

THE EDINBURGH TRAM INQUIRY

Witness Statement of William Joseph Reeve

Statement Taken on Wednesday 18 November and Tuesday 24 November 2015 by Gordon Mitchell in the presence of David Murdoch, both Edinburgh Tram Inquiry, and Stephen Leslie Rees, Solicitor, Scottish Government Legal Directorate

My full name is William Joseph Reeve. My contact details are known to the Inquiry.

Statement:

INTRODUCTION

1. I am currently Commercial Director at Transport Scotland. I joined the Scottish Executive in 2005. Prior to that I was Director of Project Sponsorship with the Strategic Rail Authority where I was responsible for the sponsorship of all rail projects in Great Britain outside London. That included the sponsorship of a considerable amount of infrastructure work across the entire rail network, including in Scotland.

2. I am a railway engineer by profession. I joined British Rail in 1983 as a sponsored student and had a variety of engineering, production and commercial roles in British Rail through into privatisation. I joined the Strategic Rail Authority in about 2000. So I have a background in a wide range of rail engineering, operations and projects, rail commercial management, and business development.

3. In 2005 powers for the railway system in Scotland were devolved to the Scottish Executive. I applied for and was given the role of setting up the expanded rail team within the Scottish Executive to manage these new powers. Initially, I was responsible for rail franchising. The portfolio of rail projects was added to my responsibilities from December 2005. The tram project was part of that portfolio.

Transport Scotland (TS) was created on 1 January 2006 as a new agency of the Scottish Executive and my position in TS in 2005 was Director, Rail Delivery. TIE had already been set up prior to my employment by the Scottish Executive. I reported initially to John Ewing and, once TS was established, directly to Malcolm Reed who was appointed Chief Executive of the new agency. Throughout my period of responsibility for the Tram project within Transport Scotland, I reported directly to the Chief Executive of Transport Scotland.

4. In December 2010 I moved into a new position as Commercial Director and I was given the task of running a number of rail related commercial projects, principally the procurement of the new ScotRail and Caledonian Sleeper franchises. I therefore ceased to be involved with the Edinburgh Tram Project in December 2010.

INCREASING THE SCOTTISH GOVERNMENT'S CONTRIBUTION TO THE TRAM PROJECT

5. I am referred to the following documents relating to the indexation of the Scottish Government's (SG) contribution to the tram project of £375m:

- i. TRS00001917 – memo from Transport Scotland to the Minister for Transport dated 18 August 2005 regarding the outline business case
- ii. TRS00002139 – email memo from Minister for Finance and Public Service Reform to Minister for Transport dated 15 December 2005 querying the proposed indexation of the £375m
- iii. TRS00002128 – memo from Transport Scotland to the Minister of Transport dated 3 February 2006 recommending phased approach to construction of tram project and indexation of the £375m
- iv. TRS00002138 – memo from the Minister of Transport to the Minister for Finance and Public Service dated 6 February 2006 regarding the Transport Investment Plan and approving indexation of the £375m

6. I am asked why the politicians ultimately agreed to the indexation of the £375m figure. In relation to Kenneth Hogg's memo to Ministers dated 18 August

2005 (TRS00001917) and the ministerial memo dated 15 December 2005 (TRS00002139) it should be noted that I was not in charge of projects at this point. By February 2006 I was at Transport Scotland and the tram project was a part of my portfolio and I can recall that there were discussions in relation to indexation of the SG contribution. However, I only recall that the issue was discussed, as reflected in the various documents I have seen, rather than any specific discussion.

7. The Ministerial memo dated 15 December 2005 (TRS00002139) looks to me like a perfectly normal exchange between a Government finance department and a Government spending department. It contains a proper level of challenge as to why an increase in cost is needed. A memo of this nature is a normal part of internal government process. The context of the discussion regarding indexation was the progression of the tram Bills through Parliament. Ordinarily when a Bill is going through Parliament funding issues are a normal part of the scrutiny process. The issue was whether the Scottish Government's commitment was sufficient to fund the expected costs of the scheme. What you're seeing in these documents is a discussion around the fact that SG could afford to index the original amount for inflation which was expected to be sufficient to cover the costs of phase 1a, but that it is unlikely to be able to afford to fund phase 1b as well.

8. These documents show a fairly standard debate regarding cost which led to the resolution that it would be proper to index the £375m contribution and that indexing would be sufficient to cover phase 1a, but not phase 1b. The SG agreement to indexing was contingent upon the project being limited to phase 1a. What you see from the documents is a sensible discussion about ensuring that SG are not promising more scope than it can afford to pay for, based on the estimates that were available and in the context of a parliamentary process.

9. I am referred to the following documents:

- i. TRS00003119 – letter from Tom Aitchison, City of Edinburgh Council (CEC), to Malcolm Reed, TS, dated 23 November 2006 requesting increased funding for tram line including Granton
- ii. TRS00003127 – email from Damian Sharp to Bill Reeve dated 24 November

2006 in which Bill Reeve expresses concern at CEC's request for increased funding

10. I am referred to an email from Damian Sharp to me dated 24 November 06 (TRS00003127) which refers to a letter from Tom Aitchison to Malcolm Reed dated 23 November 2006 (TRS00003119). Damian Sharp was part of my team at the time, he was Head of Projects and reported directly to me.

11. In his email, Damian Sharp says that he is concerned about CEC's request for extra funding. He appears to have been concerned about two things. Firstly, he appears to have been concerned about what he perceived to be an attempt by CEC to 'bounce' TS into a quick decision and, secondly, he appears to have been concerned about an increase in the amount over and above that which TS might have previously indicated. It needed to be considered whether it was proper for TS to allocate additional funds at that stage and the benefits of extra funding had to be considered. In the email Damian makes the practical point that we didn't have a spare £40-70m to extend the line to Granton.

12. The request from CEC was made after we had agreed to the indexing of the contribution. I think this was a request for a bit more money for phase 1b and it was made in December 2006 in the run up to the May 2007 election. It is not unknown for organisations to seek to secure commitments from politicians in advance of an election. The position of TS at that time was that we were not in a position to offer extra funding.

13. I am asked whether, at that stage, TS was concerned about whether CEC's and TIE's estimates were realistic and whether CEC may ask for extra money after the contract was signed. This email should be seen in the context of the normal development process for estimates for projects. TS had an ordinary level of concern about the cost estimate for this project. There was the usual engagement between TS and TIE to determine what approach to cost estimation had been used and this email represents an ordinary part of the process at that stage. What I recall is that TS stuck to the position that it would provide sufficient funding for phase 1a and some scope for risk above the cost estimate. We ended up with a settlement

allowing expenditure up to £545m. That settlement was designed to be more than sufficient to cover the cost estimate for phase 1a at the time. It was not thought to be sufficient to cover phase 1b as well.

14. Damian's email forms part of the normal process of scrutiny that TS undertook before the business case was signed off. There is nothing in the email that looks like an out-of-the-ordinary exchange for a project at this stage.

15. I am referred to a presentation by KPMG to the Scottish Executive dated 6 March 2006 (TRS00002210). KPMG were tasked to provide support to TS on a range of projects including the tram. I recall discussions around KPMG's report at that time. KPMG's report and the issues it raised was part of the normal process of scrutiny at this stage in the project. I am referred to a passage in the KPMG report which states that, with the chosen procurement method, delays and overspends may come to TS's attention only at a late stage in the construction process, when there is no realistic option other than to pay more money. That is a normal observation in relation to a conventional procurement route. If you get into procurement and things go wrong you end up paying more money. KPMG's observation is not unique to the tram project. Alternatives to conventional procurement might include PPP (Public Private Partnership), an approach which is not without criticism either. When faced with problems of procurement strategy you have to weigh up the strengths and weaknesses of different procurement models for a particular project. I believe that KPMG would have identified some problems in any procurement route we could have chosen.

16. In the context of other tram projects there had been attempts with PPP which had not gone well, particularly around endeavouring to transfer revenue risk. I think Croydon is an example of the use of the PPP model on a tram project which led to the failure of the contractor after the project started. The market sentiment at the time was that we should not seek to transfer revenue risk for the tram project. In relation to procurement we needed to consider how to stimulate good competition and ensure that the procurement is of interest to the right calibre of bidder. If you don't get these things right then costs will increase as the project progresses. I do recall discussions about the weaknesses of other models. A good deal of

benchmarking with other tram schemes had been done. There had been visits to Dublin, Nottingham and Croydon. A great deal of thought was given to the risks inherent in a tram scheme and to the appropriate method of addressing those risks. In my view, this project had done more than most to seek to learn from lessons from other projects.

17. I am asked whether TS expected to pick up any additional costs of the project. The KPMG report came before the issuing of the grant letter. The report makes the general point that if costs go up once the project had started then someone had to pay those costs. Hence there was an interest in ensuring that the plan to deliver the tram project reduced the risk of costs escalating. The grant letter was drafted and issued on the basis that the Scottish Government would not be liable to pick up any additional costs – rather, these would fall to City of Edinburgh Council.

ESTIMATES OF THE COST OF THE TRAM PROJECT

18. I am referred to a paper submitted by TIE to TS dated 26 January 2007 the subject of which is the Infraco Initial Tender Return Project Estimate Update (CEC01789822). The paper relates to initial cost estimates for the project and suggests a range of between £477m and £517m for the project. I have been asked whether I considered those estimates to be achievable or optimistic.

19. When presented with any estimate like this experience tells us that the numbers can go up or down. At the time TS retained KPMG and Cyril Sweett as advisors and I recall that we did some scrutiny of these estimates. TS retained Cyril Sweett as advisors on various transport projects and Cyril Sweett would have tested TIE's cost estimates. I do recall seeing analysis on the programme data in the documents and it is my recollection that this was done by Cyril Sweett at the time.

20. I am referred to a letter sent by John Ramsay to Damien Henderson at The Herald in September 2011 (TRS00011908). This letter was a response to an FOI request by Mr Henderson. In the letter John states that Cyril Sweett was not employed by TS to verify cost assumptions of the Edinburgh Tram Project. That is not my understanding and I think that John was simply mistaken in that letter in

relation to who he thought Cyril Sweett was working for. TS ceased to retain Cyril Sweett for support sometime after the 2007 election. Once Cyril Sweett had ceased working for us I believe it then did some work directly for TIE. It may be that that John was under the mistaken impression that Cyril Sweett had therefore worked only for TIE and not for TS.

