

**Edinburgh Tram Inquiry Office Use Only**

Witness Name: Michael Howell

Dated:

**THE EDINBURGH TRAM INQUIRY  
Witness Statement of Michael Howell**

My full name is Michael William Davis Howell. My contact details are known to the Inquiry. I am retired and my role in the Edinburgh Tram Project ("ETP") was as acting and then permanently appointed Chief Executive of Transport Initiatives Edinburgh ("TIE") between 2002 and 2006.

**Preamble**

At your request, I have supplied two CVs to the Inquiry (**CVS00000013 & CVS00000018**). This statement is the consequence of oral answers to written questions. The questions to which answers are given are not shown, so where it is helpful I have added reference to the nature of the issue contained in the questions posed. Where I have done so, I have <sup>insert</sup> ~~put it in~~ square brackets.

In the questions that were posed in September 2016, you have made references to file documents. I have looked at the referenced documents more than once, and although my memory of all events remains hazy, continuous re-exposure to these events have helped to sharpen and put in context my recollections of that period. So I have revised extensively the transcript of my oral statement of September 2016, received by me on 21 April 2017. I have removed many irrelevancies, much repetition, and my own subjective and/or pejorative comment about others who were also doing their jobs in the context of the Edinburgh tram project.

Thus, I now offer only what I am presently confident in representing as my perceptions of the time. However, I cannot guarantee the accuracy of these perceptions. Answers to questions about meeting dynamics, or my personal

judgements at the time, or my actions taken subsequently are not accessible from minutes, and thus I am usually unable to comment.

I have tried nonetheless to render, to the extent possible, an accurate and impartial account of these events that occurred between 11 and 15 years ago.

Footnote:

For the information of the reader, I suffered a stroke in October 2011. I have noticed failing memory.

Thus I did not recall that I had made a statement to Jane Ferrier of the Inquiry team in January 2015, which I only rediscovered within the past few days during the process of editing this document. I had not re-read that prior statement before giving further oral evidence in September 2016.

Therefore despite my efforts to edit this statement to the best of my current ability, there will almost certainly be inconsistencies between this statement, my oral evidence in 2016 and my earlier input in 2015.

With the recommendation of my GP, I am presently undergoing a process of testing for age- and stroke-related memory loss prior to possible treatment.

## **Introduction**

1. You ask about my prior relevant experience. Prior to my role with TIE, I took an Engineering/Economics Degree at Trinity College Cambridge, and after a 5-year spell with British Leyland, received MBAs from both INSEAD and Harvard. I then worked for large US manufacturing companies at senior level between 1976 and 1991. I became the top corporate planner at Cummins Engine Company working for that company's Chairman & CEO, and was later General Manager of Sales and Marketing for GE Transportation Systems, a

major locomotive manufacturing company. My experience in civil engineering arose from my subsequent time as Director, Commercial on the board of Railtrack Group in 1996-7. Railtrack became the privatised owner of the rail infrastructure of Great Britain, and was a major procurer of significant civil engineering works. I was the Railtrack Board's nominated client for two very large projects, the West Coast Main Line upgrade, and Thameslink 2000. I was not however a senior project director.

2. I had just finished a period managing a worldwide private company (FPT Group Limited) which distributed engineering components. In 2002, I had written to many contacts, including Ewan Brown (now Sir Ewan Brown), because I was looking for a new assignment. I had met Ewan in 1991 in his earlier capacity as Director of Noble Grossart. Ewan, who was the newly appointed Chairman of TIE (then provisionally named "ENTICO") wrote back to suggest I might consider applying for the role of acting Chief Executive, since I had been involved in major transport projects when on the Board of Railtrack. I did apply for the post, which was to be responsible for leading TIE through the planning and procurement phase of City of Edinburgh Council ("CEC")'s Integrated Transport Initiative ("ITI").
3. TIE as a new arm's-length company would be responsible for ITI which incorporated a wide array of transport projects, but was focused upon procuring a Congestion Charging ("CC") scheme, and the Edinburgh Tram Project ("ETP"). ITI's other activity included two other TIE-procured projects, the guided busway at Balgreen and the Ingliston Park and Ride. (ITI incorporated the original New Transport Initiative ("NTI") which had been conceived earlier by CEC to introduce CC to Edinburgh both to reduce traffic congestion, and to raise income for public transport improvements.)
4. I started working for TIE in a self-employed capacity in Q2 2002, and worked as acting Chief Executive for a year. Then, from mid-2003, I agreed to continue leading TIE for 2-3 more years up to the point of receiving funding and statutory powers for CC and the ETP, which was planned for late 2005. I

was formally appointed as Chief Executive of TIE in July 2003. The termination of my contract was agreed under the Compromise Agreement (CEC00114403) drawn up at the time I left TIE in June 2006.

5. TIE later became responsible for procuring the Edinburgh Airport Rail Link ("EARL") and the Stirling Alloa Kincardine railway ("SAK").
6. My proven skills were technical know-how, strategic planning, communications and negotiations, all of which were very pertinent to my job with TIE. The need for detailed technical civil engineering knowledge arrived towards the end of my time at TIE, when the Tram Project Board ("TPB") was being assembled by me to apply its collective client knowledge to the ETP's procurement and construction.
7. Primarily, I was responsible for hiring competent people to plan CC and ETP. In doing so, I relied upon colleagues for recommendations or used my own network of contacts. The procurement came later. My job was also to engage on funding with the Scottish Executive ("SE"), communicate and liaise i) with CEC on implementation (primarily the CEC City Development Director), ii) with Members of the Scottish Parliament ("MSPs") on the political dimension, iii) with Lothian Buses ("LB") on transport integration, iv) with Network Rail ("NR") on rail matters and v) with Partnerships UK ("PUK") in London on procurement strategy. I was also asked to engage with other cities to research at a high-level their experience on similar tram projects, many of which had succeeded, as in Manchester, Dublin and Nottingham; and some of which had not, as in Leeds, and Portsmouth. Partly as a result of that, TIE hired Weber Shandwick to help with PR generally, since the local press was extremely influential.
8. When I was appointed to TIE in 2002, there were few people involved. Early studies for the ETP had been undertaken and a provisional sum allocated by SE. Alex Macaulay was the nominated CEC Officer responsible for procuring ITI.



9. The CC and ETP went hand-in-hand in the early period. In fact, the CC was the more important issue at that time because Edinburgh was not likely to have a tram without it.
10. Initially, the ETP took up only a small proportion of my time, but this increased as the whole scheme came into focus. I became deeply involved with the procurement of tram infrastructure only in 2005, just before the CC referendum, and thence into 2006. My focus on the tram increased, but it was never more than 50%, due to TIE's other projects.
11. A growing city needs an increased capacity and high volume of intra-city transit activity. After a while, a city runs out of road space and bus capacity, and the benefits of a tram network can be realised through an effort to reduce congestion, pollution and noise in the city centre, while increasing the volume of passengers that can be transported through the streets on public transport. The ETP was therefore a necessary investment in the future economic growth of Edinburgh.
12. I started my career with Leyland, manufacturing buses, so I knew something about urban transport. Edinburgh was one of the best served British cities. It had very high bus utilisation rates compared to most cities, with typically two bus journeys per day per capita on average. The results of that were relatively low fares, modern buses and equipment; and a frequent service. It was a virtuous circle, and LB was one of the most admired bus networks in the UK. However, aside from the Park and Ride arrangements at Newcraighall, there was very little rail-based transport within Edinburgh especially by comparison to Glasgow. In my view, Edinburgh would soon need a high capacity rail-based system that would be complementary to the bus network.
13. SE was the principal funder and CEC the promoter of ETP. It was the SE's/CEC's long-term objective to improve the city. The Head of SE Transport was John Ewing.

14. You ask about obstacles to success. A key point is that there was never a coherent ITI story delivered by an active and credible spokesperson. In consequence, voters never understood ITI, nor displayed any enthusiasm for the expense and the disruption involved.
15. Another influential and doubting party in relation to the ETP was the press, notably the Edinburgh Evening News (EEN), and to a lesser extent The Scotsman. The EEN in particular thrived on stoking dissent and controversy through big headlines (which of course sold their newspapers). Further, there was much concern on the part of the Edinburgh Chamber of Commerce as to the short-term impact of the tram works on retail businesses, particularly on Princes Street and Shandwick Place.
16. Next, LB, led by their Chief Executive Neil Renilson, was an influential early opponent of the ETP. LB had to be closely involved if the tram was to be successful. But early on, LB was very much against the ETP for economic reasons – they did not want a big slice of their fare box revenue to go to another legal entity. They believed the capital to be spent on the trams would be better spent improving bus services. TIE wanted to avoid a destructive competitive situation between bus operators and ETP as had happened for example in Sheffield, and wanted the interface between the tram and buses to work well. There were concerns over possible conflicts of interest though if LB had joined a tram bidding consortium and LB were instructed by CEC to stand back from any involvement. LB's adverse reaction to this was marked and became sometimes disruptive.

(Note: Most other big city regions in Britain, such as Strathclyde, have a Passenger Transport Executive (PTE). A special legislative regime is introduced for the purposes of planning and operating public transport, so that local government can direct what happens without coping with the problems associated with competition law. It could have made life a lot simpler if a PTE model had existed in Edinburgh.)

17. Finally, TIE and hence ETP reported to City Development, whereas LB reported directly through its Board to the Chief Executive of CEC, Tom Aitchison. LB also had a strong link to the then Labour Council Leader, Donald Anderson. LB therefore had more influence than TIE and possessed the ability either to be helpful, or create difficulty if they so wished.
18. You ask about TIE's relationship with CEC. I was content with the working relationship that existed between TIE and CEC (in particular Andrew Holmes's City Development department), and between TIE and the SE. TIE, CEC AND SE were the three main ITI stakeholders, who moved forward together successfully on many fronts. TIE hired exceptional people from all over the UK who were committed and were working very hard. The early growth of TIE was extraordinary, because requests arose immediately for TIE to take ownership of other projects. Within a year or so of formation, TIE had been asked to assume procurement responsibility for well over £1 billion worth of projects, two of which were being managed for public sector organisations outside Edinburgh.
19. However, there were setbacks along the way. ITI was designed to utilise CC both to reduce traffic congestion and to pay for the tram. The political outcry against CC however caused the political leadership of Edinburgh to back down and call a referendum in mid 2005. Once the referendum was called (not a TIE matter), it was inevitably to be lost. However, the SE decided nonetheless to maintain funding despite the loss, but the loss to me was a disappointment, given the scope of the original idea.
20. I believe that I enjoyed a good relationship with the TIE Board and its Chairman, Ewan Brown. After Ewan's resignation, in early 2006, I extended my stay for a few months in order to assist in the appointment of my successor. I left five months later.
21. I accepted the job offer from TIE because I was keen to make the ITI happen. I wanted to see an Edinburgh with rail-based transport, and Edinburgh now

has it. Compared to the travails of Leeds, Portsmouth or Ealing, that alone is a considerable success. Everywhere in the world, there are cities which have tried to make trams happen but have failed. Edinburgh did not fail, and I was pleased to play a part in that.

22. In summary, I feel satisfied that I achieved all possible objectives for TIE during my four-year tenure as Chief Executive.

