
From: Gill Lindsay
Sent: 15 December 2007 21:31
To: Colin MacKenzie; Duncan Fraser
Cc: Gill Lindsay; Rebecca Andrew; Alan Coyle; Nick Smith
Subject: RE: TRAM: COUNCIL REPORT

Thank you Colin. I agree fully that these additions are accurate and required and reflect the discussions within the Council and with Tie this week. They properly describe the position whilst reassuring Members of the process to be followed. Duncan can you pl insert each suggestion and let us have this before we meet pl. Colin from memory I think your handwritten note did include the resolution you refer to.

Duncan do you think we should explain to Members that financial close is planned in January and that is why we are proposing to seek the recommendations . Is this clear enough.

Regards

Gill

-----Original Message-----

From: "Colin MacKenzie" <Colin.MacKenzie@edinburgh.gov.uk>
To: "Duncan Fraser" <duncan.fraser@[REDACTED]>
Cc: "Gill Lindsay" <Gill.Lindsay@edinburgh.gov.uk>; "Rebecca Andrew" <Rebecca.Andrew@edinburgh.gov.uk>; "Alan Coyle" <Alan.Coyle@edinburgh.gov.uk>; "Nick Smith" <Nick.Smith@edinburgh.gov.uk>
Sent: 15/12/07 18:42
Subject: TRAM: COUNCIL REPORT

Duncan,

I have some suggested text for the draft Council report as follows:

Paragraph 1.2; should the report not say " to seek staged approval.." (That after all is what is envisaged, and may meet the point Gill made yesterday about not giving the impression that approval and commitment is one big bang.)

Query re paragraph 4.1; who took out the sentence about TPB not being a legal entity ? Just curious.

In the third line it would be more accurate to say ..." and formally seeks to delegate..."

Paragraph 4.8 in line two delete the word "including" and replace with "together with". In line four add in brackets after "liabilities" the words " particularly those which would have implications for the Guarantee in favour of BBS".

Paragraph 4.10: in bullet point one delete the word "annually". (Council decision on 20 September does not mention "annually").

Paragraph 5.1: there should be an additional bullet point to suggest that " It should be noted the FBC Governance provisions now align with those set out in this report." (Note: I have asked Graham Bissett to make the appropriate changes in FBC).

Paragraph 8.1; should there not be a position statement here on the extent to which the design work is complete: it is after all still a Council risk ?

Paragraph 8.3; there should be a sentence to the effect that the Director of Finance will be authorised to execute the Grant Award agreement at the appropriate time.

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Paragraph 8.6; should be December and not September.

Paragraph 8.8; I suggest a general statement at the end of this paragraph to the effect that notwithstanding the contractual framework involving tie, it is the Council which carries all contractual risks.

Paragraph 8.10 and 8.15; there should be a new paragraph here, probably replacing Paragraph 8.15, almost as preamble to the Risk Section. I suggest the following for consideration.

Consistent with a project of this value, size and complexity, there are many different strands of work to be drawn together in the lead up to conclusion of the main contracts between tie, BBS and CAF. Council officers have been working with tie to close out as many of these work streams as possible, prior to seeking Council approval at this meeting. A number of ongoing matters should be drawn to the attention of Council; these are set out below. Work will continue between now and financial close to ensure that tie resolves or mitigates these outstanding areas of risk.

It is proposed that the Chief Executive ultimately, with delegated authority from Council, will determine when it is appropriate to permit tie to sign the contracts. The Chief Executive will be supported in that final part of the approval process by the Directors of City Development and Finance respectively, together with the Council Solicitor. A mandate will be given to tie when it is deemed appropriate that the relevant aspects of due diligence have been completed by tie, thus satisfying the Chief Executive. Only when the Chief Executive sanctions tie's entitlement to sign the contracts will the Council become contractually committed through execution of the Guarantee supporting tie's financial obligations to BBS.

As discussed on many occasions tie cannot obtain Professional Indemnity Insurance vis-a-vis a claim by the Council. I recommend that this is a risk which should be drawn expressly to the attention of members.

Paragraph 8.11 does not reflect the gravity of the situation with First Scotrail. Until the appropriate Letter of Comfort is received, there must be an explanation to Council of the risk. Admittedly it may end up being quantifiable in financial terms for compensation to First Scotrail and/or Network Rail. At the present time the statutory process has not been formally initiated by tie. The relevant approval may not even be received by Financial Close.

Due Diligence: a form of wording is still to be received from DLA, and the letter will be appended as Appendix 3.

Paragraph 8.16; is the final milestone of 2011 not on the vague side ?

Recommendation 10.3 regarding formal award and then reporting to the Tram Sub-Committee is now redundant, given the terms of 10.2 and new 10.9.

Appendix 4: Resolutions. This is still to be incorporated into the report. Duncan you took away my handwritten note on this. I cannot recall if there was a final resolution to the effect that the Council Solicitor be instructed to notify Scottish Ministers, in accordance with the Tram Acts, that an agreement has been entered into between the Council and tie about exercise of the statutory powers. It should be added to the list of resolutions.

Kind regards,

Colin MacKenzie
for Council Solicitor

I presume you will be passing the final draft report around tomorrow sometime, including tie people.