21. The estimates provided by TIE did not seem unreasonable. They had been produced by a set of advisors to TIE who were using normal cost methodology, methodology which the Audit Scotland report confirmed as sound. I know that there had been some benchmarking against the costs of other tram schemes. To put this in context in 2004 the Nottingham tramway had been delivered for £200m for a 9 mile system running on streets and beside railways. TIE's estimates were not out of kilter with that. TS's view, after doing some sensitivity testing, was that there might be cost increases of 10% or so. There was also evidence from other tram schemes of value engineering delivering some savings in the last stages of contract negotiation, so TIE's estimates seemed reasonable. The P90 is supposed to provide a 90% confidence level that these costs would not be exceeded.

22. In relation to the work done on these figures, I recall that TS engaged Cyril Sweett and we did some analysis of TIE's programme and costs. We thought TIE were being a little optimistic in relation to some parts of their estimates but there was significant risk provision included in the figures and TIE had included a description of the process of value engineering through which TIE hoped to achieve further savings. The figures did not therefore seem unreasonable.

23. In the development of the draft final business case TS had comments on a number of aspects including the costings and benefits analysis. My colleagues in the economics team in TS would have carried out a review of the draft final business case. It should be borne in mind that TIE's cost estimates had been prepared by reputable advisors to TIE and that the TIE team was comprised of people that had been secured for their expertise at private sector market rates. TIE had its team and its advisors and TIE would have run through these cost estimates using normal methodology. I could not tell you to what extent TIE prepared the estimates with relevant in-house experts or whether they relied on contractual advisors. I believe

that TIE had people with the right skills to calculate these estimates.

24. You can see from the documents that TS had its own views on the costings, the programme and the benefits case. As always happens when you get different advisors to different teams you get different perspectives, but nothing felt out of kilter at this point and nothing felt unusual for this stage of the process.

25. One of the things that is quite striking about this project is that most of the cost categories (including land acquisition, design, tram vehicles, and even the utilities diversions) came in either at or around the original estimates or modestly over at 20-30%. There is a useful summary in the Audit Scotland 2011 report of costs in the different categories. The infrastructure contract, the largest single contract, was the one which caused the difficulties. One might therefore say that this methodology of estimating costs has proved to be reasonably accurate for most aspects of the project, but something has clearly gone astray with respect to the main infrastructure contract.

26. I have been referred to an email from Damian Sharp to Matthew Crosse dated 29 January 2007 (CEC01789893) regarding the Infraco evaluation and revised cost estimates. The discussion and questions in Damian's email are a normal part of the scrutiny of such estimates. I don't know for certain which document Damian was looking at when he drafted his email. Some of these figures would have come from a summary of the estimates, there are different levels of summary estimates. I don't know whether Damian had seen the documents himself or whether he had been provided with advice from our advisors.

27. The estimates provided by TIE would have been looked at by TS staff and advisors. A number of staff and advisers would have been involved, and reports would have been coordinated through the TS rail major projects team in the normal manner. At the time TIE provided these estimates I was a member of the Tram Project Board (TPB) and if I was unable to attend Damian Sharp would attend, so we all would have seen some of this information through the project board papers. I think you will find in the minutes of the TPB that we would have considered TIE's estimates. One of the tests for TS was whether the project would remain affordable.

If TS were not satisfied with the accuracy and rigour of TIE's cost estimates at that stage then it would not have passed that test.

28. I have been referred to the minutes of the Review of Major Projects meeting of 8 May 2006 (TRS00004679). You can see from the remarks in the minutes that TIE are continuing to develop the project programme and cost estimates following Royal Assent. The estimates would be subjected to a quantified risk assessment and some level of optimum bias would be applied to those. TS asked TIE to provide an updated QRA and OB. I don't know if a paper on optimism bias was ever provided to TS. I would have expected normally to get a response to such a request for a report before the next quarterly review.

29. Optimism bias is based upon an observation that project estimates submitted by bodies seeking authorisation for funds often contain a measure of underestimation which is not captured in quantified risk assessment methodologies. Optimism bias is applied on top of the standard risk assessed costings. Risk, contingency and optimism bias are different things.

30. I don't remember a particular consensus on optimism bias, I would have to refer to reports at that time. I think we might have had a debate on whether a sufficient level of optimism bias had been applied but I would need to check the documents and see what resolution was reached at that stage. I don't recall the debate as unusual for the stage of business case development and scale of project – this is a normal matter for consideration. What TIE are saying in that meeting is that they are not proposing to reduce the optimism bias at that stage and that would be a prudent and conscientious approach. On any project there is often a debate about what the appropriate level of OB should be over and above any provision for risk.

DECISION TO PROCEED WITH THE PROJECT

31. I have been referred to a draft Cabinet Memorandum prepared by the Minister for Transport in January 2007 (TRS00003493) regarding the release of funds to undertake utilities diversions and allow TIE to conclude its analysis of the tram and Infracore bids.

32. This is a draft paper and I cannot recall whether it went to the Cabinet or not, however I understand the context of the memo. There is an acknowledgement that the assumptions made by TIE in the business case are key to the positive benefits to cost ratio (BCR).

33. The BCR requires a consideration of the costs and benefits. Assumptions often have to be made in relation to the benefits of a project. TIE's business case was subject to review both by TS's in-house economist team and also by a set of independent consultants retained by TIE. TIE's consultants were Scott Wilson. Scott Wilson prepared a report for TIE called the 'Independent Model Construction and Application Due Diligence Report' dated December 2006. Our economists had regard to Scott Wilson's report and it would have informed TS's draft memo of January 2007. The conclusion that I noted from Scott Wilson's report was that each overestimate in isolation was likely to be minor and overestimates were likely to be matched by underestimates. There was minimal bias in the way the Scott Wilson study was conducted. The tram project had a marginal business case but on balance it was a positive business case. We have built projects with lower cost benefit ratios, such as the Borders railway. Our experience is that demand for good quality rail-based public transport often exceeds our forecasts. I would also say that we know that not all the benefits we wanted to secure can be monetised and reflected in the cost-benefit ratio.

34. In relation to issues of competition from buses and the creation of TEL, there is often a debate as to whether you allow buses to compete freely or whether you have a central transport authority that plans public transport. In this case Lothian Buses ran the buses in Edinburgh, so CEC made a decision to co-ordinate public transport so as to provide a higher level of integration and avoid duplication between trams and buses.

35. I am referred to an email from John Ramsay to Susan Clark dated 29 January 2007 (TRS00003581) in which John raises concerns about the commencement of utility diversions for phases 1a and 1b. I don't know what the resolutions were to John's questions. TIE ought not to have been undertaking construction work for

phase 1b save only where the works were linked, for example at places where there would be junctions between 1a and 1b. TIE continued to have an aspiration to deliver 1b and CEC thought line 1b was a good thing as it would help to develop the Granton and waterfront area.

36. TS were not against phase 1b but it only had a certain amount of money to spend. TIE did have some scope to discuss delivery of phase 1b with contractors. TIE were trying to find a way of pulling together a proposal for phase 1b that would fit within the affordability envelope, or the affordability envelope plus additional funding from developers who would benefit from the tram. I recall discussions in documents to that effect. MUDFA works for phase 1b should not have been carried out, unless they formed part of 1a works. I am not aware that extensive MUDFA works for 1b were undertaken.

PROBLEMS WITH THE DRAFT BUSINESS CASE

37. I am referred to a draft note prepared by Andy Park, TS, in October 2006 on the draft final business case (DFBC) (TRS00002927). The note states that the draft final business case showed a very weak economic case for the tram and that further work was undertaken to refine the case resulting in a more healthy picture. What you are seeing in this note is a very proper set of questions raised by our economists in the scrutiny of the business case. I think the context of this note is a process of engagement between the teams at TIE and TS over their interpretations of the business case. The economic case cannot be precisely determined. Economists have to apply a complicated methodology to a complicated problem and work together to find the best way of expressing the economic case in a manner that they are mutually content with. In this case Andy Park is doing his job as a 'critical friend' or 'devil's advocate', which was his proper role at this stage.

38. When Andy Park states that work was undertaken to refine the business case he means that the various assumptions in the case have been tested by TS. For example, you need to make sure the base case is right, that you have your assumptions right, and that you are applying your forecasting appropriately e.g. in relation to road congestion. There are a lot of variables in a business case and

small changes to a number of variables can add up to material differences. The difference with the business case here is that it is not just about tram revenue, it is also partly about societal value. For example, it is based on surveys containing information on how people value time. I see this note as a fairly normal exchange in relation to a business case. I am not an economist, however, so if you wish to get into the detail of the economic modelling that was done I would recommend that you speak to the economists involved.

39. TS applied the usual tests to TIE's business case. The Scottish Government used the Scottish Transport Appraisal Guidelines (STAG) to assess the business case. One of the key features of STAG is that scheme selection is not dependent solely upon the benefit to cost ratio. Instead STAG takes into account other reasons for undertaking a project in addition to the BCR. STAG recognises the values and limitations of the BCR.

40. I was not overly concerned by what TIE was presenting to TS at this stage. You can see our concerns reflected in Andy Park's note. These concerns would have been discussed at the IDM Board and those discussions would have culminated in the draft cabinet minute of January 2007

41. I am referred to a document containing TS comments on the DFBC dated 30 March 2007 (TRS00004145). I believe I was involved in the review of the DFBC but I don't recall it particularly. I believe I saw a copy of this document. I would point out that this is a draft final business case and the final business case was not due to be concluded until October 2007 when the bids were in. The DFBC was drafted in advance of submission of bids. I would expect the final business case to be completed when there was a higher level of cost certainty. These comments are on a draft final business case in the expectation that the business case might change on receipt of the bids.

42. The document states that it appears that no account is taken of the construction impacts of the scheme. In assessing the benefits and costs of a scheme TIE had not made an assessment of the wider economic impact of disruption during construction. Clearly TS's recommendation was that the final

business case should take account of and contain proposals for mitigating construction impact. TS express concerns at section 10 about risk management and again TS would expect TIE to address these concerns. In relation to section 11 TS understood that the programme was tight and that early milestones had to be achieved in order to avoid delay. However it would not be the first civil engineering project I have seen with a tight programme.