### **Initial Proposals (2000 - 2006)**

#### **The New Transport Initiative and the Creation of TIE**

*[The New Transport Initiative report of 18 October 2001 (USB00000228) contained a CEC request for funding. The updated report (USB00000232), submitted to the Council on 2 May 2002, included a letter from Wendy Alexander, Transport Minister, supporting private sector involvement and the principle of an off-balance sheet company.]*

23. As Chief Executive, my responsibility was to procure external services and manage the contractors to meet the ITI project targets, which were set by CEC. My first assignment was to prepare a note for the SE by the end of September 2002, the primary objective of which was to present a single proposal for ITI.
24. My letter to Ewan Brown dated 3 April 2002 (WED00000136), which I have produced to the Inquiry, recounts my initial assignment for the first six months of my consultancy, which included *“the tasks of:*
- *developing and refining a timetable for the preparation and presentation of this proposal [the ITI including the tram] over the course of the summer;*
  - *receiving and integrating the inputs of the consultants who are working on various aspects of the ITI;*

- *working with PUK [the Treasury Taskforce] to develop practical financing approaches for the components of the emerging preferred proposal, taking account of anticipated charging structures and income expectations;*
  - *keeping the Board, CEC and SE appropriately informed as the proposal emerges in order to ensure problems are identified and addressed on a manageable basis; and*
  - *presenting the proposal to the SE to the agreed timetable, backed by broad consensus between the principal interested parties.”*
25. My assignment was to integrate all the information that had been gathered by the existing team (Alex Macaulay and John Saunders) in order to assemble the proposal. TIE was intended to be a world-class procurement company, so it had to be able to recruit professionals with an expertise that lay beyond the limits of the salary structure of CEC. This suggested separate rules within an independent company which could incorporate the inputs of independent directors in matters of competitive remuneration.
26. TIE was created at the behest of SE, who made the creation of an arms-length company the condition of its commitment of £375M to the ETP in 2002. It was the SE’s perception of the need for greater influence and credibility at CEC, which drove the creation of TIE. TIE became an independent company, and was CEC’s interface with the project management and engineering sectors. It was there to procure all of the sub-contractors who would be hired to deliver ITI, as there was perceived to be no one in CEC who could do it.
27. TIE was a separate and therefore “off-balance sheet” company. This was not significant in itself. The TIE cashflow and profit and loss were insignificant, since all the monies flowed direct from the funders to the contractors. TIE was a cost centre, not a profit centre, and it was a relatively small cost centre within CEC, especially when compared to the scale of the projects.

28. There was political opposition, which transformed the CC in particular into a weapon to diminish and embarrass the city's Labour administration. There was a chorus of voices raised in opposition to the ITI, with only Andrew Burns, the Labour Member for Transport, trying to present the positive case for CC and ETP. TIE brought in outside support. Ken Livingstone, who was then Mayor of London, visited Edinburgh to talk about CC and how it had worked for London. We also hired a PR agency, Weber Shandwick, to support the PR effort with focus on the CC.
29. With regard to support from CEC, that came from the City Development Director, Andrew Holmes (who reported to Tom Aitchison, CEC Chief Executive) and from Andrew Burns, Member for Transport.. There was less engagement from Tom Aitchison himself, from Donald Anderson, Labour Leader, or from Donald McGougan, the Finance Director. The Council itself was involved in regular votes on decisions regarding the ITI, and the approval of funding and payments, including those in respect of the ETP. The actual direct financial obligation of CEC was less than £50M; compared to the £375M support from the SE. Whether or not this relatively modest sum was a reason, Aitchison, Anderson and McGougan gave little personal time to the ITI or ETP, except when there was a crisis.
30. Via the operating agreement with CEC, the nuts and bolts of day-to-day procurement and management passed to TIE. CEC retained full ownership of TIE, and as envisaged, delegated to allow TIE to get on with their job.
31. CEC exercised control over TIE through regular meetings. I met Andrew Holmes weekly, and his Head of Transport, Keith Rimmer, as needed. Andrew Burns, Member for Transport, was a member of the TIE Board, and he was involved with every decision, although he rarely made strong interventions at Board meetings. Andrew Holmes, although invited, was not a frequent Board attendee.

32. We gave great consideration to how tram projects had been delivered elsewhere in the UK. The key player in this regard was PUK. PUK was a privatised former piece of the Treasury, and had strong connections with previous Government-funded tram projects, including Nottingham, which had worked, and Leeds, which had not. We also studied Manchester, Croydon, Dublin and the London Docklands Light Railway, and I put in place and maintained close relationships with all. I visited those cities to fact find and to maintain relationships and to ensure that we understood what they had done, and why, good or bad. I also looked at new tram projects in France (Montpellier) and Spain (Seville).

*[By reference to the Preliminary Financial Case for Line 1 provided by TIE to the Scottish Parliament in September 2004 (CEC00630633), it was previously commented (page 68) that TIE was “essentially a procuring body, rather than a major project management organisation”. ]*

33. TIE was both a procuring body, and an intelligent client. If someone is trying to build an extension to his/her house, it is helpful if he/she understands how the foundation is laid, how the house is constructed, where the electricity points should be, and so on. He/she is not practically managing the project but does understand enough about everything that goes into it to be an intelligent client. TIE was indeed the entity that undertook the procurement, and so we had to know what we were procuring, why, when, and what skill sets were required to deliver. But no, at that stage, we did not need the full skill set to be a major project management organisation.

34. The planning or project management was undertaken by the expert people whom TIE hired to do it, who reported to me and to the TIE Board as the client pro tem. However as the construction of the tram approached, the client role (and the knowledge required by TIE about tram infrastructure) needed to be deepened. The project work had to be divided up into slices, and every individual company that was hired to do a slice had a Senior Project Manager at the top of it. Those were the people who were the project managers for the

ITI, and all was coordinated by TIE, as sponsor or intelligent client. TIE itself did not have the resources and specialised expertise, so that had to come from somewhere else, which is why we hired other experts, generally employed by others, to do particular items of work. Some advised TIE, to bolster the client role, and some worked to deliver to TIE. The TIE organisation itself had a maximum of around 40 senior and highly skilled people, under my watch, covering £1.2 billion worth of projects, but could not and did not “project manage” all of this work.

35. I started working with Alex Macaulay who was a capable, intelligent and hard working Council Officer who had already done an excellent job during the heavy planning work of CC and the early route selection and public consultation for ETP. He was an excellent planner, and particularly good on the CC, which represented the lion’s share of TIE’s work for CEC until the referendum of 2005. I also needed a very capable and experienced financial advisor / Finance Director. I had worked earlier with Graeme Bissett, who had been a partner in Arthur Andersen. He was available and agreed to work for TIE as Finance Director, on a part-time self-employed basis, expecting to put in more and more hours as the workload expanded. Graeme’s detailed financial skills were a perfect complement to my own, and he and I formed a good team, especially in handling the intricacies of SE financial support and, with legal advice, the interlocking contract documentation.
  
36. As the workload expanded, Alex became unable to cover everything that was emerging within the ITI and ETP. Immediately after the SE confirmed it would still provide £375 million for ETP, TIE needed somebody who was very experienced in tram construction. We already had Ian Kendall, who had been supporting Alex Macaulay part time on aspects of ETP (early operator engagement (“DPOF”), and other procurement) since 2003. Ian was Australian, had held a senior role within the Croydon TramTrack project, lived in Aberdeen, and had performed well to that point. Ian agreed to work full time reporting to me to continue his tram procurement and client role. His



appointment was no implied censure of Alex Macaulay. It was just that Ian had built a tram before, and Alex had not. This was in late 2004. Once funding was confirmed, Ian set about hiring others with specialist expertise to cover specific aspects of his remit.

37. TIE did not consider hiring an external expert body to act as the client for CEC. At the early stage, the work was more economic than deeply technical and this had allowed TIE to be an effective client to its own external deliverers. TIE could handle the coordination and management itself. However, once the tram was seriously embarked upon, Ian Kendall was hired as Project Director and he, in turn, found specialised people to work with and for him. The three areas of the tram were infrastructure, vehicles and engineering design, so each one of those areas had a project manager at the top. TIE and I could no longer be a knowledgeable client, which is why the setting up of the Tram Project Board (TPB) was envisaged, recommended and approved.
38. The different elements of the project were managed by outside engineering consulting firms, who were the project managers of their own parts of the project. Returning to the house build analogy, an intelligent client hires a bricklayer, an electrician and a plumber himself and manages them him/herself. An inexpert client will hire a professional builder, to do that hiring and coordination job, and the client will not get into the details. Ian Kendall was CEC's professional builder, who managed the project managers, and then reported to the TPB who acted as client on behalf of the promoter, CEC.
39. My professional objective was to hire as my direct reports very senior people as employees of TIE who had the capacity and the breadth of experience to make their projects happen. There was always a need to have the right know-how at the top. Another major TIE project (EARL) was also being managed successfully, with Paul Prescott holding the strategic Heavy Rail Director role, and Susan Clark working for him as Procurement Manager. Director level reports needed their own experience, plus qualified people, capable in

specialist areas, who reported to them. The level of tram capability within TIE had to be built up by Ian Kendall as Tram Director.

## **Cost Estimates and Funding (2001-2004)**

*[All of the various costings and estimates were delegated to the tram team, particularly the Feasibility Study dated July 2001 (CEC01916700), the TIE report dated 30 September 2002 (CEC01623145), the report by Arup Transport Planning dated January 2003 (CEC01190799), the 2003 Preliminary Financial Case (PFC) for Line 1 dated 4 December 2003 (TRS00000054), the 2003 PFC for Line 2 also dated 4 December 2003 (TRS00000016), the Scottish Transport Appraisal Guidance (STAG) Appraisal for Line 1 dated 28 November 2003 (CEC00632759), the further version dated 30 July 2004 (TRS00000041), the STAG Appraisal for line 2 dated 31 March 2004 (TRS00018617), the further version dated September 2004 (CEC01836749), the updated PFC for line 1 also dated September 2004 (CEC00630633), and the updated PFC for Line 2 also dated September 2004 (CEC00642799).]*

40. I would sit in and hear the reports of what was going on, and follow through on the conclusions, but I cannot remember this in detail as I was not close enough to it. I delegated responsibility for costing and estimates to Alex Macaulay during this period.
  
41. The other person who was very close to all of this, from a financial point of view, was Graeme Bissett. I relied a lot on Graeme because my skillsets were external communication, strategy and management, whereas his skills were in finance, numbers, plans, and risks. Later in the programme, Stewart McGarrity was the Tram Finance Director, and also knew the numbers well. Martin Buck and James Papps, both from PUK, also had a good understanding and knowledge of costs and funding.

42. When I first became involved in the ETP, the Feasibility Study in 2001 (CEC01916700) indicated a capital cost estimate of £190 million, which then increased to £355 million for the northern loop and the west line (i.e. Lines 1 and 2). The south-east line became known as Line 3. The latter figure compares to the budget of £375 million, which was committed later by the SE. I do not recall how or by whom the estimates were prepared or considered.

43. You asked about the STAG documents. These documents were intended to demonstrate value for money measured, in some respects, by productivity improvement, and reductions in delay and congestion, therefore speeding up journey times. That, and the benefit to cost ratios (BCRs), determined whether or not these projects made sense.

[You asked about the risk contingencies in the capital cost estimates in the Feasibility Study of July 2001 (CEC01916700), the TIE Report of September 2002 (CEC01623145), and the Report by Arup Transport Planning of January 2003 (CEC01190799).]

44. Our understanding of risk was emerging at the time, and how to allow extra costs for risk was not well developed. Around 2003 to 2004, the concept called 'Optimism Bias' emerged. This spelled out that there was a tendency of a client/promoter to accept the numbers, without recognising the risks, and that the costs would always tend to increase.

