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**From:** Colin MacKenzie  
**Sent:** 21 September 2007 10:29  
**To:** Gill Lindsay  
**Cc:** Alan Squair; Nick Smith  
**Subject:** RE: Tram IPG/DMT Report

Gill,

No arrangements have been made with Andrew Fitchie and clients for today. As I understand there is no update paper for us to look at. Following a Risk Process meeting at **tie** yesterday it looks as though DLA have been given until 25/26 September to produce the final Risk Matrix. They are working on that between now and the deadline. Once it is in final form I understand Andrew Fitchie will send it on to you. Please note that Andrew has been invited, at your suggestion, to meet with City Development and Finance in Jim Grieve's office on Monday 24th September between 12.00 and 13.00 hrs. I am sure the invitation extends to you.

I am sorry but I do not know what the "present situation" is with DLA's instructions. That was the point of my question to you yesterday. I am not clear if you have provided written instructions to Andrew Fitchie, and, if so, what these instructions are.

I also look forward to hearing from you regarding the duration of DLA's appointment, and how that sits with an external independent legal review.

Regards,

Colin

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**From:** Gill Lindsay  
**Sent:** 20 September 2007 18:28  
**To:** Colin MacKenzie  
**Subject:** RE: Tram IPG/DMT Report

Colin

Council has just ended. Have you discussed and made arrangements with Andrew re tomorrow. Present situation is as advised re DLA at present. Please ensure as far as possible that discussions with Andrew continue as quickly as possible.

Gill

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**From:** Colin MacKenzie  
**Sent:** 20 September 2007 11:43  
**To:** Gill Lindsay  
**Cc:** Alan Squair; Nick Smith  
**Subject:** RE: Tram IPG/DMT Report

Gill,

I presume that the delay mentioned at the LAG meeting on Tuesday means that there is no requirement for the Friday meeting referred to below. That will presumably be re-convened at a suitable time once Andrew Fitchie has received full instructions from **tie**.

You made reference to the instructions given to Andrew Fitchie. It would be helpful for us to receive a copy of any formal letter of instruction sent to Andrew, together with his acceptance or terms of engagement letter. This would

give us a good understanding of his role and remit. Can you confirm that DLA's appointment will endure through to financial close, and that by implication an external independent legal review is not to be sought ?

Regards,

Colin MacKenzie  
for Council Solicitor

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**From:** Ysella Jago **On Behalf Of** Gill Lindsay  
**Sent:** 18 September 2007 12:40  
**To:** Robin Goodwin  
**Cc:** Alan Squair; Colin MacKenzie  
**Subject:** Tram IPG/DMT Report

Robin,

#### Network Rail

A meeting between **tie**/ Dundas & Wilson and Network Rail/MacRoberts took place on 10 September. Network Rail indicated that they are not willing to grant a lease or licence to enter upon their land for construction purposes until change processes surrounding the impact which the construction works and subsequent operation of Tram will have upon First ScotRail operations at Haymarket Depot have been concluded. These processes will require input from First ScotRail and sign-off by the Office of Rail Regulation so the timescale for their conclusion cannot be identified. Input from the successful Infraco bidder may also be required. This is a significant concern in programming terms. It is now unlikely that entry to the land will be achieved by January 2008, as was anticipated. **This is now a real risk situation which requires urgent resolution.**

Matters of immunisation, regarding the relative positioning of heavy rail and Tram electrical equipment, were also discussed. Network Rail have asked for further information from **tie**, which will call for design input. There is concern that discussions on this issue may also impact on conclusion of the lease or licence.

Network Rail have in addition indicated that the Asset Protection Agreement currently being negotiated between **tie** and themselves should be in place before a lease/licence is entered into. The Agreement is at an advanced stage of negotiation but may require review for the Council's interests if the suggestion by **tie** and Transport Scotland that the Council should be the direct surety for **tie's** obligations is carried forward. This issue is being considered by Finance at present.