43. TS were concerned that there was a bit less float in the programme than it might have expected. TS were expressing a proper concern to TIE that the programme looked tight. Remember that this is a programme prepared before the suppliers' bids had been submitted. Each of the bidders would submit their own programme and I would expect the final business case to reflect the supplier's submitted programme. This document does not contain abnormal observations for a project at this stage. We had Partnerships UK on the Tram Project Board as well as a lot of people with experience of these types of projects. They would have understood these observations.

44. TIE had prepared the business case, it had been through their own review process, and it had been sent to TS for comment. The TS review of the business case would have been a significant exercise involving in-house and external advisors culminating in TS reverting to TIE with constructive comments. The TS document was drafted several months in advance of bid submissions. TS are requesting that TIE consider the highlighted issues which will need to be addressed once TIE have firm bids rather than just estimates.

45. I am referred to Andy Park's memo (CEC01797364) sent by email to Stewart McGarrity, TIE, on 14 November 2006, (CEC01797363) in which Andy Park states that there is a serious issue with the calculation of the headline economic values in the business case. It should be noted that Andy's note predated the TS comments on the draft final business case that we have just discussed. If TS had not been satisfied that the issue had been addressed six months later then TS would have raised the issue in its comments on the DFBC.

46. I am referred to an email from Andy Park to Damian Sharp and others at TS

dated 16 February 2007 (TRS00003681) making reference to an irregularity in the BCR in TIE's business case. This correspondence was part of the scrutiny process and the concerns raised in such correspondence are expressed in the TS comments of March 2007. The TS comments of March 2007 on the business case was a formal summation of all our concerns that we had at that stage of the project.

47. I am referred to a letter from Malcolm Reed to Tom Aitchison dated February 2007 (TRS00003937) regarding the advancement of £60m to start MUDFA. The letter states that Ministers will expect a re-assessment of the BCR of the scheme when the final business case is submitted. This request makes sense as you don't get the final version of the business case until you have agreed a contract and have costs in which you have confidence. TS were not involved in the re-assessment of the BCR, it was re-assessed to the satisfaction of CEC. The letter states that the FBC should be submitted by 1 October 2007. It is not unusual to impose time limits in a project, otherwise you would be offering a period of unlimited time. Tom Aitchison may not have found the time limit unhelpful, the deadline would have helped to concentrate the minds of his team.

GOVERNANCE OF THE TRAM PROJECT

48. I am referred to an email from James Papps of Partnerships UK (PUK) to Transport Scotland dated 21 July 2006 (TRS00002657) and an email from Graeme Bissett to Transport Scotland dated 18 August 2006 (TRS00002698), both of which relate to the governance structure of the tram project.

49. PUK were a UK Government body at the time designed to bring private sector expertise on finance and project management governance into major projects. I think they were involved with the Office of Government Commerce Gateway Review Process, although PUK also favoured a Readiness Review and TS ended up doing both. PUK were a member on the Tram Project Board as an independent member and they were available to the Scottish Government on a range of projects to advise on issues. TS would have engaged PUK for some particular pieces of work on some particular projects. I cannot remember if TS or TIE engaged PUK for the tram project. If it is of importance I could look to track down the records.

50. I remember being consulted on the governance structure of the tram project. You will see from the documents that my team were involved in establishing the governance structure and we would have been involved in discussions on governance. My team would have reflected my views in those discussions and I would have been informed by my team's views. I had a preference for simplicity and clarity in the governance structure. There was discussion at the time about the proper roles of TEL, TIE and the Tram Project Board. There was some evolution of the governance structure and then it settled down. By the time it all settled down I was content with the governance structure. Audit Scotland subsequently approved the governance structure in its 2007 report.

51. I am referred to an email from James Papps of PUK to me dated 25 October 2006 in which James Papps refers to poor project governance being a particular concern earlier in the year. At the time CEC, TIE, TEL and the Tram Project Board were involved in the project. PUK raised concerns about whether the roles of those different bodies were clear to everyone and whether there was an overlap of roles. I think that these were not unreasonable concerns and I recall discussions about it at the time. My recollection is that when the Tram Project Board settled down in 2006/2007 it seemed to know what it was doing and was functioning as I would expect a project board to function. I don't recall any particular concerns I had with the governance structure but I do believe that it was understood by everyone involved and I think that it operated as it was meant to.

52. We eventually got to the point where people were content with the governance structure and hierarchy. When Audit Scotland reviewed project governance in 2007 it reported that the governance structure was well established, clear and that proper processes in different organisations were being followed. If you read the Audit Scotland review on Edinburgh transport you will see that it was critical of governance in the EARL project. So Audit Scotland would not have hesitated to speak out about governance of the tram project if it had any concerns.

53. TIE's role was as the appointed project delivery agents of CEC. TIE ran the project and were responsible for delivering it. TIE was set up as an organisation to

manage and deliver projects. In some cases, for example, TIE was offering its services to organisations other than CEC. TIE was a supplier of project management services and CEC appointed TIE as the body responsible for the promotion, development and delivery of the tram project. The specific governance for the tram project, as distinct from the broad range of things that TIE were doing, was through the TPB. TIE were responsible for reporting progress to the TPB and for bringing issues to the TPB for a decision. If the TPB made a decision then it was for TIE to take account and have regard to that decision. The TPB was tasked with governance of the project and TIE were responsible for delivery of the project as governed through the TPB.

54. TIE had a broad remit. TIE had been responsible for the promotion of the Bill through parliament and for giving advice to CEC as to the preferred route before the Bills were presented to parliament. This was TIE's project to run. The TPB was to provide governance for the tram project while TIE had a portfolio of projects which it had to deliver. It was right that TIE had its own board and right that the tram project had its own board.

55. I am referred to an email from Damian Sharp to me dated 17 January 2007 in which Damian reports back on a Design, Procurement and Delivery Sub-Committee meeting (TRS00003538). Damian remarks that a new committee will be set up to "look hard" at MUDFA progress. This email was sent before the MUDFA grant letter was issued in February 2007. At this stage the contractor is appointed, the idea that money is needed to get on with the works is understood and the principle of getting utilities done first has been agreed. I am unsure as to whether utility diversion works had actually started at this time. I can infer from the email that either there was a concern that the programme for delivery had not yet been agreed or that there was a concern that the programme had not been developed to the extent expected. There is a separate issue about whether works for phase 1b should be included in the MUDFA works. Without more of a context to that email I would not be able to add much more information.

56. I do recall subsequent concerns that TS and others expressed on the TPB about the pace at which utilities diversions were progressing. Those concerns were

being reported to the TPB at that time and the TPB were asking questions about progress. I don't recall the proposal to set up a separate MUDFA committee and I can't recall the outcome of that proposal. I can't recall if there ever was a committee. I do recall that the progress with utilities diversion works was a constant theme for discussion at the TPB at that time.

57. TS raised concerns over the slow progress of MUDFA and advised that getting the MUDFA contract back on track was important. However it was not TS's role to manage the contractor. TS did not have a contract with Alfred McAlpine/Carillion, it was not our contract to manage. TIE were the project managers for that project, they were responsible for managing the contractors. I did not have any concerns on how TIE was managing the MUDFA contract but I certainly went on to have concerns about the success of the delivery of MUDFA.

58. In relation to just about every tram project, utilities diversion is a huge issue. There seem always to be more utilities than expected, the records are never complete and the sooner the diversions get done the better. I think Dublin said that if they were having their time again they would have done the utilities first. The experience of other tram projects informed the decision to progress with utilities first. Doing the utilities diversions in advance of the main construction works is good practice.

59. As with MUDFA the SDS contract was not TS's to manage. It was apparent that progress on the design programme was not as it should be. It was therefore appropriate that TS raised that as a concern. Again, however, it was not TS's contract to manage and I would not know the detail of the matter. I do know that for the designs to be signed off they had to go to CEC to be approved by the planning department. I recall being told of the classic story of the designers saying that the council was not being reasonable and the council saying that the design was not of the right quality. I was not involved in any of these discussions so I offer no opinion as to the rights of either view. As a matter of fact the design programme was behind. Parsons Brinckerhoff has a good reputation and has done good work elsewhere, but this would appear not to have been its finest hour. There is a comment in that email about one lone voice raising a view but I don't know who that was.

60. I would observe that TIE was populated with people with a good range of experience of this sort of work. There is always the question about how much value would one add by intruding on a difficult piece of work or relationship when one is not directly responsible for that work or relationship. I was not in a position to tell TIE how to address its problems. Damian's email is evidence of a project team recognising it had an issue and thinking about how best to address it. There was a shared appreciation of the problem among all concerned. It was not the case that I was a lone voice crying in the wilderness.

ROLE OF BILL REEVE

61. I am referred to an email from John Ramsay to Lucy Adamson dated 2 November 2010 which contains a table of TS membership of the TPB and TIE board (TRS00011133). The TS role on the board and in the project generally was as principal funder. TS have funded a number of local authority schemes. SG were not going to be the owner of the asset produced at the end of the tram project. That was to be owned by CEC. It is normal practice for local authorities in the UK to take the lead in light rail schemes. I had the portfolio of rail projects and the Edinburgh Tram Project was one of them. My function on the Tram Project Board was to represent the interests of Transport Scotland as part of the Scottish Government. I was able to take decisions on behalf of the Scottish Government where I was properly empowered to do so or report to Ministers where necessary. My role also was as a member of the board to offer advice on the basis of my experience of major projects elsewhere. On the Tram Project Board I was the nominated representative and Damian Sharp was my nominated delegate.

62. I am referred to a TPB Minute dated 20 February 2007 (CEC01628134) and asked about an outstanding agreement between CEC/TS on funding for cost overruns. CEC are asking for an agreement that SG would cover costs in case costs overran. That is a normal request and there would have been a discussion between CEC and TS about the matter. In that meeting I noted that the deliverability of phase 1a was critical for Transport Scotland. There was a constant debate about phases 1a and 1b. TS's view was that TIE should focus on phase 1a for which they had

been funded. It was TIE's aspiration to complete phase 1b at the same time.