45. You ask about the capital cost estimates for Lines 1 and 2, as between the November 2003 STAG 2 Appraisal (CEC00632759), which allows for Optimism Bias of 31% but no risk contingency; and the December 2003 PFCs (TRS00000054) and TRS00000016), which include both an Optimism Bias allowance and a risk contingency. Also why the September 2004 Update of the PFC for Line 1 (CEC00630633) has the same allowance for risk contingency but a reduced allowance for Optimism Bias. I cannot answer these questions.

46. You ask about the Green Book. I am not familiar with the Green Book.
47. You ask about Optimism Bias. In principle, I think it is a good idea to take account of Optimism Bias, but I do not have a view in relation to any specific numbers used. We were engaged in procurement, and we followed the recommended approach early on. Optimism Bias, contingency and other methods of assessing and quantifying risk for infrastructure projects are not within my area of expertise. We were relying on the outside advisors on these matters.

### The Parliamentary Process

48. I do not remember the Parliamentary process causing delays or difficulties. Barry Cross had the responsibility within TIE for the progress of the Tram Bills through the Scottish Parliament, which to my recollection <sup>was</sup> pretty smooth. Barry <sub>^</sub> was a former employee of CEC. We hired the Parliamentary advisor to CEC (Malcolm Thompson QC), supported by Dundas & Wilson (D&W) as the Parliamentary agent, and both were very good. (On PUK's advice, we had started by hiring a London-based Parliamentary agent, Bircham Dyson Bell, but we switched quickly to D&W. D&W had had a lot of experience with CEC and its public sector processes.)
49. Alex Macaulay and Ian Kendall had strong roles in relation to reporting to Parliament. I also had to give evidence to the Edinburgh Tram (Line Two) Bill Committee on 1 December 2004 and to the Edinburgh Tram (Line One) Bill Committee on 7 February 2006 (CEC02083972) along with Donald Anderson and Barry Cross.
50. A big issue was the inflexibility of the SE in refusing to index the £350 million funding, which they had originally promised back in 2002. Three years later, in 2005, they were still refusing to acknowledge that inflation would happen. I recall trying to twist John Ewing's (Head of SE Transport) arm about this, to

get him to be more realistic but I did not succeed. I think he was hoping, by holding back, to get CEC to contribute more, but this delay damaged bidder confidence.

*[An email from Graeme Bissett to Mark Bourke dated 27 November 2003 (TIE00058492) and an attached background paper (TIE00058493) refer to TIE having “explored all reasonable avenues and concluded that a substantial unconfirmed funding requirement will remain relative to each of the two Lines”. Further reference is made by yourself to insufficient funding for both lines in your Chief Executive report dated 15 December 2003 (USB00000024).]*

51. You ask whether I recall if any consideration was given to producing a new Bill or a different STAG Appraisal. Embarking on such a course would have caused inevitable and significant delays, which would have widened the funding gap, and damaged if not destroyed the prospects of the ETP. [An email from Barry Cross to Ian Kendall dated 23 September 2005 (TRS00001961) and attached note (TRS00001962) refer to the Bills process and the gap in funding respectively.] The note makes it clear that the decision to have two Bills provided options which would not have been available had we gone for the whole Network in one Bill. The issues and possible solutions are spelled out in the referred attached note.
  
52. Everything that was built was proposed to, and considered by, the Parliament. TIE listened hard to all advisors' perspectives throughout the process of settling upon the line that was in fact built. TIE hired its advisors for their experience, and felt that it would be best to follow the advisors' recommendations .

## **Ove Arup Review – October 2004**

*[During their Review in October 2004, Ove Arup raised concerns regarding the BCR in the Business Cases for Line 1 (CEC01799560) and Line 2 (CEC01019126).]*

53. I do not recall TIE's response to the review, but I do recollect concern since CEC and TIE needed to have a strong financial case for the project. The benefit was measured in terms of how many people minutes per day' were saved by the tram. The value is in keeping down people's travelling time and thereby improving labour force productivity.

## **The Procurement Strategy**

54. The tram procurement strategy had not been embarked upon when I joined TIE in 2002. The initial planning and consultation work during 2002-4 was handled effectively by Alex Macaulay. It extended to DPOF (early operator involvement), which Ian Kendall led, with Transdev as the winning contractor. Thereafter Ian was transferred into the Tram Project Director role, reporting to me, and Alex took on other smaller projects. It was not until the recommitment of £375M by the SE in mid 2005 that the procurement of hard infrastructure finally got under way.
55. The approach to TIE's tram procurement strategy was to integrate inputs from people who really understood the subject matter, under the leadership of Ian, the experienced tram practitioner. Ian worked closely with Graeme Bissett and Stewart McGarrity of TIE finance, and with PUK. [The strategy for the Tram Project, is set out in the Updated PFC for line 1 dated September 2004 (CEC00630633), the Draft Interim Outline Business Case dated May 2005 (CEC01875336), and the Progress Report produced by TIE for the Scottish Parliament in September 2005 (TRS00000209).]
56. The main strategic adviser that was involved in developing the procurement was PUK. TIE worked closely with Martin Buck and James Papps of PUK, and I visited other cities with them to talk through the procurement strategies that had been operated there, and how they had worked out in practice. James

Papps ensured that our procurement approach took account of all that had gone before. The SE was also involved, and we had our technical advisors e.g. Scott Wilson and Turner & Townsend, and the lawyers for the procurement, DLA.

57. Examples of issues for consideration were a) whether to hire a tram operator early in the piece, b) whether or not to develop a clear infrastructure specification to put out to tender, c) whether to put out to tender the infrastructure independent of the rolling stock, and d) whether and how to make the infrastructure contractor also responsible for the design and/or the commissioning of the operating tram system. There was also the lateral matter of integration with buses and the farebox risk. The critical judgement was between maximising the offload of risk, yet still offering a proposition that would appeal to the very finite number of possible bidders. You ask about the approach to infrastructure design. In retrospect I do not recall any suggestion that TIE should have adopted a collaborative model, as opposed to a tendered model, despite TIE's earlier positive experience with Balfour Beatty on the guided busway. Item d) above could have led to the collaborative model. But other considerations, and possibly the preference of key players such as Ian Kendall, may have militated against this. I do not recall who or why.
58. I chaired the meeting to settle the finally selected procurement strategy. We put these final strategy proposals to the Board, and any observations or inputs from the Board were properly reflected in the final direction taken.
59. The procurement work included system design, utilities diversion works, infrastructure construction and later, tram vehicle procurement. I was not involved in the detailed drafting of those individual contracts.
60. I was responsible, as Chief Executive, for understanding what decisions were made, offering my input on rail-based systems that I had visited (e.g. DLR,

Nottingham, Dublin and Manchester which presented contrasting models), and presenting them coherently to the Board. I gave Ian Kendall the opportunity to present his conclusions directly to the Board, which he did, in conjunction with Graeme Bissett and James Papps of PUK. This three person team led the procurement development. Subsequently Andie Harper, who had taken over as interim Tram Director by the time I left, took the lead.

61. I cannot remember who else was involved but there were others fully cognisant of alternative approaches and the risks and benefits of each, and how they would fit with Edinburgh's own particular needs. I delegated leadership to Ian Kendall after his appointment as Tram Director. I chaired procurement strategy meetings and I ensured that the inputs of our own people and the best external advisors were brought to the table. As a general point, I did not feel that it was appropriate for me to try to impose my own judgements about matters under discussion on people who were experts. I sought to bring forward the best consensus of those present. This was a coherent and well-operated process, which considered carefully what had gone before, what had happened in other cities, what the options were and which would be best in the context of what Edinburgh wanted to achieve.
  
62. **TRS00000209** summarises the approach taken. The key factors influencing the procurement strategy were keeping the risk premium down whilst ensuring the possibility of future expansion. On the one hand, one is seeking the lowest possible bid, and a defined package of works (the SDS contract) assisted that. On the other hand, one is seeking to avoid handing the potentially considerable costs of possible failure to the public purse. In Manchester, for example, we observed that the PTE had a contract with one contracted operator for the whole system, so the whole of the tram operating agreement had to be opened up in order to extend the network on the ground. With the early prospect of future tramlines in Edinburgh, it was necessary to ensure the flexibility to extend the Edinburgh network in the future.



63. A second point was the critical interface between tram and bus in terms of timetable and fare strategy. LB needed to be kept separate from the infrastructure contracting process so that it could play its critically important operating role later in the integration progress. We retained a distinction in the contracting structure between tram operations (where Transdev played a role) and the building of tram infrastructure. This was a similar situation to Nottingham, where the bus/tram interface had been well managed by Nottingham City Council who also owned both the tram and the bus company. The Joint Revenue Committee and the establishment of TEL then came into the picture in terms of farebox management.
64. Ultimately, it was a essential to develop an attractive proposition to prospective bidders because the cost of bidding is very high and commercial companies will not spend huge sums on developing a bid for something which looks likely not to proceed, or which will not be profitable to build. The attractiveness of the proposition to the market is therefore a key matter. We were relying on outside parties to tell us how the market looked, and whether or not there were certain elements that we could add into the bid conditions without putting them off. Contractors like Bilfinger Berger are global, so they are comparing Edinburgh against say Vancouver or Bangkok, and wondering which one they want to bid on. We could not assess that situation internally; we had to have outside advisors to cover those aspects, and we turned to Ian Kendall as Tram Project Director together with PUK to pull together the appropriate advisors.
65. There were clearly implementation challenges but precisely who was responsible for each problem, and when those problems emerged, is ascertainable only from the documentation which I do not have the capacity to remember or reinvestigate. Ownership and implementation of the infrastructure procurement strategy was with Ian Kendall supported by Graeme Bissett, under my leadership, with the advice of PUK and DLA. We had the best possible advice from the people who had been most involved in all other projects of a similar nature in the UK. We took a lot of time to make

sure that we considered their points of view and factored those into the strategy ultimately adopted. Despite all the careful preparatory work, the relatively small amount of interest in bidding for the project was disappointing, especially because we had contacted, in a relatively small field, all the prospective players.

66. We had a lot of problems with budgetary approval delays. The SE was holding us to an uninflated budget, but then allowed months to elapse before providing key answers on funding which, by definition, added measurably to the cost. The TIE Board document (TRS00018651) dated 20 December 2004, contains a very long CEC document (166 pages), presenting the tram implementation programme. It points out (on page 72) that there had been a three month delay from the SE on the implementation budget from August to November 2004. This compressed the schedule to make it impossible to meet the schedule for Utility Diversions. This was a significant delay that was completely outside the control of TIE and CEC, and which pushed the Actual Opening Date at that time from 2009 into 2010.
67. In the ITI Steering Group notes of 18 August 2003 (TRS00001884), there is reference to taking a more hands on approach to risk and ensuring that there is an appropriate level of risk transfer on CC. This was directed to Alex Macaulay and to me.
68. The responsibility for risk transfer was indeed with Alex and me. Once finalised, the ITI (CC) procurement strategy was approved by the TIE Board meeting for approval. See para 69 and "Risk" section below for comment on this topic related to ETP.