As regards the irritancy clause in the lease, a revised version has been drafted by Dundas & Wilson and is presently being considered by Network Rail's solicitors.

A Contractual Arrangements Map which will provide "milestones" for lease and contract negotiations is under preparation and will be considered at the next meeting between the parties on 25 September.

#### BAA/EAL Roads Demarcation Agreement

Negotiations with BAA on the lease are continuing and good progress is now being made. There remain some outstanding issues as between the Council and BAA but these are presently under consideration by the Council and may be capable of resolution. A further meeting with BAA is to take place shortly.

#### Third Party Contracts Infraco/ Tramco

DLA have provided both a detailed and summary version of a risk allocation matrix of the Infraco contract. These were distributed and discussed at a meeting of the Legal Affairs Group, which included representatives from the departments of City Development and Finance, on 30 August.

Further meetings of the Legal Affairs Group have taken place on 10 September and 18 September.

Andrew Fitchie of DLA has been in regular contact with the Council Solicitor advising of progress. The latest meeting took place on 14 September.

At present, **tie** have proposed a procedure and programme for Council approval of the Infraco and Tramco contracts, leading up to a recommendation to full Council on 25 October on the preferred bidder for the contracts. However, the programme provides that the contract documentation should be provided to the Council and that a response on any issues which the Council may have should be given by officers by 21 September. Essentially, this requires the Council officers to be satisfied in terms of the allocation of risk in terms of the risk matrix from a legal, client department and financial perspective by this date. **tie** have advised that the date of 21 September is required to adhere to their current programme in terms of selection of preferred bidder. Work is ongoing in considering the contracts, risk allocation matrix and risk from legal, client department and financial perspectives.

From a legal perspective, in essence, DLA are being requested to provide advice directly to this Council on whether the contracts can reasonably be recommended for acceptance to the Council and of any particular risks which require to be brought to Council attention, whether due to their financial scale, likelihood, impact with or other material factor. Advice is also sought on any Letter of Comfort which may be sought from the preferred bidder and the interface with the final terms of the funding letter from the Scottish Executive. Advice is also sought on the total and individual legal risk exposure for both **tie** and the Council, that which is and is not covered in terms of project insurance (referred to as "OCIP insurance") or otherwise, with any reasoning for the exposure, i.e. whether it is necessary or commercial expectation, cost issues re bidding and whether or not risks are prudently insurable. DLA are available throughout the course of this week to liaise with the Council Solicitor's Division, Financial Services and City Development as required. A further meeting is arranged for Friday, 21 September for final review.

It is expected that the Council will be in a position to receive further advice from DLA in the course of this week which will assist in the Council providing additional comfort to **tie** by 21 September. The level of comfort required is that necessary to be reasonably and prudently comfortable with the risk allocation matrix in terms of the choice of preferred bidder. Though there will not then be a competitive situation, a fuller and further assessment of risk can and will continue until financial close.

The Scottish Power and Telewest agreements are not as yet signed off by the Council. It is understood that Scottish Power have raised technical concerns which had not previously been identified. The impact of this on programming, specifically in relation to the MUDFA contract, cannot be quantified at present. It is however anticipated that the Telewest agreement will be signed off shortly.

#### Operating Agreements

As regards the Operating Agreement with **tie**, detailed discussions are now taking place between Legal Services and City Development and Finance, focussing on the next stage of identifying the role to be undertaken by **tie** during construction and delivery of the project. The first draft of the agreement should be available in early October, with conclusion in December.

The TEL Operating Agreement has progressed further and is expected to be concluded in the same time frame as that for **tie**. Both agreements are being informed by the ongoing development of the funding agreement with Transport Scotland and the project business case. The final Infraco and Tramco contracts may also influence the detailed terms of the operating Agreements.

#### Vesting and Compulsory Purchase

The GVD Notices for Tranche 4 were signed off on 7 September and issued on 10/11 September. The vesting date is 19 October.