ROLE OF TRANSPORT SCOTLAND IN CONTRACT AWARD PRIOR TO MAY 2007

63. I am referred to an email from Damian Sharp to Trudi Craggs dated 7 September 2006 (CEC01784647) regarding Transport Scotland's involvement in the procurement process. I recall some discussion and debate about what TS's role should be regarding the evaluation of tenders. TS decided collectively that it was not its role to evaluate tenders and that it would not be involved directly with the procurement process, but that it should be satisfied that the right team and the right criteria were in place. TS decided that TIE should evaluate tenders, as it was the owner of the project. Instead TS would assure itself that the criteria for selection made sense and that the people running the procurement had sufficient competence to discharge that function. I think that was perfectly normal where, as here, we were not directly procuring something ourselves.

64. As to whether it is normal for TS to be involved in the procurement process at all, it must be remembered that TS did not have another project of this kind. It was therefore prudent and normal for TS to be involved as TIE was a new organisation and the trams were a big project. TS was not involved directly in the procurement process but it did want to ensure that the correct process was being followed. TS wanted to avoid the classic claims that arise from a poor procurement exercise, such as not having the right people involved or the right selection criteria. By way of comparison, where we use Network Rail to deliver heavy rail projects that TS is funding, NR procure contractors and TS are not involved in the evaluation of an NR procurement process.

65. The limited role of TS in the tram project was perfectly normal where it was not procuring the tram network itself. Procurement law requires clarity as to which body is procuring a project. In relation to other tram projects in the UK it would be unusual for the Department for Transport to be involved directly in the procurement of a tram project where it is providing funding to a local authority for the project. Such limited central government involvement has worked fine for most UK tram

projects.

66. I am referred to an email exchange involving me and Damian Sharp in August/ September 2006 (TRS00002732) in which Damian states that TS should distance itself from the procurement process. I think that Damian is making the point about role clarity in the procurement process. Damian mentions that CEC or TIE should be the procuring authority for the purposes of EU law. He is making the perfectly proper point that you have to be clear in a public procurement about who has what role and who is doing what. In any major project establishing role clarity is essential.

67. In my email response to Damian Sharp (TRS00002732) I said that TS's separation from risk should be seen as a second order consideration after maximising the chance of success. The point I was making was that TS needed to be satisfied that the procurement process that was being put in place was likely to lead to successful procurement. After due consideration and discussion, I became satisfied with the procurement process that was put in place. I was satisfied with the track-record and experience of the TIE team. TIE had done sensible things such as getting Transdev on board to advise as an operator. TIE had looked at other tram projects and had learnt the lessons from previous procurements and had reflected those lessons in their approach to the Edinburgh tram procurement strategy. I thought that was good practice. The combination of people in TIE's skill sets and the approach TIE were taking seemed sensible.

EVENTS FOLLOWING THE ELECTION IN MAY 2007 – EFFECT OF THE OUTCOME OF THE ELECTION

68. I am referred to an email exchange between TS and TIE in June 2007 (TRS00004481) regarding the anticipated final cost of the tram network. This is a normal exchange, one of the TS team is writing to TIE to confirm that TIE are not proposing to change their anticipated final costs. TS are seeking confirmation that TIE has no reason to consider that the AFC was no longer a valid estimate.

69. The context to this exchange is that a government had just been elected that

had opposed the Edinburgh Tram Project in its manifesto, but it was a minority government and parliament wanted to proceed with the tram project, so there was work underway to consider how to address the project going forward.

70. Audit Scotland was commissioned to review the tram and EARL projects in 2007. This email exchange shows TS checking with TIE that they were not going to tell Audit Scotland something different to what it had told TS and that TIE had no reason to believe that the costs were going to change. The cost of the project was of interest to parliament at that point. I don't think that anything in particular would have prompted this email. It looks like a normal email exchange regarding costs and too much should not be read into it. On every project you will find requests for confirmation of the anticipated final cost.

71. I am referred to an email I sent to John Ramsay and other TS staff on 10 May 2007 noting the costs of cancelling the tram project (TRS00004286). This email was sent one week after the election of a new government with a manifesto commitment to cancel the tram project. TS was being asked at the time about the costs of cancellation of the tram project. It would be odd if we were not asking these questions given the context of the election result and the new government's manifesto commitment. In order to compile the information in the email TS staff would have looked at records of TS funding to TIE.

72. I am referred to a letter from Willie Gallagher to Malcolm Reed dated 28 May 2007 (CEC01555676) in relation to the "backdrop of uncertainty" following the election. At the TIE board meeting there would have been a discussion about the new political context and the future management of the project. I don't recall the specific meeting referred to but there would have been a discussion about the current situation and an acknowledgement that, while it would be problematic for TIE to suspend work, TS was not yet in a position to commit additional funds until the future of the tram project was clear. A balance had to be struck and I think it was the responsible thing to do to minimise further expenditure until the position was clearer.

73. I am referred to an email exchange between TS staff in June 2007 (TRS00004489). In that exchange John Ramsay notes that I have referred to TS's

new role as 'bankers' rather than facilitators. This is an illustrative term that I used after the decision was taken, in consideration with Ministers, about what TS's role should be going forwards. The use of the term 'bankers' was my shorthand description of TS's change of role. It summarised the decision to withdraw TS from active involvement in the direct governance of the tram project and assume the role of funder. Role clarity in major projects is very important. The SG had taken a decision to change TS's role in relation to this project and to reaffirm and emphasise CEC's role as the owner of the project and its responsibility for the management of the project.

74. When there is a change of role it has to be communicated clearly so that everyone understands their new role, behaviours change, and confusion is avoided. I used the term 'bankers' as a shorthand way to to explain to my team the way in which TS's role was changing. The reference to a due diligence process in the email exchange is a question about whether any additional checks are needed for TS's new role as funders. The conclusions of the due diligence process are the conditions contained in the grant letter, including, for example, the Gateway Review.

75. TS withdrew from the TPB but the TPB still retained PUK and people with a lot of experience. CEC still had to be satisfied about the business case and a Gateway Review process still had to be carried out. Even without TS's presence on the TPB the checks were still in place.

76. I have seen a memo from Malcolm Reed to the Cabinet Secretary for Finance and Sustainable Growth dated 6 July 2007 (TRS00004523 and TRS00004522 (covering email)). An important point made in this memo is that without EARL the tram becomes the rail link to the airport, so patronage numbers should increase therefore strengthening the business case. The memo recommends that SG should provide a capped contribution (which was consistent with what had been previously agreed) and that TS should scale back its direct involvement in the governance and management of the project and withdraw from the TPB. The Cabinet Secretary agreed that this was the direction in which he wanted to proceed in his email dated 11 July 2007 (TRS00004536). There would have been a subsequent process of clarifying and confirming the position and then TS would have had to discharge that

position.

77. I imagine that there had been discussions with Mr Swinney prior to that advice being given to the Minister. Malcolm Reed would have met Ministers and I suspect I did as well but I cannot specifically recall doing so. We would have given advice to Ministers in advance of the debate in Parliament. The memo sent to Mr Swinney would have reflected discussions with Ministers. I would need to check who drafted the memo. It could have been Malcolm, Gerry, Damian or me.

78. I am referred to a memo from Matthew Spence to me and Malcolm Reed dated 20 July 2007 (TRS00004559) in which we try to define the scaled back role of TS. What has changed at this stage is the direct involvement of TS with TPB and governance of the project. The memo confirms and emphasises that the tram project is a CEC project.

79. You will see that I raised questions about TS's scaled back role. However I was content that the proper process was followed and once we had reached a decision it was my role to discharge that decision. There were two or three different options that TS could have chosen and we chose the option to scale back our involvement. I think that was a reasonable decision. This was CEC's and TIE's project. TS guaranteed the money but CEC and TIE had to fix the problems, such as those relating to the design, and deliver the project. It was CEC's and TIE's job to deliver the trams and they had to get on with it. I think the decision to scale back TS involvement re-emphasised that CEC, through its subsidiary TIE (an expensive organisation with well paid employees) had to deliver this project. Scaling back TS's involvement in the project brought it more into line with tram projects elsewhere in the UK.

80. As to why that was not done prior to 2007, before the elections in May 2007 I think the Ministers in power at the time saw the tram project as something with which they wished to be directly associated. It was something that they wanted in their manifestos, so TS were asked to be more directly involved with the project. I think it was as simple as that.

81. The memo from Matthew Spence to the Cabinet Secretary for Finance dated 25 July 2007 (TRS00011021) follows on from the Matthew's previous memo of 20 July 2007 and is a record of what has been decided rather than why it was decided that TS should withdraw from the TPB. The section headed "basis for the proposals" (i.e. the basis of the proposals to scale back TS's role) is not giving the reasons for withdrawal of TS from the TPB but instead explains what the new arrangements are to be. The heading may be a little misleading. Mr Swinney noted that he was content with the proposed redefined role of TS (TRS00004595)

82. As regards TIE's view, there was a range of views expressed on TS's withdrawal from the TPB. By this stage it was clear that the project was going ahead. While we did not yet have the bids in, the basic shape of the project had been determined, the procurement strategy had been established and the business case had been reviewed in draft final form. Audit Scotland had decided that a sensible and sound methodology had been used to estimate costs (it should be borne in mind that Audit Scotland's report was an important part of the context of the decision to withdraw from the TPB). Whatever value may have been added by TS involvement in the project, TIE's engagement in detail with TS would have been a time and resource intensive exercise. TS's withdrawal from direct governance allowed CEC and TIE to get on with the project. Not every project director likes being second guessed. I do not recall TIE being unhappy with the new governance arrangements. I don't recall any howls of protest from anyone.

83. I am referred to an email I sent to Malcolm Reed and Damian Sharp dated 18 July 2007 in which I raise concerns about the risks arising from TS's withdrawal from the governance arrangements (TRS00004547). In respect of my own concerns regarding TS withdrawal from the TPB, I saw the value that TS could provide to the governance of the project but I also saw the value of leaving TIE to focus on delivering the project without the distraction of TS reviewing their work. A balance must be struck between sufficient governance and reviewing the project to the extent that the project team cannot get on with delivering the project.