*[Ilan Kendall's report, dated 14 December 2004, to the TIE Board in relation to the tram implementation programme () can be found in the Board papers for the TIE Board meeting on 20 December 2004 (at page 72 of TRS00018651). That report states that: "[t]he Board has previously approved the procurement strategy which allows for the development of an Infraco contract being a*

*turnkey design, construct and commission contract for the tram system". The report notes that dates for Royal Assent, design, utility diversions and land acquisition were all now considered to be unachievable.] But please see para 66 above.*

*[The TIE Board Report for 21 March 2005 (TRS00018615) refers to the delivery targets for the project, showing (page 16) TIE's Corporate Targets for 2005, including those relating to the tram.]*

69. The targets were scrutinised and the risk register regularly updated. However, TIE did not appoint the contractors within two months of Royal Assent or within budget, as set out in the delivery targets. TIE did not actually let the contract until late 2006, after I had left. The main reason for the delay was that the SDS design process took far longer than expected. It certainly appears to have been Parsons Brinckerhoff (PB) who was responsible for the overrun. Despite PB's reputation as a well-respected organisation, they failed to deliver.
70. Mark Bourke was TIE's risk manager who reported direct to me and who regularly updated the risk register. He and I also took the time to go through the risk register with the ETP team. The biggest risk in 2005 was the delay to the detailed design of the project, which was due to PB's poor performance. Perhaps Ian Kendall had insufficient resources to stay ahead of the emerging failings of PB. But this was his job, so no excuses. As a result of PB being late, the letting of the infrastructure contract was also very late, stretching eventually into late 2006. However, that might have been linked to the funding delays, or the novation of the operator contract . I do not recall.

*[The paper on Systems Design Services and Joint Revenue Committee Proposed Contracts dated 17 August 2005 and presented to the TIE Board meeting held on 22 August 2005 (TRS00008528) refers to System Design Services (SDS) and Joint Revenue Committee (JRC) tenders. The problem was the SDS contract, which was awarded to PB. The paper notes (page 96)*

*that the tenders had been “programmed to mitigate risk” and that “[d]evelopment of design ahead of the Infraco ITT shall drive scope and cost certainty, increase competition and reduce and substantially remove the risks...”]*

71. It was a great pity that SDS programme under PB disappointed. TIE was, for very good reasons, seeking to provide a very clear scope of work, so that the bidding contractors could give us a firm prices that they were going to meet.

*[The minutes of the Transport Scotland (TS) Quarterly meeting (Review of Major Projects: Edinburgh Tram) held on 8 May 2006 (TRS00004679) refer to slippage of the procurement programme. ]The minutes record (page 4) that: “the Panel noted that an independent Readiness Review will be convened on 22 May 2006”. The minutes go on to say that: “Further progress with procurement will be contingent on outcomes. Gateway Review also envisaged prior to contract commencement. Slippage on Procurement programme was evident. Whilst it was accepted that Tramco may be ready following the Readiness Review, Infraco is unlikely to be ready until end of June (previously April)”.]*

72. This meeting was immediately after Ian Kendall’s departure. At that point, it was quite clear that the project was in difficulty. Ewan Brown, our prior Chairman, had left in January and we were appointing a new Chairman, Willie Gallagher, who did not understand his role. We had no Tram Director in place, and the focus of my time just then had been on finding somebody to take on that role. I had found Andie Harper, as interim replacement. Urgent steps were needed to recover the position. The Readiness Review (**CEC01793454**) was a key moment when a lot of things came together. The review was initiated as a definitive position check in the context of much ongoing uncertainty. Andie Harper participated in the Readiness Review throughout and the committee was impressed. He was an excellent professional, who had previously been a successful Project Director for London Underground. Andie took the role until the permanent appointment was made, which

happened after my departure. As soon as Andie arrived, I breathed a sigh of relief because it was clear that he had the right skills to address the many issues that this minute highlights.

73. The Readiness Review output gave TIE and SE a definitive status report with clear steps to address deficiencies. The committee's observations were to be followed up by Andie Harper. There was a strong vote of confidence from the committee in Andie: "provided [Andie] is given the authority and clear governance framework to do his job effectively, this project has every chance of success."
74. However, Andie had only just become involved. (He was not present at the meeting on 8 May 2006 because either he had not yet been appointed or had not been able to make it to Edinburgh.)
75. The Readiness Review document contained a number of 'Red' as opposed to 'Amber' or 'Green' indicators. The observations made in the meeting of 8 May 2006 needed to be followed up by me and Andie Harper. There was however a moment of discontinuity when Willie Gallagher arrived and started to get deeply involved. Andie Harper was still away. I recall he may have had a previously agreed holiday. Despite my ownership of the follow up, Willie sidelined me in the weekly review of progress on the Readiness Review recommendations.
76. You ask – but I do not recall the status at that moment on the infrastructure procurement, or whether the design for utility diversion works was either delayed or incomplete.
77. In my Chief Executive's report dated 27 February 2006 (TIE00087124), I had said in my report that: "*The relocation of members of the System Design Services (SDS) team into Verity House follows a disappointing start by Parsons Brinckerhoff. This leaves us some weeks behind schedule, and the*

*pressure is on to ensure catch up during the balance of the year*". You ask what happened next. At that moment, we knew that we had to have some coherence from PB. I recall having invited a senior executive of PB, to visit Edinburgh from their Head Office, to talk about these concerns with Ian and me. What happened later I do not recall, but it ~~was~~<sup>is</sup> logical that there would have then been more manpower from PB on the project.

78. [The TIE/TEL senior management meeting held on 11 April 2006 (CEC01882566) reports on Project Qualification (PQ) submissions for the Infraco contract.] This was perhaps the tram procurement process senior management meeting, at which Ian Kendall would have been present. I commented that the *"response had not been five star"* because there were fewer bidders than we had expected for the Infraco contract. I believe that five submissions had been received, but some of these were still hesitating to formalise a bid. There were no (?) tram projects underway in Britain at that point, and we had hoped for a much keener interest. During the evaluation process, I was personally involved in reviewing the submissions and meeting the bidders. However, the actual negotiations were handled by Ian Kendall and Graeme Bissett.
79. Ian Kendall's comments provide the background. In summary, any British tram project would have had less than sterling credibility due to the past losses incurred by other international contractors on earlier UK projects. There was also doubt about the SE commitment to fund the project, and the failure over three years to offer any kind of indexation of funding probably led bidders to believe that there was a lack of will on the part of SE/CEC to see this through. Some big players were absent, and others had not yet forged the necessary alliances to be credible. There were comments to this effect from Bill Woolgar, the Managing Director of Turner and Townsend Project Management Limited (Turner and Townsend), in a letter to me dated 15 June 2006 (CEC01827972), which was just before I left TIE. The letter states: *"The contract has been advertised, with only three potentially realistic organisations likely to progress to a tender list... This was not the client's expectation of*

*what the OJEU [Official Journal of the European Union] notice would produce...".* He is commenting that we did not get many people interested. It was suggested that running the competition for the successful contractor after the qualification process would be difficult, which proved to be the case. At the time of the award, we only had two qualified players, which was the absolute bare minimum. We had the Bilfinger consortium, namely Bilfinger Berger, Siemens and Morgan Est and the Laing O'Rourke Consortium, namely Laing O'Rourke, Grant Rail and Bombardier. AMEC / SPIE (mentioned in Woolgar's letter) presumably never qualified.

80. Ian Kendall's comments were pertinent. However, the issues were both external, in that we had not received enough bidders, and internal, in that the statutory consents and the approvals were all overdue. This poor performance, which emerged late in the day in relation to these matters, was almost certainly the reason why it was finally decided that TIE should seek Ian Kendall's resignation from his position as Tram Director.
81. You ask about my understanding of the completion status of design, consents and approvals at the time of my departure from TIE. Things were thankfully really picking up under Andie Harper's leadership, as was shown by the subsequent "Amber" rating of the later readiness review. The fact that the design was late though remained a serious problem, since the completion of design, consents and approvals was critically important.

## **2005 Congestion Charging Referendum**

82. On the subject of CC, and the extent of my involvement, the Project Director was Alex Macaulay, and I chaired the process of finalising the scheme proposals following the statutory processes, including public consultations, and the Inquiry. [More information can be found in relevant documents such as the TIE report dated September 2002 (**CEC01623145**), the Minutes of the Meeting of Directors of TIE on 27 June 2002 (**TRS00001871**), the minutes of

the Special TIE Board meeting on 22 December 2003 (TRS00001890), a letter dated 12 January 2004 from me to Councillor Andrew Burns (WED00000029), and the Minutes of the TIE Board meeting on 28 February 2005 (TRS00008507).]

83. There were several different potential models but TIE settled on two concentric cordons, a bigger one around the inside of the ring road and a second smaller one around the city centre. It was complex concept to sell to the public, since being charged depended on whether or not you drove into the city, the time of the day of the journey, and whether or not you drove from the periphery into the city centre. Drivers were charged on crossing a cordon, but in the inbound direction only. Therefore the scheme affected individual drivers differently depending on where they lived or worked.
84. Obviously, the reasons for the attractiveness of this project, when it was originally proposed, was first the disincentive to bring cars into town, which would reduce city centre congestion, and second the availability of the revenues coming from the CC to fund the continued development of the tram system. This final proposal was put out to consultation in early 2004, and I see there was an Inquiry in April-June. The Inquiry found in favour.
85. After the approx. £9 million spent on developing the final scheme, the referendum was comprehensively lost. After the result, there was a meeting between the Head of SE Transport John Ewing, and Nicol Stephen, the Minister, reconfirming the £375 million budget, although it was still not indexed to inflation. Previously, we had the two separate line 1 and line 2 projects. The result of the renewed funding decision with of course no CC income, eventually emerged as a single, hybrid line project, from the Airport to Leith Waterfront, combining bits of both lines, but with no clarity about the future of network growth.
86. Whilst the focus of this Inquiry is the tram, when I started at TIE in 2002, ITI was the package, and the really important piece of that package was the CC. I



was more focussed in the early period on the CC because that was critical to getting ITI, including the tram, off the ground. Once the CC went away, there was no alternative but to face the reality of the fixed sum we had been promised, and cut back to whatever could be built with it.

## **Draft Interim Outline Business Case and Draft Final Business Case**

*[The Draft Interim Outline Business Case dated 30 May 2005 (CEC01875336) and the email from Graeme Bissett to me dated 6 May 2005 (TIE00090105) with attached 'ETP Summary of funding position' (TIE00090106) related to estimated capital costs. This gives a clear summary of what the position was and what the options were in May 2005.]*

87. The input to these papers came from whomever was working for us at the time: the subcontractors, engineers and so on. The co-ordination was done by Graeme Bissett, Finance Director. Graeme and I had a very close working relationship. I retain respect for him; he was a very good guy. As the project evolved, we would put our heads together frequently and have an informal discussion on the issues. As Graeme writes: *"Phase 1 of the ETP will require to be substantially curtailed compared to the Council's ambitions for a full line 1 and line 2 network. Officials at the Council have indicated that TIE...have got serious concern about the extent of financial risk implicit in the full network model and in the Airport network model ... unlikely that Council feel able to take on any debt to support the project funding and a reasonable cushion will be needed to take account of risk in the project in revenues, operating costs and impact on LB"* (TIE00090106).
88. I was not personally involved in the detail but reviewed the outputs and considered their strategic implications. The primary work was done by the Tram Project Director and the Finance staff. There had been a fixed funding number (£375M) and time had been allowed to pass, because of bureaucratic delays (with the SE). There were only two options: either we found more

money (e.g. debt), or we cut back on what we planned to build. This was why we ended up with the segment of tram line from the Airport to Leith Waterfront. *[The increase in costs for the project was noted at an early stage, such as in your Chief Executive's report for the TIE Board meeting held on 24 October 2005 (USB00000377).]*

89. This document was a typical synopsis for the Board of the points emerging from the papers presented to the Board. In other words, I would read through the papers and write a synopsis to give to the Board. The details for each project and work stream were in the accompanying papers also presented to the Board. The information covered all of the contracts and work streams, not just the ETP. The papers were substantial and presented by the relevant Project Directors at the Board meetings. I did not present the whole thing myself; I would delegate that to the people who were responsible for delivery.
90. The TIE Board meetings were not working (i.e. technical problem-solving) meetings because their purpose was to present to the Board the conclusions of earlier meetings. The parties who were involved in those prior meetings were inevitably the Project Managers, our own Finance people, James Papps of PUK, and the primary funder, the SE. (PUK were essentially the nominated financial consultants of the SE.) Those discussions were good. The people were well-informed and had seen similar challenges before. Graeme Bissett and I would package the conclusions for the Board with the help of the relevant Project Manager. When he/she presented to the Board, it was a plan for action, not just a set of problems.
91. Thus the Board was told what we were going to do, and we followed through afterwards. However, the problem was that, while Ewan Brown, a financier, was a capable chairman, neither he nor the other TIE Board Directors had hands-on civil engineering experience. CEC who appointed the directors might in retrospect have selected individuals who really knew about transport projects, particularly trams. That was one of the reasons why I and Ian recommended that TIE create the Tram Project Board (TPB), to bring in

people who were more familiar with the practical aspects of such a project, and who would be better placed to make suggestions on how to rectify problems in terms of cost overruns. A similar path was followed for EARL.

