender stage, contemplate the need for works outwith LoDs & LLAUs, firstly on the grounds that other such tramway projects have not required such works and secondly, given the rigour of the Parliamentary process, a clear understanding that LoDs & LLAUs would have been drawn and proved as sufficient in themselves for the purpose of constructing, operating and maintaining the tramway.

With the above in consideration, it may now be clear to tie that by providing "tie with the wording for the Change Instruction" leaves SDS with a predicament as such instruction would take count of the Statutory Utilities Companies wish to provide the design solution outwith the LoD.

May we kindly request tie consideration to this problem such that we may move the utility design for Constitution Street forward in order to support the MUDFA Installation Programme.



SDS would suggest a short meeting between selected parties prior to our next review at your convenience in order to clarify any issues in the above correspondence.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alan Dolan'.

Alan Dolan
Parsons Brinckerhoff

- cc. Steve Reynolds
- Jonathan Bloe
- Jason Chandler
- Kim Dorrington
- SDM's
- Tony Giabezbrook, **tie**
- Susan Clark, **tie**
- Graeme Barclay, **tie**
- David Simmons, Halcrow

Wording for D. Crawley for Change Instruction

Providing Designs for Construction Outwith Limits of Deviation (LoD)

SDS is instructed to engage with each Statutory Utility Company and agree with them a design solution for utilities which is at their request and to remove the major sections of utilities outwith Constitution Street and therefore outwith the Limits of Deviation.

It is understood that OEC as the "authorised undertaker" or ~~the~~ as its delegated body, do not possess the powers under the Edinburgh Tram (Line One) and (Line Two) Acts 2006 to make works associated with the Edinburgh Tram Network outwith the LoD or LLAU and we therefore instruct you to execute this work under the powers of.....

This is recognised by ~~the~~ as a Client Change as this is in conflict with the SDS Agreement, Clause 3.3.6 which states SDS are "...to perform the Services ...so as to ensure compliance with the Tram Legislation".

In accordance with Clause 15 of the Agreement between us please find enclosed the relevant Client Notice of Change in order that you SDS provide the an Estimate of Change in accordance with Clause 15.3 of the said agreement.

AD 020507