84. I did raise concerns about departing from the governance structure in place and the value that TS' role on the TPB had been adding, but you are looking at a

point in the middle of a debate. Following that email there were discussions and I understood the advantage of emphasising CEC's role, the advantage of role clarity and the advantage of allowing the project team to get on and discharge its function. A decision was made to withdraw and I saw the rationale for the new structure we adopted. It is a matter of speculation but I am not sure whether TS's presence on the TPB would have made a difference to what subsequently happened with the project.

85. The project was moving into a new phase at this point (Summer 2007). The checks and balances prior to 2007 were consistent with the run-up to the decision on whether we should proceed with the project. We were moving into the phase of appointing contractors and building the network. The election and change of government caused there to be consideration as to the new arrangements going forward.

86. You have the record of how the decision to withdraw was reached in the documents you have shown me. You can see there was a change of government, a parliamentary vote, an Audit Scotland report, a proper consideration of the new arrangements and the Cabinet Secretary had expressed a view. All these things were taken into consideration and a decision was reached to withdraw TS from direct governance. That decision was put to the Cabinet Secretary to check that it accorded with his preferences and a decision was taken. The Scottish Government decided, through the normal processes, to withdraw TS from direct governance of the project.

87. I am referred to a Public Audit Committee report from March 2011 (SPS00000028) and to David Middleton's comments on page three regarding TS withdrawal from the TPB. This report comes after I had stepped back from the project. I am asked why the reasons supplied by David to the PAC did not apply before the elections in May 2007. David Middleton was not present at the time the decision was made to withdraw TS from the TPB but he would have gone through the emails from the time. The reasons provided by David are a reasonable summation of the discussions at the time. The main reason for TS withdrawal from the TPB was to ensure role clarity within the project. That seemed to me to be a

SPS00000028
should be
SCP00000028

reasonable conclusion to reach.

88. I am referred to an email sent by Graeme Bissett to Willie Gallagher dated 23 November 2007 in relation to TS funding (CEC01508000). The TS grant had within it a cash profile. TIE would have quite liked a lot of cash up front but the Scottish Public Finance Manual advises against the payment in advance of need. Separately, TIE wanted TS to pay promptly as TIE did not want to have to seek a bridging loan from CEC. We provided reassurance to TIE that they would be paid promptly. This payment mechanism was not a back door way for TS to micro-manage the project. It was simply that the SPFM would not allow TS to pay a lot of money in advance. TS could only pay money to TIE upon receipt of adequate information that expenditure had been properly incurred against the terms of the grant. I recall that there was also a requirement for an annual independent audit and a letter of confirmation from the Director of Finance in CEC that the monies had been properly expended. These were standard grant conditions. TS were able to withhold money if the evidence of expenditure was not presented to us.

FINANCIAL CLOSE OF INFRACO

89. I am referred to a an email from John Ramsay to Jerry Morrissey dated 12 March 2009 (TRS00016897) in which John Ramsay states that CEC relied on TIE's report on the draft Infraco rather than on an independent report before financial close. John is expressing surprise that CEC have not commissioned an independent report, having thought it might do so.

90. TIE was a wholly owned subsidiary of CEC. It was for CEC to decide whether they were content with TIE's report. All such reports cost money and it would have been up to CEC to determine whether TIE's report was satisfactory or whether it needed to commission an independent report. John Ramsay was part of my team and he was tasked with monitoring the justification of payments to TIE and he attended the four-weekly meetings with TIE to discuss the basis of the payments.

91. Without seeing the relevant documents I cannot comment on whether the decision made by CEC to rely on TIE's report was reasonable.

92. You can see this email highlights concerns around the slow commencement of work by BBS and that would have been more the focus of my concern at the time. It became apparent reasonably quickly after the signing of the infrastructure contract with Bilfinger that there were differences in its interpretation. There was a noticeable reluctance on Bilfinger's part to commence work on the anticipated programme. By this point it is apparent that the contract with Bilfinger is not proceeding smoothly and I think what John Ramsay is describing is CEC's growing realisation of that. CEC were trying to understand what was happening and it was becoming concerned about information being provided by TIE. TS were observing that things were not running smoothly.

93. In terms of what action TS could take at this point you have to consider what powers TS had to take action. Those powers were defined in the grant letter. We had discussions with colleagues in CEC and asked questions and offered observations but TS had no power to step in. It was up to CEC and TIE to deal with the projects' problems. It was CEC's contract to manage.

GRANT

94. I am referred to an exchange of emails to and from Damian Sharp in July 2006 (TRS00002597) which makes reference to the lack of a 'claw-back' provision in the grant offer. The final grant letter included provision that if the project was not completed the government had the right to recover the money. That was a right to recover money, not an obligation to recover money. These are normal terms in grant letters between SG and local authorities. I am not sure whether Damian Sharp was commenting on a draft grant letter or a grant letter in relation to previous interim funding we provided to the project, I would have to check if there is a claw-back provision in the main grant offer.

INFORMATION PROVIDED TO TRANSPORT SCOTLAND

95. I am referred to an email from Matthew Spence to me dated 3 April 2007 (TRS00004141) in which Matthew remarks that the MUDFA delay could probably be

explained by the lack of design. I was aware of these problems at the time. This was in the period before the grant letter was issued. TS set out a number of conditions which had to be satisfied before the grant letter was issued. Those conditions included conditions regarding affordability (that line 1a of the project had to be delivered within the funding envelope of £545m), that CEC had to be satisfied that the BCR was greater than one, and that the trams would not need an operating subsidy. In order for TIE to close the contract TIE would have had to satisfy the contractors that it had the finance in place. The conditions for the grant were satisfied by January 2008.

96. During the period this email was sent TS would have been feeding its concerns and observations back to TIE. In this email Matthew is pointing out the things that TIE would need to do in order to get the preferred bidder to a point where they would sign the contract. As far as I am aware TIE would have addressed these points in the run up to contract close. Everyone knew that the design was behind schedule and that problem was reported to the TPB at the time. You will see other documents explaining how the design programme would be brought back on track.

97. I have been asked whether Transport Scotland were satisfied that the problems identified with the tram project had been dealt with before the award of the grant. After the new arrangements were put in place the conditions for the grant were set out in the grant letter. CEC had to satisfy itself and assure TS that it was satisfied that the conditions in the grant letter could be met.

98. The grant letter contained requirements for four-weekly meetings and quarterly meetings. John Ramsay chaired the four weekly meetings between TS and CEC, which were to run through the basis for CEC's claim for payment for that four week period. That was the principle purpose of that meeting. The quarterly meeting was at a more senior level and that's why I typically led those meetings for TS. At the quarterly meetings senior officials from CEC would be present and, exceptionally, TIE would be present. These meetings were used to take stock of progress with the project and to satisfy ourselves that the conditions of the grant letter were being met. These quarterly review meetings were a condition of the grant agreement. TS and CEC were obliged to meet and discuss the project under the

terms of the grant agreement. TS would discuss its concerns with CEC and ask questions and offer observations. However, it was ultimately for CEC to address problems with the progress of the project as TS had limited powers to act under the terms of the grant letter.

99. John Ramsay would produce the note from the four weekly meeting and there was normally a set of minutes from the quarterly meetings written by one of us present at the meeting. The policy of the Scottish Government is for all these documents to be stored on the Electronic Record Data Management System. We don't keep separate paper copies.

QUARTERLY REVIEWS

100. I am referred to the second quarterly review dated 3 March 2009. (CEC00908591). This document is entitled 3rd Quarterly Review dated 3 March 2009 but it is in fact the 2nd Quarterly Review dated 3 March 2009. The context of this review is the delays and disputes with BBS. This is where it is becoming apparent that the operation of the contract is not in a happy state. I am referred to the third quarterly review dated 18 June 2009 (CEC00705152).

101. What we saw pretty much from the commencement of the contact with Bilfinger and TIE was that there was a failure to agree between the two parties as to what the contract actually meant. Quite early on it became clear that Bilfinger were coming back to TIE and asking for either significant variations to the existing contract or for a change in the contract terms and using that as a condition for commencing work. I do not know what it was in the drafting of the contract and/or any associated documents that allowed that state of ambiguity. I don't know whether there was something profoundly ambiguous in the contract or whether it was the case that the contract was utterly clear and that one or other of the parties was refusing to comply with it. It was an unusual situation. A recurring discussion in the review meeting minutes is in relation to what action CEC/TIE should take in light of the of the difficulties with the infrastructure contract.

102. I am referred to the fourth quarterly review dated 13 November 2009

(CEC00475412). The purpose of the meeting was restated simply because Richard Jeffrey of TIE was present and he was new to these meetings. It was not a new or revised purpose. TS's relationship with CEC was a funding relationship. Quarterly reviews were set up as a discussion between ourselves and CEC. TIE was CEC's wholly owned subsidiary and appointed project manager but until this point I don't think that TIE had been at the quarterly review meetings. Reference is made to the cost and budget implications section of the minute which states that TIE advise that delivering the project within £545m would be very difficult, with £600m to £620m more realistic. I would have been disappointed by that. It wasn't entirely a surprise to TS but this was the first time that range was quoted to us. Prior to that TS had been aware of slippage in the programme. Slippage in the programme always carries a cost risk. It should be noted that TIE have not formally stated at this meeting that they cannot deliver within £545m, just that it will be difficult to do so. In relation to the possible overspend we would have reported that to our Chief Executive and we would have kept Ministers advised of progress with the project and our concerns. We reported to Ministers what we were being told at the meetings and offered some views as to likely outcomes in our report to Ministers.

103. TS knew from previous meetings that the contract was not proceeding at a pace. CEC and TIE were working out what their contractual options were. It was therefore not surprising in that context to see cost pressures emerging. I'm sure if you trawl through TS internal documents at that time you will see reference to TS concerns about the risk arising from slippage. Under the terms of the grant letter it would be for CEC to find the difference between £545m and whatever the final cost turned out to be. It was also a condition precedent of offering the grant that the estimate remained within £545m, but the project here is at a stage where the grant offer has already been made and contracts signed. There is no longer any need to satisfy the conditions precedent for the grant but we do still need to ensure that remaining grant conditions are complied with.