92. The individuals who were responsible for monitoring costs were Graeme Bissett and Stewart McGarrity. I oversaw that responsibility of course and regularly brought ongoing issues not only to the board but also to CEC and SE.

*[The report to CEC on 26 January 2006 (CEC02083547) made recommendations for funding and phasing of the tram network.]*

93. Regarding the first tram phase from the Airport to Leith Waterfront, I recall that the utilisation of the Line 1 was contingent upon considerable development in the Granton area that had yet to be embarked upon, whereas the traffic along the City Centre to Edinburgh Park route was more clearly quantifiable (to a large extent following the existing number 22 Lothian Bus route). Damian Sharp of SE was integral to the decision-making process throughout. There was an assessment made of the various options and a first phase from Edinburgh Park to Leith Waterfront seemed to be the best one. We were looking at the BCRs and revenues, and I recall a hands down win for this single line from the Airport down to Leith because of the 22 bus traffic from the west, and the many other bus routes that ran along Princes Street and down Leith Walk.

94. I do not recall that it was considered necessary to include Edinburgh Airport in the tram line in order to secure SE funding. However, there was debate about building both the Edinburgh Airport Rail Link (EARL) and Line 2 of the tram, which partly cannibalised each other since both served the Airport. At one stage, when EARL seemed likely to be built, there was the suggestion that we should not build the line to the Airport from the depot at Edinburgh Park, just a mile away, because it would duplicate. On the other hand, we all felt that, if we were aiming to have integrated transport, it would be less than optimal to build

a tram that terminated at the depot. So the Airport was always in the base plan. (I was not there when EARL was cancelled, which of course will have made the need for the tram to serve the airport more evident.)

95. There was a mood of pragmatism therefore, and we knew that the project would have to be curtailed, or phased, due to the shortage of funds. The Airport to Leith Waterfront option had been assessed and was the best for utilising the funding available. We knew we could not build Lines 1 and 2, as we did not have enough money. The ETP team made a practical and justifiable decision with the support of SE and CEC and we got on with the project.
96. I do not recall what consideration was being given at that stage to the possibility of the total cost exceeding £535 million, nor do I remember how £375M became £535M. It seems possible that, if further cost escalation had been contemplated, the ETP team could have shortened the line to fit within the whatever budget was available.
97. I was not involved with the draft Final Business Case that was presented to CEC. The presentation took place six months after I left.

## **SDS/Design**

98. My recollection is that the SDS award was made on the basis of PB's commitment to meet the schedule for the Infraco contract. PB to my knowledge therefore contracted that the detailed design would be completed, and the consents and approvals obtained, by the time the Infraco contract was to be signed.

*[It was hoped that the "early involvement of the designer will reduce the planning and estimating risks that bidders for the infrastructure contract are exposed to and so will contribute to eliminating the substantial risk premia*

*they would charge" - TIE Board Meeting papers dated 20 June 2005 [TRS00008522 page 66]. ]*

99. These comments in the TIE Board Meeting papers are logical. However, it did not happen as planned because PB did not get the work done. Since the design was not delivered on time, that pushed up the bid price due to the uncertainty, and probably also helped to ensure that we had fewer bidders.
100. The risk for Infracore bidders was not just a matter of taking ownership of the PB design, but also being required to assume responsibility for the integration with the tram vehicles. The bidders were forced to make an estimate and were reasonable in setting a high price to allow for getting it wrong. These risks deterred bidders, which meant that there were only two bidders in the end, and the quotes came in higher than expected. However, that happened after I had left.
101. However, if you try to specify exactly what the contractor is going to build, then you must spend the money to supply a designed proposal. The contractors then bid on precisely what they had been asked to build, and the promoter has a cost which is relatively risk free. (However, there is also the underlying expectation on the part of the bidder that there will be changes to the design during the process of construction, which would justify additions to the quoted bid.) The result will inevitably be ongoing confrontation between the promoter and the successful bidder.
102. The alternative would have been a collaborative approach with the design being developed jointly along the way. That happened with the Balgreen busway, which was a relatively small project, but it was undertaken successfully in a collaborative rather than a confrontational way. If there is a process whereby there is a degree of mutual trust, confidence and understanding, the builder can design something that he will know how to build. A much less costly and much less troublesome process is the result. This could have been a fundamentally different way of doing the whole thing. However, we did not *adopt this approach.*

103. I was not personally involved in any of the design process, for determining the requirements to be adhered to by PB, or in relation to any decision making or correspondence with PB.
104. My concerns over the completed design, by the time that I left, were evident and are documented. PB performed badly; I cannot remember why, or who was involved. Andie Harper and I went to PB's head office (a second effort after the earlier meeting in Edinburgh with Ian Kendall) to ask them again to strengthen their leadership in Edinburgh. This was after it was evident that they were quite some way behind, and therefore catching up was going to be very difficult.
105. If I had had a Chief Executive successor, I would have passed on my concerns about the project, but there was no successor to me at that time, other than Willie Gallagher, to whom I wrote a short note (see below) about events during a holiday that he took after I had agreed to resign. Neither he nor CEC made any attempt to debrief me formally prior to my departure, although I would have thought that CEC might have wanted to do so. I met with Tom Aitchison, but it was not a debrief; it was just to say 'thank you and sorry you are going'.
106. I did write a brief note to Willie Gallagher in July 2006 (**WED00000032**) covering the period from 3 to 14 July 2006 when he was on holiday. I had been continuing my job during that period, knowing that I was to be leaving imminently, so this was just my note to him on what I had done in his absence. Thus it was clear that Willie (and TIE) retained confidence in me until I left, and my relationship with Willie remained good.

## **Utilities**

107. I do not recall specific information that was provided to me, or who would have provided it, regarding what was required in relation to utilities, and particularly

the MUDFA contract. I do remember being involved in some meetings with utility companies and contractors, and I believe the person who was handling the MUDFA contract was an individual who worked for Ian Kendall.

108. I did meet some of the utilities people. This was to encourage them to go along with the coordination of all utilities works with one contractor, which was the essence of the MUDFA concept.
109. Of course, that meant that the MUDFA contractor had to have separate contractual relationships with every one of the people whose utilities they were moving, because they would dig the hole and then perform all the services. This was a good idea but it became quite challenging to get all these various contracts in place in time. I cannot recall who put the tender package together, but we would have had an arrangement sorted out with the various utility companies, so whoever was to bid on the work knew what they were taking on. There will have been someone who put the whole bid document together, with legal help, but I do not recall who led it.
110. I do not recall whether I met AMIS/Carillion (who ultimately became the MUDFA contractor) prior to the MUDFA contract being let.
111. There was delay in awarding the MUDFA contract, which was signed after I finally left. I cannot recall details of my involvement. It was part of the ETP, so it came under Ian Kendall until his departure, and I cannot recall what if any steps were taken to address the delay
112. The minutes of the meeting of the TPB on 22 November 2005 (TRS00002067) record that I stated: *"if we don't start Utilities diversions in the middle of the year then it will delay the project and cost both time and money"*. They go on to state that: *"IK [Ian Kendall] confirms to the TPB that it is TIE's intention to begin Utilities diversions following the end of the festival at the beginning of September 2006..."*.

113. The minutes show that I raised concerns well in advance, in order to minimise disruption. Ian Kendall was apparently unable to meet the target of “the middle of the year”.
114. Graeme Bissett attended TIE Board meetings. I would have sat down with Ian and Graeme afterwards to talk through this unexpected delay, and decide how to recover the position.

### **The Infrastructure Contract**

115. I oversaw the team on the Infrastructure Contract. The preparations went on for three years, and it was not awarded until late 2006.

*[The minutes of the TIE board meeting held on 25 October 2004 (TRS00001901) record that “[t]here has been a delay in TIE receiving the letter of award for INFRACO from SE [SE]. Any further delay on the approval of the procurement will result in a serious risk to the deadline.”]*

116. This comment was directed at John Ewing, who was the Head of Transport of the Transport Section of the SE. We were endlessly frustrated at the slow speed of the SE in anything that related to money. TIE/CEC’s requests for indexation of the initial grant of £375 million continued for perhaps three years. We pointed out that this did not make sense, and we could not operate unless they took account of inflation, but this never changed. Delays by SE were the normal fare. I do not recall exactly what action was taken. Usually when we had problems of this sort we rushed down to Victoria Quay (a major office building housing the SE in Edinburgh). I always tried as hard as possible to speak directly to John Ewing, but often he was “unavailable”. The workings of the Civil Service are sometimes totally opaque. At one point I asked Ewan Brown as TIE Chairman to contact Nicol Stephen, the Minister, to try to get a clear picture of what was going on. It did not help.



## Transport Initiatives Edinburgh (TIE)

117. I received information and updates through direct reports within TIE, and through wandering regularly around the office, which was not big. Board papers were submitted and I reviewed them before the Board meetings. I agreed with the team which points needed to be presented to the Board and who would present them. There was a regular preparatory dialogue between me and each one of the individual project leaders (Alex Macaulay, Ian Kendall, Paul Prescott and their underlying reporting managers). I made a point of taking key second level people out to a quick lunch whenever possible.
118. Project leaders were mostly open and willing to seek help when things were going awry. Generally, information flow was good. However, the ETP was the most complex project in the TIE portfolio, and was where transparency was most essential. Easy communication though was not Ian Kendall's forte.
119. Ian Kendall was hired by Alex Macaulay from late 2003, because of his senior experience on the Croydon tram project, and was put to work on a number of projects relating to procurement of the ETP. It was hoped he would emerge to lead the ETP. In late 2004 / early 2005, Alex was heavily burdened by the work leading up to the CC referendum. Up to that point, Ian had achieved what was asked of him including work on the DPOF (Transdev) appointment and certainly he was used to the typically confrontational world of civil engineering. After consulting with Ewan Brown and the TIE Board, and despite my reservations about Ian's management style, I followed through on the plan to appoint him to the Tram Director role reporting to me.

*[The agenda and papers for the TIE Board meeting on 12 May 2003 (TRS00008474) record (page 13) that "[t]he roles of the chief executive of tie and its project directors will be clearly delineated".]*

120. As I have already written, the distinctive part of my role was that it was largely strategic and external. The largely planning work of Alex Macaulay for ITI did not change. As his project load grew, stronger resources had to be applied to the ITI (CC and ETP) in order to make sure that there was adequate direction and to preserve focus. This paved the way for the eventual appointment of Ian Kendall as Tram Director in late 2004.

*[The agenda and papers for the TIE Board meetings on 15 November 2002 (TRS00008470), 4 March 2003 (TRS00008472), 15 December 2003 (TRS00008492), 25 October 2004 (TRS00018644), 21 March 2005 (TRS00018615) and documents referred to earlier in relation to the 2005 road charging referendum all contain reference to your provision of progress reports as the TIE Chief Executive. How were these prepared?]*

121. We had a monthly routine, in terms of which I asked each member of my staff to prepare a report for the Board. I integrated those reports into a single Chief Executive report. I should say that very often the underlying reports were presented to the Board unedited, but I also took the key points and put them into my report. I added my own comments on the activities of others and, of course, I added activities for which I had been personally responsible. I think that is a fairly normal process for a Chief Executive report.
122. Apart from the tram, where Ian was not a natural or spontaneous communicator, I had no concerns about the information being passed to me. I did not operate in a bubble. I talked to employees at lower levels informally, and in walking around and chatting to people, so I was able to cross-check inputs. More importantly, I trusted those in my team, at least until evidence arose to prove otherwise. They were a very good crowd. I would make mention of any issues of overall concern in my report. I also had an active schedule of visits with clients and outside bodies and would pass on information to the TIE board if relevant to TIE's mission or performance.

123. In December 2005, Ian Kendall's mother died, and he went to Australia to take care of her affairs. His team approached me during his absence to say that they were not happy with his management style. On his return, I took him out of the job over the Christmas period, explained what had happened and asked him to do a written self-assessment, which he presented to me and I think Graeme Bissett. We discussed with Ewan Brown. Early in January, Ian met with his team for a frank conversation when he accepted their concerns, and indicated how he would change his operating style in response. After this meeting, his direct subordinates were asked how they felt, and they unanimously agreed that he should resume his duties.
124. Four months later, Ian Kendall resigned on 2 May 2006, because he accepted that he was not meeting his objectives. This was two months before I myself left TIE. I do not recall the specific issue or report that triggered his departure. I met Ian off-site, early on the day in question. He agreed to resign.
125. His resignation did not have any long-term impact on the delivery of the project. He operated on a consultancy basis, so departure itself was straightforward. It would be more pertinent to say that his remaining in post would have multiplied problems. I signed a letter on 13 June 2006 modifying Ian's contract which took him out of his job but allowed TIE to use his residual knowledge to the benefit of the project. His responsibilities were speedily reassigned to me, particularly those relating to MUDFA/Infraco negotiations. Ian's departure allowed immediate appointment of Andie Harper who was better equipped for the job. Ian's problems were those of style, personality and communication, rather than of technical competence.

*[The minutes of the TIE Board meeting held on 8 May 2006 (CEC01758155) note that you were Acting Project Director following Ian Kendall's modified role in the project.]*

126. This involved me stepping into all of the on-going engagements for which Ian Kendall was responsible. Obviously, it was only an interim situation until Andie

Harper's appointment. In total, I would have been Acting Project Director for a maximum of six weeks. It did add to the short-term pressure that I was under, because I was still supervising the other projects as well, but it was a necessary interim situation.

*[In the minutes of your Chief Executive's report to the TIE Board meeting on 26 June 2006 (USB00000025), it is noted that Willie Gallagher had been appointed as TIE's new Chairman. The report also notes that you would step down as the TIE Chief Executive, and that Willie Gallagher would assume that responsibility until a replacement Chief Executive was appointed.]*

127. I first met Willie Gallagher after he had been interviewed by CEC. I remember meeting both Willie Gallagher and David Mackay, who was the previous Chief Executive of Scottish Rugby, in around March or April 2006. Both were candidates for the TIE position.
128. The job of the Chairman is to run the Board and to supervise the Chief Executive. Willie was appointed to chair the company, yet he ended up leading the tram project. He was intelligent and enthusiastic, and obviously keen to support TIE in any way that he could. He had relevant technical experience from the electric power industry. He was direct, had a good sense of humour and his CV suggested that he knew how to manage people. On the face of things, I preferred Willie to David who was harder to judge and seemed much more political. Also David did not have technical experience.
129. Whilst Willie appeared to be competent, I assumed that detailed references would be, or had been, taken by CEC since he was being presented as a suitable candidate for Chair. I did not do my own diligence on him. I accepted Willie at face value and thought he would hopefully be helpful to me (for the few months I intend<sup>ed</sup> to remain) and to TIE's projects, especially the ETP.
130. My letter to Willie dated 8 June 2006 (WED00000030) explains what happened. On my resignation under a compromise agreement within a week

or so, Willie told me that he was intending to hold both Chairman and Chief Executive roles temporarily, pending recruitment of my successor. I understand however that he subsequently held both roles until his departure from TIE.

*[The TIE Business Plan 2003/4 sent to CEC on 26 June 2003 (CEC02083550) refers (page 5) to a performance related staff bonus scheme being introduced for TIE staff.]*

131. I introduced the TIE bonus scheme. The CEC culture, within which many of our people had worked, was not high achieving. People came in at 9 am, left at 5 pm, and deadlines requiring overtime were hard to impose. I felt sure that, if we were going to deliver a serious high impact project, we needed to incentivise people to deliver specific personal objectives. TIE was competing with the engineering consultancy firms for good people, and those firms always have a significant bonus component in addition to annual salary. If TIE were to get people to leave the private sector and join the public sector, we needed something comparable. I was able to persuade CEC to agree to a 15% bonus scheme, which was conditional upon good performance and meeting specific targets. This small performance incentive helped to change the TIE culture towards measured performance. It was capped at 15% for any one individual, and very few people received the full 15%. It was generally 8% to 10%, which is by no means a monster bonus in the private sector. It also provided the means by which individuals could be assessed annually for their performance. The bonus scheme was introduced to attract people from the private sector, to encourage loyalty, and to encourage performance.
132. Seconded individuals did not receive bonuses from TIE because seconded employees (usually from CEC) were paid by their existing employer.
133. I do not recall how the bonus scheme worked in detail, but there would have been a percentage of the bonus linked to specific quantitative targets. Supervising managers would highlight specific tasks that had to be

undertaken during the course of the year, attaching a percentage of base salary to each of those, and there would be an overriding general performance award, with only an excellent performance attracting the maximum award. Therefore, it was both quantitative and qualitative, and I felt, a fair representation of each individual's contribution. It was not just I who managed performance; it cascaded down so that the senior managers who reported to me managed the performance and bonus awards of their own people. In addition, a bonus payment summary would be presented to the Remuneration Committee of the Board, who could deliberate and see how it was allocated and assessed, before it was awarded. My bonus was awarded by the board, in my absence from the room as recommended by the Chairman.

134. The question has been asked whether the bonus scheme was controlled by CEC. It is never the shareholders' responsibility to control a company's internal bonus scheme. Basically, the cost of the scheme was budgeted, the budget was signed off by CEC, and TIE was responsible for administering it.
135. To my knowledge, CEC officers were kept informed, particularly Andrew Holmes, by me, because he was responsible for the TIE budget. Elected members, other than Andrew Burns, who was on the TIE Board, did not have enough information to exercise any supervision or control over bonuses. I am surprised there are now so many questions about this subject. I presume the very fact of introducing a bonus scheme in a public sector organisation was more significant than I perceived at the time.

### **Tram Project Board**

*[The minutes of the TIE Board Meeting of 22 August 2005 (TRS00008528) refer to a draft remit for the ETP Board (Appendix 2, page 50). This describes the role, remit and responsibilities of the TPB. "The TPB exists to 'champion' the best interests of the ETP." ]*

136. TIE delegated most of its own responsibility for the ETP to the TPB. TIE nominated a TIE Director, Gavin Gemmell, to chair the TPB. The person who fulfilled the role of Chief Executive of this Board was the Tram Project Director. Most parties who had an interest in the tram already attended the TIE Board. However, there was not enough time in the two hour TIE Board meetings to give ETP adequate scrutiny.
137. The TPB was a good idea, since the ETP needed a working board with more time to devote to the ETP. The TPB itself met typically for two hours, so this achieved that objective.
138. I had some concerns over the TPB and its individual members. The TPB model created a new layer because it was in fact an executive board beneath the TIE board. And then it was suggested that TEL would assume a new role with the “mantle of control and ownership.”. So, the respective roles of TEL and TPB were unclear from early on. TEL had been called the so-called new “government in waiting”, and TEL was represented by Neil Renilson who had a strong executive bent. This seemed likely to make life more difficult for the Tram Project Director.
139. Further there was bound to be conflict of interest for each member of the TPB in considering both i) the broad interests of the ETP on the one hand (it was the primary remit of the TPB) and ii) the narrow interests of the company or contractor by whom that member was employed. I assume this could well have generated mistrust and would have been tricky for the Chair to manage.
140. In the event, there were clearly other changes going on of which I was not aware. TEL did not wait long to move into the lead. It was announced by CEC that David Mackay, newly appointed Chairman of TEL would become Chair of TPB, and that TEL and TPB boards were “one and the same”. I do not recall any explicit announcement to me from the CEC or from the TIE Board about this. (There was an acting Chair of TIE at that moment, who I think was Gavin Gemmell.) In essence, the TPB seemed like a great idea for creating a better

client to oversee the Tram Director, but its implementation was clumsy and muddled and this unforeseen TEL “coup” risked making things worse rather than better.

141. You ask about the Tram Project Director Executive Summary (TIE00090571), produced for the TPB meeting (agenda item 3) held on 22 November 2005. It is a rather peculiar report. It looks to me as though it was written by a man in a state of intense frustration seeking to get clarity and move forward fast. I can understand why he wrote it in the way that he did, but it was perhaps not very tactful. I do not remember Ian Kendall asking for my advice on how to handle this meeting. The report highlights one approach of Ian Kendall i.e. to offer a sheet for approval and signature, without covering the ground with a presentation setting out the rationale. I suspect that he was impatient with the additional influence over his freedom of action, even though at that point the takeover by TEL had yet to happen.
142. The Delegated Authority Rules (DARs) were appropriate and sufficient, if it was simply a question of transferring the TIE responsibility. The DARs were simply novated to TPB.

### **Transport Edinburgh Limited**

143. To balance strategic operating decisions between trams and buses in Edinburgh without problems from the Competition Commission, it would be necessary in due course to have a single economic entity. TEL was the answer. TEL was created in 2004, to become Edinburgh’s vehicle for this purpose.
144. Until 2006, TEL seemed to be largely dormant because it would only need to become active as the tram approached operation, which would be after the system was largely built.



145. When Willie Gallagher was nominated to the TIE Chair, a surprise decision was also made to hire David Mackay to chair TEL. Previously Andrew Burns (Member for Transport) had been mentioned by CEC as the intended Chair.
146. Neil Renilson and David Mackay were both ambitious. Together it seems plausible that they could have pressed hard on CEC at the highest level to pull the bus and tram activities together quickly under Neil Renilson's leadership. Both would see TEL as the means by which they could achieve overall control of both bus and tram on the fastest possible timetable.

*[The Minutes of the TIE Board meeting held on 20 December 2004 (which can be found in the papers for the subsequent meeting - TRS00018651) record (page 8) that you participated in the TEL Board meetings as an "observer".]*

147. In 2004, TPB did not exist and TEL was not anywhere close to becoming the controlling entity. It was engaged in operations integration, which included timetabling and street infrastructure. I did not have much to say on these subjects. It would become important when the bus/tram integration happened but this was too early. However, as the result of my observer status at TEL Board, Neil Renilson for the first time had a reciprocal role on the TIE Board.
148. The TPB report dated 22 November 2005 (TIE00090573) referred to TEL governance and service integration. The TEL Board was described as a forum for debate and resolution of service integration issues, while the TPB was the forum for resolution of all project matters. The two boards therefore had different roles.
149. The minutes of the TPB dated 19 December 2005 (TRS00002102) note that the "*TEL migration plan was identified as essential in understanding roles and responsibilities going forward*". There was no evident need for any TEL migration plan at that stage, but under the impetus from David Mackay and Neil Renilson, it was a useful way to speed along the agenda for TEL.