104. Clearly TS were concerned about the emerging problems with the project. We were advising Ministers and Ministers were becoming increasingly concerned about the implications of these problems. Our concerns at this stage were partly the same concerns that we had in the early stages of the project when we had received

assurances from CEC that those concerns had been dealt with. However the question arises as to what TS could do. TS had the powers and obligations contained in the grant agreement. TS could offer views and advice to CEC/TIE but TS were not parties to the contract with the contractor, TS were not present at the negotiating table, TS did not do an appraisal of the bids. The parties involved had more information than we did about the project and it was up to them to resolve the problems. TS were told about what was going on and we were asked for our views and Ministers' views but our role at that stage was to exercise the responsibilities, obligations and rights under the grant agreement.

105. My personal reaction was that I was, of course, disappointed that this situation had arisen. I was also somewhat puzzled as to how it had arisen. However, my focus was principally around what it was appropriate for TS to do at that stage. It was appropriate for TS to keep abreast of what was happening and to apprise Ministers of that. TS had to consider, under the terms of the grant agreement, what its appropriate action and behaviours should be. There was consideration about exercising some of the powers we had under the grant agreement, such as serving a cure notice on CEC. However, TS had to consider whether exercising any options under the grant agreement would have actually helped the project.

106. The quarterly panel reviews were internal TS reviews prior to the grant agreement and should not be confused with the quarterly project reviews held with CEC under the grant arrangements once the project was underway.

107. I am referred to an email from Graeme Bissett to Matthew Crosse dated 24 July 2007 (TIE00061490) in which it is reported that I said that the tram project reporting was the weakest of all TS projects. I am struggling to remember that comment or why I made it and I would have to look at the documents provided to me at the time. Someone within TS probably would have told me that the information provided by TIE was late or wasn't right. I think it likely that the comment would have been made in relation to the timeliness of TIE's reports, but I cannot say for certain.

108. I am referred to an internal TIE briefing note for Willie Gallagher for a meeting with me sent on 27 November 2007 (CEC01500213). This would be a meeting after

the preferred bidder had been selected. I can't specifically recall this meeting. The briefing note makes reference to 'sparring' between BBS and SDS. TS was not present at the contractor meetings so I don't know to what this refers. My inference is that the sparring was in relation to the quality of design at that point. I would have expected such issues to be discussed and resolved in the run up to contract close. The issue about design may have been part of the problem with the infrastructure contract. TS were not involved with the contractors. This was a contract negotiated between TIE, on behalf of CEC, and BBS.

109. I am referred to papers of the Design, Procurement and Delivery Sub-Committee (DPD) meetings sent to me in May 2007 (CEC01567145 and TIE00064786). I don't recall attending the DPD meetings. I don't recall that papers from the DPD meetings were ordinarily being included in the papers to the TPB. It should be borne in mind that this was before the project governance arrangements changed after the election.

TS INVOLVEMENT AFTER MAY 2007

110. I am referred to an email from Willie Gallagher to me dated 11 May 2008 regarding final agreements to conclude contracts (TIE00431225). I wouldn't say that TS were closely involved with the tram project after withdrawal from the TPB. The purpose of the email appears to have been to reassure me that closure had been reached. It comes at the tail end of a vast negotiation to which I was not party. You will note that although I acknowledge receipt of the email, which was unsolicited, I don't offer a view or say a great deal other than to wish them well. After withdrawing from the TPB TS were apprised of progress and progress was discussed with CEC and TIE from time to time but TS's role as funder was absolutely clear. It is not that we were not interested. TS were interested in progress but we had no formal role in relation to negotiations and contract close.

TS INVOLVEMENT WHEN PROBLEMS BEGAN TO EMERGE

111. I am referred to John Ramsay's briefing note dated 2 February 2009 ahead of a Tram Budget Meeting on 3 February 2009 (TRS00016779 and TRS00016780). I

think the purpose of the meeting was to discuss the project budget in light of emerging concerns as to cost. I don't recall the particular meeting but I can recall in general the concerns it dealt with. At this stage TS was concerned about the infrastructure contract not working properly, incomplete utility diversions and the slow mobilisation of BBS. These were pressures on the project programme and on costs.

112. The objective of this meeting was to try to establish with CEC and TIE as accurate a picture as possible as to what was going on with the project, having regard to TS's obligations under the grant agreement and our obligations to keep Ministers informed as to the real state of progress. I don't think it was a meeting at which we were expecting to decide or instruct something. I was not intending to use any of the powers under the grant agreement. This was about getting information and clarifying what was going on. We knew by this stage that there were issues and we were trying to get to the bottom of what was causing them and how big an issue they were. To put this in context, Bilfinger was retained by Transport Scotland to deliver the M80 contract at the time. Broadly speaking during this period Bilfinger was delivering satisfactorily for TS on that project. A motorway contract is, of course, different from working in a city centre street but it was curious that there were difficulties and a failure to agree between Bilfinger and TIE at this stage when the M80 project appeared to be progressing relatively smoothly. I don't recall the outcome of the meeting. It was one of a series of discussions around that time about what was happening.

113. I was not personally directly involved with the M80 contract but some of my colleagues were and I dare say that the tram project might have been discussed in passing by them and Bilfinger staff at M80 meetings. TS staff had occasional informal discussions with Bilfinger staff, simply through bumping into people when out and about in Edinburgh. I think Bilfinger made occasional requests to TS for direct discussions about the tram project once problems began to emerge with the contract. However, TS had no formal role in negotiations to resolve the dispute with Bilfinger and TS would have been very wary of undermining TIE's clear role in negotiations with Bilfinger.

114. Reference made to a number of documents (CEC00867339 / CEC00867340/

TRS00016789 / CEC00869282 / TRS00016898 / TRS00016899 / TRS00016900 / TRS00016901 / TRS00016936 / CEC01009977 / TRS00016949 / TRS00016963 / CEC00966220 / TRS00016908) in relation to TS's interest in the project.

115. It is suggested to me that TS were interventionist in terms of seeking information. We may have sought information but I would not describe TS as interventionist in terms of the project. TS were not intervening. We were not directing, instructing or participating in the negotiation of disputes. TS were properly interested in accurate information and properly interested in keeping Ministers apprised of developments on the project, which was in the public domain and highly visible. TS's powers to intervene were set out in the grant agreement. Although we may have had the power under the grant agreement to intervene, there was always the separate question as to whether it would have been helpful to exercise those powers. We kept Ministers apprised about what options the SG had to intervene under the grant agreement. Mr Swinney was concerned. The problems were in the public domain. It was not good for Scotland that this highly visible project in its capital city was not going well. Notwithstanding that Ministers had not wanted the project in the first place, it was now going ahead as a matter of fact and the money was being offered. It was in the interests of the SG that the project go well. We did consider whether or not to serve a cure notice on TIE, but what would a cure notice have done? It would have required TIE to come up with a plan to address the programme slippage, but TIE was already telling TS that it was working on a plan to address the slippage. A cure notice would have just created an additional set of correspondence and legal documentation. TS concluded at that stage that there was nothing more it could do at that stage of the project which wasn't already being done.

116. One of the issues TS had was that it had set aside a significant proportion of its capital budget in accordance with the programme of expenditure that TIE had provided (through CEC). The forecasts for expenditure from TIE either didn't materialise or were late because of the project disputes. The SG had a dilemma as to whether to reallocate the capital budget to other bits of the Scottish Government programme and risk leaving CEC exposed or whether SG should hold on to the money and risk losing it as we could not carry money over into the next financial

year.

117. One option was for CEC/TIE to terminate the contract and that option was discussed. However unless both parties agreed to termination it was unlikely to be a cost free exercise. Unless one party was “bang to rights” there would be penalties and counterclaims to be taken into account.

118. I am referred to an email from John Ramsay to Gerry Morrissey dated 13 March 2009 (TRS00016908) and to a memo from John Ramsay to the Minister for Transport dated 02 April 2009 (TRS00005106). In the email John Ramsay states that the shift to demonstrable cost basis would lead to cost increases. In the subsequent memo John Ramsay advised the Minister that the Princes Street Supplemental Agreement was “at no extraordinary additional cost”. I am asked for my comments on this. What John Ramsay is reporting in the subsequent memo to the Minister is TIE’s advice to him that the signed supplemental agreement did not create extraordinary costs. The memo to the Minister is a faithful representation of what TS had been told by TIE in relation to the signing of the supplemental agreement. However you can see that in the memo to the Minister TS express reservations about CEC’s cost estimates and notify Ministers that the forecast should be considered risky until the outstanding claims are settled and that the cost could therefore exceed £546m. In my view John Ramsay’s memo to the Minister is consistent with his earlier email.

119. The infrastructure contract was signed by Bilfinger after a period of evaluation and negotiation and a price was agreed which was represented as being a fixed price, and yet very shortly after the contract was concluded Bilfinger were making claims that it was not possible to deliver the project for that fixed price. The only way in which Bilfinger were prepared to proceed was by being allowed variations or by altering the contract so that it proceeded on a demonstrable work basis. It is quite stark that this was happening early in the contract. It seems to me that there was either no agreement between the parties as to what the contract actually meant or one of the parties knew fine well what it meant but chose to take another position. In essence Bilfinger were saying that they could not afford to deliver the contract for the price they had signed up to and that in any event they were entitled to more. TIE

were saying "you've signed up to this contract through a competitive process, the contract says you must do this, get on with it". There is no mention in the memo about the effect of a possible shift to a demonstrable cost basis but I am sure that the Ministers were being advised that Bilfinger were seeking variations to the contract, as it was hardly a secret. TIE's view was that the Princes Street Supplemental Agreement did not alter the nature of the contract to a demonstrable cost basis. John does advise that the cost could exceed £546m and, as I have said, in my view his memo is consistent with his earlier email.

120. I am referred to an TS email exchange in September 2009 (TRS00017238) in which Ainslie McLaughlin is of the view that the infrastructure contract has completely broken down and that both parties' efforts and resources were now focused on the contractual disputes. The email notes BBS's desire for TS to take over the project or for TS personnel to be seconded to TIE to help oversee the work. Ainslie is highlighting that if there were quick decisions from the dispute resolution process (DRP) then Ministers could get a sense of who was right in this dispute and that might be the point at which Ministers could get involved.