150. The minutes of the TPB meeting on 22 November 2005 (TRS00002067) note that the TEL Board “*will hold the mantle of control and ownership post financial close*”. As it happened, TEL did not wait, and the “merger” of TPB and TEL moved ahead within weeks, and well before the financial close.
151. The minutes of the TPB of 23 January 2006 refer to the “merger” of the TPB and TEL Boards (TIE00090588). After the detailed and exhaustive prior staffwork on the remit and role of the TPB, this merger assertion seems at the least to be surprising. There is no reference to the remaining role of TIE as the legal counterparty to the CEC/TIE operating agreement, and therefore the party still responsible for the ETP. TIE had agreed to delegate to TPB, not to TEL, so the “merger” assertion by Mackay seemed to be somewhat cavalier.
152. I recall Mackay saying at his first TPB meeting in Jan 2006: “*from now on TEL and the TPB are one and the same*”. From that moment, despite the CEC/TIE operating agreement, it seemed TIE was no longer responsible for the strategic management of ETP. Instead TIE became a deliverer of infrastructure to TEL, which is a different role than overseeing the whole project. I was still however expected to manage the Tram Director, Ian Kendall, and his emerging performance challenges.
153. I am not sure what happened later and have not enquired. I did learn that Neil Renilson departed and wonder how the TIE/TEL/TPB triangle evolved subsequently.
154. Meanwhile I felt that Ian was subject to additional distraction as a result of this TEL “takeover”. I recall that there was friction between Ian Kendall and Neil Renilson. Ian would have been upset by this turn of events.

## Transport Scotland

155. I declare an interest insofar as I was one of two in the final list of candidates to become the Chief Executive of TS. As it happened, Malcolm Reed, who was previously the Chief Executive of Strathclyde PTE, was appointed.
156. Damian Sharp with whom we were working at SE moved to TS, with his team. Prior to the advent of TS, there was no technical project management expertise for rail available to the SE, except within NR. The objectives of NR, which was a UK-wide organisation, often conflicted with the priorities of the SE. NR saw Scotland as just one tenth of the UK and often did not give much priority to it.
157. Thus in 2002, TIE had been seen as a useful vehicle for the SE. The SE saw TIE as a useful supporter for a range of non-Edinburgh responsibilities, most notably EARL, which would have been a significant addition to the Scottish NR Network, and also the Stirling Alloa Kincardine (SAK) restored freight railway, which was to bring coal to an existing power station.
158. It is asked why TIE agreed to take on other projects. Prior to TS, there had been no way in which smaller authorities could get project management from the public sector. TIE's overheads, including the cost of both of me and my staff, were significant. If TIE had more projects, the cost of overheads could be spread further and the cost to CEC reduced. Thus Alex Macaulay, formerly the Tram Project Director, took on a role within TIE to seek work on development of smaller projects for neighbouring local authorities. However, once TS was formed, it had a wide remit which included roads, bridges and also management of the Scottish national transport budget. Thus this "missionary" role of TIE had less to offer.
159. Both the SE and TS could be a bit opaque and slow. With regard to the ETP, It was opaque in the sense that TS were trying to get CEC to come up with money in addition to their own money but the result was a nebulous ambiguity

surrounding the project budget. This was not constructive, and TIE and its potential Infraco contractors were not getting clear answers. By holding back on promising indexation of the £375M, I presume SE/TS thought they were applying pressure to CEC to come up with a larger share of the project cost. That struck me as a rather byzantine way of doing it. What actually happened is that this lack of clarity discouraged the Infraco bidders.

160. The tram was a CEC project but, of course, the large majority of the funding was coming from SE/TS, so there was always someone from SE/TS at the meetings. Damian Sharp, in particular, attended frequently. Thus TS were attending the TIE Board meetings and regular SE update meetings at Victoria Quay. The key players were John Ewing, still the Head of Transport at the SE; Damian Sharp, who migrated to TS once it was created; and others within TS. There did seem to be a lot of TS. There were twice as many people supervising TIE from TS as there were actually working in TIE.

### **Lothian Buses**

161. LB's early concerns with the ETP were focused on the appropriation of passenger traffic on their busy routes. This was understandably a big problem in their eyes. Neil Renilson wanted to be involved with the ETP because he feared severe damage to "his" business and did not trust TIE. It was assumed by TIE that this eventually would be addressed by CEC, and that any way this matter was some way off. See para 16 above.
162. The Joint Revenue Committee was a study team set up to assess what would happen as a result of the tram introduction, and what would happen to LB fare revenue. The JRC was appointed to support primarily TEL, the single economic entity that would control both businesses..

## **Advisors to TIE**

163. I had a close relationship at senior levels with PUK, D&W, DLA. The various technical advisors were procured by, and reported to, TIE's project leaders.
164. PUK handled themselves well. Martin Buck and James Papps were competent and thoughtful. Martin Buck was more influential, but he became less involved. James Papps was quite clever but tended not to make an impact in a big meeting. James would then refer issues to Michael Gerrard, head of PUK, who became involved later on. D&W managed the Parliamentary agent role and the Public Inquiry well. We used Malcolm Thomson QC to represent TIE at the ETP Parliamentary Hearings and the CC Public Inquiry. He was an able advocate.
165. The biggest vulnerability was DLA, who advised both CEC and TIE in relation to the tram. At the beginning, TIE wanted Scottish-based expert tram lawyers and, of course, there were no such people because there were no trams in Scotland. Therefore, we decided to go for DLA as the firm that knew the sector, and asked it to establish itself in Scotland. However, DLA picked a new Scottish partner called Andrew Fitchie, who had not worked in trams before. He lacked the relevant experience. The TIE Board felt that we should have had better support, for the amount of money being billed. I made representations to DLA London, and visited Andrew Fitchie's boss, who said they would deal with these issues by strengthening Andrew Fitchie's team. I would have preferred a more experienced DLA partner, but Andrew Fitchie remained in place. If there were problems around the contract terms and language, a fairly sizeable slice of ownership should lie with DLA.

## **Office of Government Commerce - Readiness Reviews**

*[In May 2006, an Office of Government Commerce (OGC) Readiness Review was carried out on the ETP, and you were involved in determining the Terms*

*of Reference (CEC01881454 and CEC01881455). A report of the review dated 25 May 2006 (CEC01793454) was then delivered to you as Chief Executive of TIE. ]*

166. I set up this review in conjunction with PUK after Ian Kendall had been relieved of his responsibilities. We were concerned about what we might, or might not, know about how the ETP was doing. The best way to find out was to bring in experienced outsiders.
167. The report of the review dated 25 May 2006, and issued to me on that date, is a particularly good document (CEC01793454). Malcolm Hutcheson, who led the review, and three team members, none of whom I knew – Mike Heath, Sian Dunstan and Willie Gillan – were all outsiders with experience of civil engineering contracts. The key page is the ‘Red, Amber, Green’ summary. I used it to highlight the issues to Andie Harper, to show where we had not been fully focussed. The recommendations listed (on page 13) show 6 red areas, 6 amber areas, and no green areas, so it was not a good score. PUK, in particular, were supposed to be TIE’s eyes and ears and had not flagged these concerns. James Papps was quietly spoken and perhaps he had his worries, but he was not forthright enough in terms of saying what the issues were, and what should be done.
168. It was clear that there was a serious danger to the project if the correct actions were not taken swiftly. I had strong concerns along the lines of those underlined by the Readiness Review. I was pleased with the showing of Andie Harper, who I had appointed as Interim Project Director, and the comments of the committee about him.
169. Then Willie Gallagher arrived and set himself up in the absence of Andie Harper as the acting Tram Project Director. This was despite the fact that Andie Harper was a qualified and successful major project director, who had impressed the OGC Review Committee. Willie Gallagher had never ever managed any such project. Thanks to this episode, I had little, if any, chance

to follow through on the recommendations of the Review before my employment came to an end. Andie Harper retook the lead, once he returned from holiday in July. I left at the end of July.

170. A second OGC review was carried out in September 2006, shortly after I left the project. Obviously things had improved and progress had been made because the outcome of the second review, just four months later, was 'Amber', which was better. "The project should go forward with actions on recommendations to be carried out before the next review of the project".

## Governance

171. The agenda and papers for the TIE Board meeting on 22 August 2005 (TRS00008528) (page 26). The structure was overly complicated. I think it sapped the energy and effectiveness of Ian Kendall, who was in any case not performing in the role, and that is probably why so many 'Red' action points arose. He did not address the necessary issues, and his style of management did not engage and motivate his people. He had a tendency to tell people what to do, but in a project of that size you cannot do that; you have to ask people to help you to get things done, and get their input and active collaboration.
172. Efforts were made to work on the relationships between CEC, TIE, TEL and TPB, which was the purpose of the TPB Board. In my view, the lead to straighten things out had to be taken by CEC, and it was not. We were not helping the Tram Project Director.
173. I believe this subject already been adequately aired in the sections on TPB, TEL and Lothian Buses. I need to add no further personal perspective. I reproduce below the reference documents from your original September 2016 questionnaire [paras 174-180].

174. The report to the CEC Council dated 30 June 2005 (**CEC02083971**) refers (paragraph 5.13, page 5) to a *“full and comprehensive review”* of the relative roles of all of the organisations involved in the ETP. [This paper was an enabler for the later papers referenced below.]
175. The attachment to my Chief Executive’s report for the TIE Board meeting on 25 July 2005 (**TRS00008524**) lists (page 19) the *“Summary of principal issues”* to be delivered by the governance structure.
176. The relationships between the main boards and committees are set out in the minutes of the TIE Board meeting of 22 August 2005 (**TRS00008528**, page 51, paragraph 5.1 under *“Responsibilities and delegated authorities”*).
177. A project governance review was undertaken and a report submitted by Graeme Bissett as part of the papers to the TIE Board meeting held on 24 October 2005 (**TRS00008535**, page 30). DLA had written a document called the *“Legal Review of Project Board Remits”* in October 2005 (**TRS00008535**, from page 43).
178. The Tram Project Director Executive Summary dated February 2006 (**TIE00090593**, page 10) notes that: *“the Project Board should ensure that effective mechanisms are in place to manage the project”*. In particular, the report notes that there should be: (i) rigorous controls over expenditure; (ii) effective change control processes; and (iii) effective risk management procedures.
179. The Chief Executive’s Report submitted by me to the TIE Board dated 27 February 2006 (**TIE00087124**) records that the role of the TIE Board was changing with: *“direct responsibility for the ETP now passing through TEL to CEC.”*
180. The OGC 1 Review from May 2006 (**CEC01881455**) also refers to the governance structure of the project.



181. As a footnote, my note dated 26 May 2006 (CEC01740339) refers to the requirement for TIE to act as one organisation (tieVision). I do remember that we appointed a firm whose principal was Mike Nichols, to do an internal survey. Whether or not this was my initiative, I do not recall. It is certainly understandable that with the many changes that had arisen in 1H 2016, an effort to draw the team together was justifiable. Whatever happened to tieVision after my departure I cannot say.

## CEC

182. During my time at TIE, CEC were not so much an active overseer as an observer. In the absence of active input, things just seemed to happen around CEC. When there is turbulence among offspring, the parent should step in and reassert order. This did not happen. Whether it was selecting a new Chairman with the right qualifications for TIE, doing an audit of the skills on the TIE board, or managing and controlling the activities of TEL, or just pulling people together to hear things out, there was no evidence of an active role from CEC.