121. We at TS were naturally very concerned about the situation but at this juncture it was not yet clear how the contract dispute would be resolved as the DRP was on-going. Bilfinger felt that if their claims were upheld then the costs of the contract would rise to £700m. However we did not know at that juncture whether or not Bilfinger's claims would be upheld. TIE were telling us that Bilfinger were not working the contract properly, that they (TIE) were confident that they were right, that they had good lawyers and that they expected to win the contractual disputes at which point TS would see that TIE's cost estimates were right. As a matter of fact TS's contract was with CEC, CEC's contract was with TIE and TIE's contract was with Bilfinger. TIE was responsible for managing the dispute process. TS were also getting both sides of the argument and were trying to discern where the balance of truth lay.

122. There were two parties at this stage with different views as to how the contract should be interpreted and what the costs should be. The grant letter set out the scope of the SG's powers. We did not have power to step in and take over the

project. It was arguable whether we could have served a cure notice in that situation. Bear in mind that the resolution of the disputes as to the contract and costs was still uncertain at that stage. TS would have done something if we thought it would have helped the situation. I think we recognised that serving a cure notice would have added heat but not light to the situation. It was a difficult situation and not a happy place for anyone involved.

123. I am referred to documents relating to a meeting between me, the Minister for Transport, and Richard Jeffrey in January 2010 (TRS00019654 / TRS00010627 / TRS00017371) at which various options were considered. One of the options considered was the shortening of the route. I understand that Siemens were not entirely happy with the aggressive approach that was being taken by Bilfinger at that point, so there was a question about whether it was possible by agreement to get Bilfinger out of the way and for Siemens to take on the entire role of Infracore. In my brief note from the meeting I am merely recording for the benefit of my team what TIE said to the Minister regarding various options.

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124. I am referred to an email from David Middleton to the Permanent Secretary and others dated 11 March 2010 (TRS00010651) in which Mr Swinney states that Transport Scotland should “stay close” to TIE. What TS weren’t doing was interfering. TS were making certain that we were informed of what was going on so that we were able to provide advice. This was not a moment of schadenfreude for the SG, there was a genuine concern within SG that the project was not working and if TS were asked for advice it would give it, but it would be for CEC to decide whether to act on that advice.

125. I am referred to a draft memo from John Ramsay to the Cabinet Secretary for Finance dated August 2010 (TRS00017806 / TRS00017807). This followed CEC formally advising TS for the first time that it was unlikely that the project would be completed in the available funding envelope of £545m and was likely to be in excess of £600m. We are advising Ministers that it was an option to serve a cure notice and the cure notice would require CEC to have a remedial plan in place. At that point, however, CEC were trying to put a remedial plan in place anyway. We are drawing to the attention of Ministers that the obligation to continue to pay the grant under the

grant letter has fallen away. TS were obliged to continue to pay the grant so long as the conditions were complied with. At this point those conditions were no longer being fulfilled. At this point TS therefore had the right to cease payment or indeed request repayment. Note, however, that whilst we had the right to do that we didn't have the obligation to do it. We are advising the Minister what the position was and setting out what his options were. It should be noted that we are not recommending that it would be helpful to cease paying the grant at this stage as this would have made it difficult for CEC to pay Bilfinger which would likely have led to counterclaims by Bilfinger. Ceasing payment would not have helped at this juncture.

126. There was a period prior to this when TS were anticipating that it was likely that the project would reach the stage where CEC would have to notify us that the project could no longer be delivered with the available funding. However it was important that CEC should decide for itself to tell TS that. It was a big thing to tell SG that the project would not be delivered within budget. It triggered the provisions in the grant letter. It was not a trifling matter for CEC to have to formally admit this to the Ministers. From the information we were receiving from CEC and TIE it was not certain until this point that the project would be over budget. Until that point CEC's position had been that the projected final cost of the project was within a range where it was still possible for the project to be delivered within budget. They then moved to a point where they were saying that they no longer thought that there was any prospect that they could deliver the project within budget.

127. I am referred to the Audit Scotland Report of 2011 (ADS00046) in which it reported that the SG should consider using TS expertise in the tram project. I was not directly involved in the tram project after December 2010 and therefore, whilst I read the 2011 Audit Scotland report out of interest, I had no responsibility for the project at that stage. It is my understanding that after the mediation in March 2011 was completed both Bilfinger and CEC were keen that TS should become involved in the project. It is quite different to be invited into the project than to interfere without formal power. As a general principle when we were asked to provide advice or assistance we did so but that is different from dictating, intruding or imposing in the project where we had no formal right to do so.

EARLY AWARENESS OF PROBLEMS

128. I am referred to an email from Fiona Spencer to me dated 12 October 2006 (TRS00002901). I don't know what the 'short review' referred to would be or where it could be found. If it is not in the documents we have sent I would not know where to find it.

129. I am referred to the following documents in which concerns are expressed about design problems:

- I. An email from Damian Sharp to me dated 17 January 2007 (TRS00003538)
- II. Tram Project Quarterly Review Report for 24 November 2006 (CEC01691907)
- III. Annex A of the analysis of DFBC by Transport Scotland in December 2006 (TRS00003494)

130. It was reported at the TPB that progress with the designs was not being delivered to the design programme. The problems with the design programme had been identified. Work was done to address these problems, for example there were discussions with Parsons Brinckerhoff to get them to bring in more senior resource. It was for TIE to manage the contract with PB. TS were aware of the problems whilst on the TPB and from the reports after withdrawal from TPB. However it was for TIE to satisfy itself that the designs were satisfactorily completed in a manner that was consistent with the procurement strategy at the time the infrastructure contract was signed. I would have expected any concerns with the design to be resolved by the time of contract close. I cannot comment on the final suite of contracts because TS did not have sight of it at the time of contract close.

131. It was for CEC (rather than TS) to satisfy itself that the design problems had been addressed prior to the award of the grant in January 2008 and to provide TS with assurance that the business case was concluded and that the Gateway reviews had been completed in relation to the design programme. That is the sort of thing that I would expect Gateway Reviews to pick up. In terms of the grant conditions TS

had to be satisfied that CEC were satisfied that the design problems had been resolved. It was not for TS to satisfy itself directly as to these matters.

132. I am referred to an email I sent to John Ramsay and other TS staff on 23 January 2007 in relation to key issues for the TPB (TRS00003551). My comment in relation to issues on TIE's side in relation to the SDS contract is about TIE needing to give clear directions as the client to SDS as to what the priorities are. I don't think that TS could have influenced this issue. TIE was aware that the design was a problem and was giving instructions to SDS. One of the intended consequences of the clear focus on CEC's role was that CEC had the incentive to resolve the design problems. TS could discuss the design problems at the TPB and hold TIE to account in relation to these problems, but equally CEC could hold TIE to account after TS stepped back from the project. TS were not the only people at the Tram Project Board saying that the design needed to be fixed. TS did not bring a unique perspective in that regard.

133. I am referred to an email from Damian Sharp to Malcolm Reed dated 17 July 2007 (TRS00004547). Damian Sharp is providing feedback from the Tram Project Board. The reference to critical design elements is a reference to the need to complete first the design of elements of the tram network that are to be built first. While TS was on the TPB TS knew that the design was behind and TS anticipated that that would lead to some programme slippage. When TS then withdrew from the TPB we were not as involved in those details but we were aware of continued design delays through the reporting. By contract close we had received assurances for CEC that things were in a satisfactory state. At contract close it was for CEC to assure itself that TIE was discharging its obligations and it was for TS to check that we were only being asked to pay for that which was appropriate for us to pay for. TS maintained an interest in progress and were able to provide Ministers with informed judgements as to what was actually happening. We did not know in detail how CEC discharged that obligation to ensure that it was satisfied with design progress.

134. It was clear from other successful tram projects that clear leadership from the council on a major project was important in terms of getting the whole council organisation behind the tram project. It was clear that with the change of roles and

renewed clarity of CEC's role that one of the effects ought to be to ensure that the CEC were working as a cohesive whole on the tram project. One of the critical elements of success in other tram projects was having the whole council get behind the tram project. The arrangements to remove TS from direct governance arrangements put the project in line with other UK projects.

135. As to whether TS had any leverage to bring pressure to resolve these issues using the grant funding, our powers in that respect were in two phases. There was the grant offer which provided that if certain conditions precedent were met TS would supply the funding. The nature of that offer was set out quite clearly and that included the business case being concluded satisfactorily. Once the grant is agreed TS are then obliged to pay in terms of the grant. If it became apparent that the project would not be delivered or its scope would be curtailed then TS had a different set of remedies we could enforce under the grant letter.

136. The conditions that needed to be satisfied in order for TS to offer the grant was the outcome of discussions in mid-2007. Once those conditions were met then TS had to offer the grant. CEC assured us that they had met those conditions and the grant came into effect accordingly. In order for TIE to run a procurement and conclude a contract it needed to know that the grant funding would be forthcoming.

CONCERNS AS TO COST

137. I am referred to an email from Scott Prentice to me dated 31 October 2007 (TRS00005020) in which Scott expresses concern about the lack of detailed information provided by TIE in relation to costs. Scott Prentice was an advisor embedded in the TS project management team. This email is about substantiating TIE's cost forecasts. TS were managing serious capital forecasts accounting for a significant chunk of the SG capital budget and it was a concern to us to ensure not only that we were paying legitimately incurred expenditure but also to ensure that we were not holding onto any unnecessary budget provision for the relevant financial year. The email is about substantiation of their cost forecasts. We are expressing concern in this email that they are not going to spend £80m in ten weeks and they are saying that they will. It is not unknown for project managers to seek to hold onto

costs forecasts rather than risk losing their budget and it is not unknown for those that are paying to challenge those forecasts.

138. I am referred to a minute of meeting of the Tram Project Board on 22 November 2005 (TRS00002076) in which concern was raised about the costs of both 1a and 1b. I think this was just before I took on the projects portfolio rather than just the franchise portfolio and so would not have seen this email at the time. I took on my role in the tram project in December 2005. Kenneth Hogg would have had the lead SG role at that point. There is a reference to both phases costing £634m to £714m. TS were consistently of the view that 1a and 1b were not affordable within the funding envelope available and that 1a should be focus of the project. CEC were ambitious for the project and were always trying to find additional funding for 1b. We were clear that the money TS would provide would not cover both lines.

139. I am referred to a TIE email exchange from October 2007 (CEC01473643) in which it was stated that I had 'grave concerns' about the CAPEX (capital expenditure) forecast. This is the same issue that I have mentioned previously regarding capital requirement forecasts and SG budgets. TS was obliged to pay the grant to TIE for work done. TIE was slipping in terms of progress with the work but TIE was still forecasting expenditure that didn't take into account that slippage. The spend rate of TIE was not consistent with its forecast for year-end being met as TIE was under-spending. TS was stressing how important it was for the SG to manage cash up to year-end on 31 March 2008 and I was highlighting to Willie Gallagher that an accurate forecast was important to SG. Remember TS paid the grant upon production of evidence that work had taken place and costs incurred. TS was holding money for TIE that TS did not think TIE would spend before the financial year-end. It was no good for TS to hold on to money for that financial year that could be used for other purposes. Willie Gallagher and CEC understood that TS would rather not hold on to the grant money and lose it at financial year-end.

140. I am referred to the following documents:

- i. TRS00016973 – email exchange between TS staff in March 2009 in which there are doubts about the revised cost estimate

- ii. TRS00017060 – email from me to Jerry Morrissey and John Ramsay dated 24 June 2009 I refer to BSC's request for an extra £50m
- iii. TRS00017088 – a TS exchange of emails in July 2009 which refers to BSC requesting an additional sum of £100m
- iv. TRS00017090 – email from John Ramsay to Bill Reeve and other TS staff dated 30 July 2009

141. I am referred to a TS email exchange from March 2009 in which it is noted that the council had a difficulty explaining to the full council why the costs of the project might be as much as £601m when the public figure was £512m. Obviously that would be a difficult discussion. There may have been a further dynamic at play that is not necessarily apparent from these documents. At this stage TIE was managing a set of claims with Bilfinger. TIE through CEC made us aware that TIE did not want Bilfinger to believe that extra money was available. It was a negotiation tactic. Amongst other sensitivities was the consideration that if Bilfinger had heard that £650m was the budget then it would know it had that amount to spend. That was in the mind of TIE and CEC at the time.

142. I am referred to an email from Richard Jeffrey to me dated 2 October 2009 (TRS00017211). In that email Richard said that there was no reason why the project should not be completed at a cost of £524.5m plus an allowance for the settlement of claims. Richard later says that it would be difficult but not impossible for the project to be completed within the funding envelope of £545m. Richard is describing the cost pressures but is reluctant to state it will cost more than £545m. Such an admission would have triggered certain provisions in the grant letter so he would have been reluctant to state that. On a number of occasions we relayed to Ministers what TIE was reporting but we also advised Ministers that we thought there were additional pressures and risks. There were considerable uncertainties as to how the dispute resolution procedure would play out.

143. I think TS understood why TIE was not reporting all the pressures and risks as there were a number of issues in play at that stage. There was a dispute resolution process underway and TIE and CEC were naturally reluctant to admit that the contractor's claim could be right. There was the context of the grant conditions and

the effect of stating that the project would cost more than £545m. There were political considerations in relation to the likely reaction of the Council to an admission that the project would be over-budget. Finally, each party involved in the dispute genuinely believed it was right, even if that may have been an error of judgement on the part of one or both of them. TS understood TIE's and CEC's situation.

144. I am referred to a TS email exchange from October 2010 (TRS00018048 / TRS00018049) in which Ainslie McLaughlin states that "it may well come out in the wash that having the major funding party remote from the decision making and management of the contract is not a sensible way to manage projects like this in the future". TS were obliged to pay the grant once it was signed, and in my view the withholding of payment would have made the situation worse. Ainslie is stating an argument that the Inquiry may wish to consider. I have considered that argument but I would still argue the fact that having a local authority tasked with a tramways project is one that has worked in lots of other locations and is the norm. If the Inquiry concludes that it wasn't appropriate for a local authority to deliver a tram project under these circumstances it might be useful to explore why that model has worked elsewhere. I don't know why a model that has worked elsewhere could not have worked in Edinburgh.

145. I am referred to an email I sent to Ainslie McLaughlin on 6 October 2010 in reply to his email discussed above (TRS00011064). My view then and now is that TS did take its obligations under the grant conditions seriously and discharged them properly. We had the four-weekly meetings where we checked the claims and we had quarterly meetings. We did what the grant conditions required TS to do, these grant conditions are standard for all sorts of major projects. The grant conditions are derived from legislation.

146. I am referred to a TIE email exchange from March 2007 (CEC01714284) in which there was reference to the possibility of TS and CEC sharing all risk in the same proportion and reaching mutual decisions. That may well have been TIE's wish. However, TS's capped contribution and CEC's contribution should have been enough to cover the estimated cost and leave a significant margin. The point of having CEC take on the risk of any further costs was an attempt to emphasise to

CEC the importance of managing a project for which they were responsible. I can understand why TIE wanted risks to be shared but that was not the offer from TS.

INVOLVEMENT OF POLITICIANS

147. I have been referred to an email exchange with John Swinney's office in December 2009 (TRS00016715) and asked about John Swinney's involvement in monitoring the tram project. John Swinney had the finance brief as well as the transport brief. This email is in relation to TS holding on to its contribution, so the finance minister would like to know whether that money could be spent elsewhere by the SG. This is an entirely proper inquiry from a finance minister. The Transport Minister was Stewart Stevenson and the Cabinet Secretary was John Swinney. As John Swinney had the finance brief and the transport brief I would anticipate questions from John Swinney wearing either hat.

148. I am referred to an email from John Ramsay to Ministers dated 30 April 2008 (TRS00005076) in which Mr Swinney seems to have concerns about the timescales and the programme slippage. It is not surprising to me that John Swinney is kept apprised of developments on the tram project. This is one of the biggest capital projects in Scotland. The cash impact is of significant interest to his portfolio. He is a member of the Cabinet and issues in relation to a high profile project are likely to be matters of political concern. It would be extraordinary in my view if John Swinney was not kept aware of developments.

149. I am referred to emails from 2010 which narrate the establishment of the Funders Oversight Group (FOG) (CEC00475541 / TRS00010843). I did not attend FOG but Sharon attended, she was our Finance director, Gerry was my representative to provide project context, and you have senior finance people from TIE and CEC in attendance. FOG meetings were for the finance teams. Richard Jeffrey and I had phone call conversations and I would have had regular updates from Richard Jeffrey. Ainslie McLaughlin was involved as he was our head of Procurement and head of Trunk Roads Directorate. He also had experience of working with Bilfinger on the successful M80 contract.

150. In the FOG meeting notes I see that it was suggested that there was a danger that the whole £500m from SG would be spent with no completed line and that is a fair statement. There was discussion on a range of options about how CEC could raise additional finance. Those options included private funding, funding from Lothian Buses, funding from property deals, and prudential borrowing. Another option that was considered was the sale and lease back of the trams. A number of those mechanisms would have needed TS approval. This group was looking at funding mechanisms to bridge the gap between the available funding of £545m and whatever the final bill would be. TS would report back to the Chief Executive of Transport Scotland and to Ministers as requested. For any other information regarding FOG you would have to ask those who attended. You are approaching the stage where I was going to move on to deal with other things so I began to be less involved and others became more involved.

151. I am referred to an email I sent to Ministers on 10 May 2010 containing a tram project update (TRS00010718). This was point at which it was realised that there would not be sufficient funding to build the entire route, so TIE was trying to get to the point where it could negotiate a shortened route. Bilfinger had a contract which entitled it to be paid for building the whole route. I think TIE was trying to create a pressure through the contract termination process which would encourage Bilfinger to come to the table to negotiate the truncated route as a means of curtailing the extent of the liability. This email is about how do we produce a funding settlement that is consistent with what has to be paid for.

152. I am referred to Richard Jeffrey's note of a meeting on 21 June 2010 with Ministers, TS and TIE personnel (CEC00263295). The Gogar Interchange (Edinburgh Gateway Station) was a means for people coming from other parts of Scotland such as Fife to get to Edinburgh Airport by switching from the train onto the tram without having to go into central Edinburgh. It was a replacement for EARL. The Gogar Interchange was part of the rail improvements programme as it was too much of a complication to add it to the tram project. It was paid for through the Edinburgh to Glasgow rail improvements budget and not from the tram project budget.

INVOLVEMENT OF AUDIT


153. I am referred to a number of documents relating to Audit Scotland's reports on the project and TS's engagement with Audit Scotland (TRS000010878 / TRS0010933 / TRS00005079). The emails shown to me just describe the normal Audit Scotland process. It would be odd if TS had not had a lot of input into the Audit Scotland reports. With Audit Scotland there is a process to plan the scope of the audit and ensure Audit Scotland has the correct facts. To the extent that TS provided input it was not an attempt to influence Audit Scotland but rather to ensure that Audit Scotland had its facts correct and had the relevant information or understood where relevant information was to be found. TS is often asked to comment on drafts for factual accuracy but I am not reading anything unusual in these emails. It would be entirely up to Audit Scotland whether to accept or reject any comments by TS. I don't consider TS's interaction with Audit Scotland to have been abnormal.

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COSTS TO STATUTORY UTILITIES

154. I am referred to emails relating to payments made by Scottish Water for the utility diversions (TRS00017217 / TRS00017234). Scottish Water was a wholly owned subsidiary of SG and there was an issue about the cost to Scottish Water in relation the diversion of utilities. There was a principle that the promoter should pay for relocation of utilities, but there is also a concept of betterment where to reflect the fact that the utility company ends up with a more modern asset it has to make a contribution recognising the betterment of utilities. I recall discussions around those issues. The practice of paying for betterment is a well-established practice. On the Edinburgh tram project the utilities were moved by Carillion at the cost of the promoter. I have been told that in some other countries the utility companies are told to move the utilities at their own cost because the tram is seen as a public good. The scale of the costs of utility diversion seems more of a feature in tram projects in the UK than elsewhere.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 47 pages are within my direct knowledge and 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... 21/3/2017...