183. With regard to communication with CEC, I very rarely got phone calls. I would get an email, or rumblings through a third party that someone was uncomfortable, and I would have to pick up the phone and ask Andrew Holmes or perhaps Keith Rimmer if what I had heard was true. Generally, I would find that it was, and the matter could be addressed.

184. For me, "CEC" meant the CEC City Development Department, to which TIE reported. My relationship with Andrew Holmes the Director was good. We met in Andrew's office late on Friday afternoons. We were always able to address issues without conflict.

185. We did have concerns about the upper level of CEC engagement and support. Ewan Brown was occasionally able to talk to the CEC Chief Executive, Tom Aitchison, Andrew Holmes' boss, ~~who reported to Tom~~. To

me, Tom Aitchison was therefore distant, and rarely became involved. What CEC did not do throughout 2002-5 was to take ownership for addressing the question of how to get LB on side. I mention elsewhere that Nottingham was comparable to Edinburgh, because they owned their bus company as well, but Nottingham had managed to get the bus company on side from the beginning, and that had made all the difference.

186. It would have been totally counterproductive and expensive for CEC and TIE to have had separate advisors or experts in order to check or validate information being passed from TIE to CEC. TIE operated a policy of full disclosure. Andrew Holmes and Andrew Burns could speak to TIE's advisors or to my subordinates directly at the TIE Board, or whenever they wished in order to satisfy themselves as to the validity of their inputs. I noticed that sometimes Andrew Holmes did not come to the TIE Board meetings, which seemed a bit odd. However, we had consistent support from the Member for Transport, Andrew Burns, who was terrific.

*[The email and attached note entitled "tie/CEC" sent by Barry Cross to me dated 4 December 2005 (TIE00707565 and TIE00707566) refer to his views on TIE's relationship with CEC. The note states that: "CEC set up TIE, but not necessarily voluntarily. It was a condition of committing the £375m by Wendy Alexander MSP, Minister at the time."]*

187. I had forgotten that TIE was established because previously CEC had started projects themselves but had never actually delivered anything. Therefore, the SE told CEC to find some way of running things better before committing to the finance. The fact that ~~they~~<sup>CEC</sup> were forced to set up TIE, rather than having volunteered to do so, could well have coloured their attitude towards TIE. In other words, they could thus have seen TIE as an unwanted creature foisted on them by the SE. There was always a level of mutual suspicion between CEC and SE, both of course located in Edinburgh. The note goes on to state that: "CEC wholly owns tie. Profitability might therefore be considered

*desirable*". I do not agree. There could have been no question of TIE charging fees to CEC to make a notional profit. That does not make sense.

188. With reference to the remainder of the note, it is true that CEC's role was more one of *"check, control, audit – rather than support, assist and enable"*. (When Barry Cross referred to CEC, he was talking about Head of Transport, Keith Rimmer, and City Development Director, Andrew Holmes.) There were certainly no champions of TIE at the higher levels of CEC. Barry Cross himself came to TIE from the Transport Department, and he was excellent. Barry Cross's note continues later that: *"CEC's view is probably at its worst within functions removed from City Development. The Council Solicitor's team is a particular problem."* I have no recollection of any issues relevant to this comment. The note continues: *"CEC is generally reluctant to allow TIE to work for other clients..."* CEC appeared worried about dilution of effort on their own projects, but they never disallowed it.

*[The agenda and papers for the TIE Board meeting on 12 May 2003 (TRS00008474) note (page 11) that TIE's "goals are completely aligned with the Council and its other public sector stakeholders in the delivery of transport projects". ]*

189. This paper was prepared at a time when the SE itself realised that it did not have project management capability (which was later rectified through the creation of TS). They wanted TIE to take on the management of two rail projects, which CEC and TIE agreed it should do. Therefore the above statement was made in the context of any alternative to TIE, which would have been a private sector project management firm. A private sector firm would seek to further its own economic interests and profit, whereas TIE did not. The evident truth is that TIE, as a matter of objective fact, was a public sector organisation looking after the interests of the public sector. Its identity of view with CEC was not however being asserted.

190. As I have said, the influence from LB within CEC was stronger than that of TIE. There was a strong view spelled out by LB that the large sums of money to be spent on the tram would be better allocated to improving the bus network. When the CC referendum was lost, it seemed probable that CEC hoped that the tram would go away. TIE (both the Board and I) were surprised when the SE then reconfirmed the £375 million funding. Perhaps it confirmed that CEC was, in some respects, being dragged unwillingly towards the tram whereas it was really the SE's big idea. Possibly TIE was viewed as a 'cuckoo' placed in the nest' by SE/TS, rather than a cherished creature of CEC.
191. I do not recall there being any issues that required arbitration. Whenever there were issues of that nature, Andrew Holmes and I talked to each other over a cup of tea and ended up with a satisfactory conclusion. The responsibility to resolve unbridgeable issues would have gone up to Tom Aitchison as the Chief Executive, and to Ewan Brown as the Chairman of TIE. I do not ever recall ~~them~~<sup>their</sup> having to meet in that context.
192. Despite higher salaries at TIE, there was a certain amount of reticence from CEC employees about joining TIE. There was the high risk that one might find oneself out of a job when the ETP came to an end. The better salary with TIE though appealed to some CEC senior officers, such as Barry Cross, and later the Head of Transport, Keith Rimmer, who both transferred to TIE. TIE procured the ETP and so had the spotlight, the funding and many good people. I am sure this was not good for morale within the Transport section of City Development Department.
193. Despite all the above, the relationship between me and CEC's City Development Department, specifically Andrew Holmes, was good and we always sorted out TIE's narrow problems without fuss. Andrew Holmes had other responsibilities, including encouraging investment in Edinburgh, and was responsible for CEC's built environment. However, it did not come

naturally to Andrew to rock the boat by getting involved, even though in retrospect, it could well have helped TIE and ETP.

194. However, there was a problem for Andrew Holmes. How could <sup>he</sup> seek to take charge of the debate within the relevant CEC companies, TIE, LB and TEL, without the active input and involvement of Tom Atchison, to whom the last two reported? Thus Tom Atchison seems have to lacked engagement and focus in resolving these problems.
195. The person who really displayed that engagement and focus on behalf of CEC was Andrew Burns, the Member for Transport. He was on the TIE Board, and was a very positive influence, and a good guy in every way. But he also had no remit for either LB or TEL.

## Risk

196. Mark Bourke, of Turner and Townsend, was hired to take ownership of risk management for all TIE projects, at a time when there were emerging concepts, such as Optimism Bias, of which we were starting to take advantage. Mark reported to me, so that risk had the highest level of attention. I was involved because Mark worked closely with the individual project managers, particularly Ian Kendall, Tram Project Director. He worked very hard and kept up with the risk register for all projects, particularly the tram. I encouraged my direct reports to follow Mark's recommendations.

I have nothing further to add.

## Delay

197. Graeme Bissett sent me an email dated 27 October 2005 (TIE00710136), which referred to the cost of delays on the project. We all understood that delay was inevitably expensive.
198. In his letter addressed to me (CEC01827972), Bill Woolgar, Managing Director of Turner & Townsend, commented on the progress of the project, including the utilities diversions, project objectives and priorities, and the procurement of Infracore. This letter was received a week after I had decided to leave. It is a fairly detailed technical synopsis, which would have been delivered to the Tram Project Director in the first instance, had there been one at this point. I do not have the memory <sup>of</sup> the detailed knowledge to respond to the points mentioned. I have no reason to disagree with Bill Woolgar's comments, albeit that I do not know quite what his mandate was. It should also be noted that Turner & Townsend are a commercial project management company, who were already working on the Technical Support Services (TSS) contract, and certain recommendations can therefore be expected to be slanted toward the interests of his company.
199. Bill's letter echoes the Readiness Review with regard to PB not having completed SDS utility surveys or a diversion strategy, and to the urgent requirement for Halcrow to complete utilities design. The poor response to the OJEU (Official Journal of the European Union) notice for the Infracore contract reflected the risks that were to be undertaken by the contractors. The risk transfer and responsibility for all statutory consents was not attractive. I also have no reason to disagree with the observations about "*organisational accountability*" and Mr Woolgar's belief that "*the project structure needs to be redesigned and refined*". He points out that his joint proposal with Scott Wilson on utilities presented in earlier meetings to Ian Kendall "*had not yet been adopted*". However, I do not know what happened subsequently as a result of this letter.

## **Interaction with the Public and Businesses**

200. My report to the TIE Board meeting dated 16 February 2004 (**TRS00018613**) refers (page 11) to "*managing the public interface*". I would simply refer to the fact that I had previously reported to the Board on 15 December 2003 summarising the whole public interface issue (page 3 of **TRS00008492**).
201. We did our best to be open to inputs and to respond constructively to all contacts from the public. It was a question of doing it professionally, and the major thing that might have helped is Nottingham's experience. Nottingham managed to unite the bus company and the trams in a way that allowed the city to speak authoritatively to its residents, Nottingham set up a body early on which brought the Council-owned bus company into full engagement with the tram project.

## **Consequences**

202. I did not live in Edinburgh during the period of construction, and so I am not well-informed in relation to the consequences of the ETP as far as residents and businesses are concerned. Beyond generalities as to cost, inconvenience and irritation, I do not know.

## **Conclusion**

203. My Chief Executive's Report dated 26 June 2006 (**CEC01827975**) was my last report prior to departing from TIE, and it records my thoughts on TIE's major projects. My comments about the conclusions of the Readiness Review in May 2006 underline some of the deficiencies that had emerged strongly during the four month period earlier that year when Ian Kendall remained in charge. I was very impressed with his successor Andie Harper and his willingness to listen and delegate.

204. TIE was a creature of CEC which was well received. SE and even other Councils wanted to make use of our services and TIE did good things in terms of projects which it managed for others. The Balgreen Busway is now in use for the tram, the Ingliston Park and Ride is in daily use, and the SAK line was a success. TIE could well have done a good job of EARL if it had continued.
205. Whoever is now running LB will no doubt tell you that the tram has had adverse effects on the bus business. At that time, Neil Renilson was simply trying to run the business and, in the absence of any effective supervision, manage in the best way that he could conceive. He and I could have been working together, but in the absence of coherent guidance from above, sadly we never did. It seemed impossible for us to align ourselves without external support and it is a pity that CEC took no responsibility for making that happen.
206. So, CEC was largely absent from the field of battle, at least for most of the time that I was there. TEL was eventually created to bring the bus and trams together. Presumably it worked eventually but neither I nor, as it happened, Neil Renilson were any ~~was~~ ongoing part of that.
207. However, finger pointing, to the extent of these my comments, cannot help. I can only view things from today's perspective of my job at that time. Not everything in TIE's garden was perfect. However, everyone in TIE worked very hard, we had a good team and a good atmosphere within the company. To the best of my knowledge my annual assessments were strong, and were reflected in my annual bonus payment.
208. The undeniable achievement now is that Edinburgh does have a tram in operation, which is starting to develop popularity with the travelling public. In contrast, a lot of cities spent money on tram projects and got nothing. I am sure we will also see extensions to the Edinburgh tram system. In 10, 20 or 30 years' time, the challenges that beset us will have faded, and history will record that TIE made a big difference to Edinburgh's long-term success.



I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 60 pages, to the best of my present knowledge, are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature. 

Date of signing.....22 August 2017\*

\* I originally signed and sent this transcribed statement on 5 July 2017, but it was lost after receipt by the Waterloo Place office.  
M.H.

